

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Philip Seldon

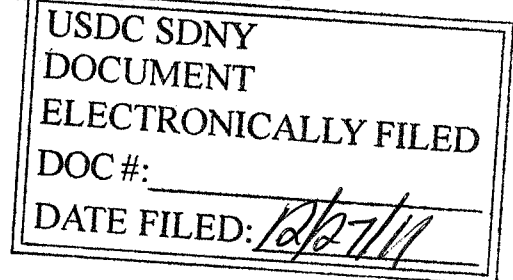
Plaintiff.,

vs..

Edward Magedson a/k/a Ed Magedson,
Ripoffreport.com and Xcentric Ventures L.L.C.

Defendants.

Index no. 11CIV6218



**PLAINTIFF'S AFFIRMATION IN OPPOSITION TO MOTION TO DISMISS
AMENDED COMPLAINT**

PHILIP SELDON, affirms under the penalty of perjury that:

1. I am the plaintiff in the above captioned action.
2. I make this affirmation in opposition to defendants' motion to dismiss my amended complaint in this action.
3. A copy of my Amended Complaint is annexed hereto as Exhibit C.
4. Defendant contends that I do not have personal jurisdiction over the defendants because they do not have a presence in the State of New York. The defendants in a prior case in the State of New York been have found to have been subject to jurisdiction in the State of New York and in addition have subjected themselves in at least on case voluntarily to jurisdiction in the State of New York. In Seth Greenky and Green Key Management, LLC, vs. Jeffrey

S. Joslin, 3 Legged Dog Productions, Xcentric Ventures, LLC d/b/a Ripoff Report.com and Google, Inc. in the Supreme Court of the State of New York, County of New York, Index No. 101174/2010, Xcentric Ventures did not contest jurisdiction in the State of New York and was thus subject to New York State jurisdiction.

5. In *Intellect Art Multimedia, Inc. vs. Matthew Milewski, John Does 1-5 and Xcentric Ventures, LLC*, in the Supreme Court of the State of New York, County of New York, Index No. 117024/2008 the Judge Judith Gisch held that Xcentric Ventures, LLC was subject to New York State jurisdiction based on New York's long-arm statute, CPLR 302, finding that the plaintiff in that case has alleged sufficient facts to show that Xcentric does indeed transact business within New York through its Ripoff Report website, given the high level of interactivity of the website, the undisputed fact that information is freely exchanged between website users and Xcentric's solicitation of companies and individuals to "resolve" the complaints levied against them on Ripoff Report. A copy of Judge Judith Gisch's decision in that case is annexed hereto as Exhibit A. A copy of Intellect Art Multimedia, Inc.'s attorney Jeremy M. Klausner's (of Calo Agostino, PC) Memorandum of Law in Opposition to Defendant Xcentric Ventures Motion to Dismiss is annexed hereto as Exhibit B and is adopted hereto as this plaintiff's argument in opposition to defendants' motion to dismiss as if it were stated here as the argument is virtually the same as would be made in the instance of this opposition as the facts and circumstances of Xcentric's presence in the State of New York are virtually identical in that Xcentric Ventures has systematic and continuous contact with New York as fully explained in Exhibit B.

6. While this court is not bound by Judge Gisch's ruling, it is respectfully requested that this court take judicial notice of it and adopt it's finding in rendering its decision in this action.

This court should also take judicial notice of the fact that Xcentric did not contest jurisdiction in at least on other case in which it was involved in the State of New York as cited above.

7. While the Communications Decency Act does provide a level of protection for Internet websites such protection is not absolute. Xcentric creates its own content as a first party for the postings it publishes on its website in its "title tags" which are not created by the third parties that post on the site but are manufactured by Xcentric as a first party. This is alleged in the Amended Complaint. Furthermore, Xcentric examines each and every posting that is presented by the third parties and decides whether or not it will be posted and whether or not it will be posted as presented or if it will be modified with defamatory words redacted. The CDA is designed to protect websites that do not have the capacity to provide this level of monitoring - it was not envisioned to protect a website that examines each and every bit of content that is presented to it as is done on Xcentric's Ripoff Report.com. It was created to protect websites such as Amazon, Google and the like that do not monitor or edit the content posted by third parties that do not have the ability to do so. Furthermore, Xcentric edits and removes content for a large fee with its Advisory program, a facility that was not envisioned by the CDA.

8. Ed Madgedson had a presence in the State of New York with Philip Seldon in that he, along with Xcentric, made two oral contracts with him over the telephone in telephone calls initiated by Madgedson, one in June and one in July and further had other telephone conversations and email communications with him initiated by Madgedson with Philip Seldon being in the State of New York. Furthermore, Ed. Magedson is the manager of Xcentric and is involved in its day to day activity in the State of New York, such activity found to be subject to New York State jurisdiction by Judge Gisch. This activity subjects Ed Magedson to New York jurisdiction.

9. The July contract was essentially for advertising in exchange for websites not being used by the plaintiff and not necessarily for removing the defamatory postings about the plaintiff. The value of the advertising was in excess of \$150,000 as was the value of the Internet domains being exchanged for the advertising. The term of the advertising was to be for less than one year. After the contract was entered into there was a discussion of advertising for a period of five years but this was not the period of time covered by the oral contract which called for advertising for a period of time of less than one year. As such, the contract is not barred by the Statute of Frauds.

WHEREFORE, it is respectfully requested that this court deny defendants' motion to dismiss in all respects along with any such further relief as it deems just and proper.

A handwritten signature in black ink, appearing to read "Philip L. ...". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

EXHIBIT A

*Intellect Out Multimedix Inc -
vs. Matthew Milewski John Doe 1-50
Xcentric Ventures LLC 117024108*

*Judge
Judith S. Busch*

ective expressions of consumer dissatisfaction with plaintiff and the statements are
not actionable because they are Milewski's personal opinion. Since the statements are
protected opinion, the first cause of action is dismissed.

Xcentric's motion to dismiss

Xcentric seeks to dismiss the complaint against it on grounds that the court lacks
personal jurisdiction and, alternatively, to dismiss the causes of action for defamation
and products liability for failure to state a claim.

Since it is undisputed that Xcentric is not subject to general jurisdiction based on
presence or domicile in New York under CPLR § 301, in order for plaintiff to avoid
dismissal for lack of personal jurisdiction, the court must find that Xcentric is subject to
long-arm jurisdiction in New York. Plaintiff argues that Xcentric is subject to long-arm
jurisdiction with respect to the defamation claim pursuant to CPLR § 302 (a) (1), and
with respect to the products liability claim pursuant to CPLR § 302 (a) (1) and (a) (3).

Where a defendant moves to dismiss the complaint asserting that the
court lacks personal jurisdiction over them, the plaintiff bears the burden of proof (see
Barrington Capital Group, L.P. v. Arsenault, 281 AD2d 166 [1st Dept 2001]). However,
in responding to such a motion, plaintiff need only demonstrate that facts "may exist" to
exercise personal jurisdiction over the defendant (Hessel v. Goldman, Sachs & Co., 281
AD2d 247 [1st Dept 2001]).

To determine whether a non-domiciliary may be sued in New York, the court
must first determine whether New York's long-arm statute, CPLR § 302, confers
jurisdiction over it in light of its contacts with this State. LaMarca v. Pak-Mor Mfg. Co.,
95 NY2d 210 (2000). If any of the provisions of CPLR § 302 apply, then the court must

determine whether the exercise of jurisdiction comports with due process (*id.*). The purpose of CPLR § 302 is to extend New York jurisdiction to nonresidents who have engaged in some purposeful activity in New York in connection with the cause of action asserted. Parke-Bernet Galleries Inc. v. Franklyn, 26 NY2d 13 (1970).

Under CPLR 302 (a) (1), "a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state." The issue of whether an internet website standing alone is sufficient to confer jurisdiction is a developing area of law. Courts typically look at the nature of the website. A defendant is more likely to be found to be transacting business within the state vis-a-vis a website if the website is "interactive," thereby permitting the exchange of information between the website users and the defendant, as opposed to "passive" websites that merely display information and do not permit an exchange thereof. See Hollins v. U.S. Tennis Ass'n, 469 FSupp2d 67, 74 (EDNY.2006); Bankrate, Inc. v. Mainline Tavistock, Inc., 18 Misc3d 1127(A) (Sup Ct, Kings Co 2008); Sayed v. Walser, 15 Misc3d 621 (N.Y.City Civ.Ct. 2007); Baggs v. Little League Baseball Inc., 17 Misc3d 212 [Richmond County, Sup.Ct.2007]; Chestnut Ridge Air, Ltd. v. 1260269 Ontario Inc., 13 Misc3d 807, 810 (Sup Ct, N.Y. Co 2006); see also Aqua Prods., Inc. v. Smartpool, Inc., 2005 WL 1994013 (SDNY 2005); Heidle v. The Prospect Reef Resort, Ltd., 364 F Supp2d 312 (WDNY 2005); Shultz v. Ocean Classroom Found., Inc., 2004 WL 488322 (SDNY 2004); In re Ski Train Fire in Kaprun, Austria on November 11, 2000, 230 FSupp2d 376 (SDNY 2002); Spencer Trask Ventures v. Archos S.A., 2002 WL 417192 (SDNY 2002); Thomas Publishing Co. v. Industrial Quick Search, Inc., 237 FSupp2d 489 (SDNY

2002); Citigroup Inc. v. City Holding Co., 97 FSupp2d 549 (SDNY 2000).

Plaintiff argues that Ripoff Report is an interactive website. Plaintiff claims that Xcentric makes money by "soliciting business from the companies and individuals who have had negative posts made against them. For a fee, Xcentric offers to enroll companies and/or individuals in a program by which Xcentric will 'follow-up' with the aggrieved individuals or entities" to resolve the complaints posted on Ripoff Report. Plaintiff further maintains that in this case, Xcentric has "rights" to Milewski's posting via Xcentric's Terms of Service. Plaintiff further claims that Xcentric drafted its own headline to draw attention to Milewski's posting.

Here, the court finds that plaintiff has alleged sufficient facts to show that Xcentric does indeed transact business within New York through its Ripoff Report website, given the high level of interactivity of the website, the undisputed fact that information is freely exchanged between website users, i.e. Milewski, and Xcentric, Xcentric's alleged role in manipulating user's information and data, and Xcentric's solicitation of companies and individuals to "resolve" the complaints levied against them on Ripoff Report. Since plaintiff's claims against Xcentric arise from Milewski's alleged posting on Xcentric's website, CPLR § 302 (a) (1) applies to the facts in this case.

Next, the court must determine whether due process will be served by the exercise of long-arm jurisdiction over Xcentric (International Shoe Co. v. Washington, 326 US 310 [1945]; LaMarca, supra). The due process inquiry consists of a two-part analysis: [1] minimum contacts must exist between the defendant and the forum; and [2] the assertion of jurisdiction must not offend traditional notions of fair play and substantial justice. CPLR § 302, Commentary C302:3. Here, the court finds that the

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
INTELLECT ART MULTIMEDIA, INC.,

Plaintiff,

v.

MATHEW MILEWSKI, JOHN DOES 1-5, and
XCENTRIC VENTURES, LLC,

Defendants.
-----X

ORIGINAL

INDEX NO. 117024/08

SEP 15 2008
COUNTY CLERK
NEW YORK

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT XCENTRIC
VENTURE, LLC'S MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFF'S
MOTION FOR DISCLOSURE OF IDENTIFYING INFORMATION**

Preliminary Statement

Intellect Art Multimedia ("IAM") brought suit in the Supreme Court of the State of New York, New York County, against defendants Mathew Milewski, a resident of the State of New York, and XCentric Ventures ("XCentric"), an Arizona-based LLC. IAM's allegations include claims against XCentric for defamation and products liability.

XCentric responds that jurisdiction in this Court is not proper. XCentric alternatively argues that IAM fails to state any claim against it upon which relief may be granted. For the reasons set forth below, this Court's exercise of personal jurisdiction over XCentric is appropriate and IAM sufficiently pleads its claims. XCentric's motion must therefore be denied.

Argument

I. THIS COURT HAS JURISDICTION OVER XCENTRIC

On a motion to dismiss for lack of jurisdiction, the plaintiff bears the burden of showing that the court has jurisdiction. Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 507 (2d Cir. 1994). Prior to discovery, as here, the plaintiff may defeat a motion to dismiss based on legally sufficient allegations of jurisdiction. Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir. 1990), *cert. denied*, 498 U.S. 854 (1990).

A. Xcentric Ventures has systematic and continuous contact with New York.

New York CPLR §301 provides that “a court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.” The basis of this “general” jurisdiction is set forth in the seminal case International Shoe v. Washington, 326 U.S. 310, 316 (1945). There, the Supreme Court set forth the famous test that jurisdiction over a non-resident comports with due process when the defendant has “certain minimum contacts...such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *See also* Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) (finding that jurisdiction is appropriate where an injury arises out of actions that are purposefully directed toward the forum state, even if the defendant never physically entered the forum). A primary theme underlying general jurisdiction is that systematic and continuous contact with the forum state will allow the forum to exercise jurisdiction over any dispute involving the party. Simonson v. Int'l Bank, 14 N.Y.2d 281, 285 (1964). A party's contacts with the forum state must be based

on the aggregate of its activities. Baggs v. Little League Baseball, 840 N.Y.S.2d 529 (Sup. Ct. 2007).

Given the aggregate of Xcentric's contacts with New York, this forum can exercise general jurisdiction. It is undisputed that Xcentric continually enters into contracts within the state, both with individual users through its TOS (Klausner Aff., **Exhibit D**), and with businesses through its Corporate Advocacy Program (Klausner Aff., **Exhibit F**). Every New York user of Ripoff Report must agree to Xcentric's TOS. The TOS is a contract whereby XCentric agrees to post the users' statements in exchange for, *inter alia*, (1) the users' promise not to author defamatory material, and (2) the users' assignment of certain intellectual property rights in the material to XCentric. XCentric's Corporate Advocacy Program is a contract between XCentric and New York businesses wherein businesses pay XCentric to provide the service of internet reputation repair. This business model is somewhat ironic in that the businesses with whom XCentric contracts would not need reputation repair but for the material posted on XCentric's own website, Ripoff Report. Finally, XCentric sells goods in New York in the form of its book on how to get ripoff revenge. Klausner Aff., **Exhibit B**. Given the aggregate of XCentric's contacts with New York, general jurisdiction is proper and XCentric is amenable to suit in New York on all IAM's claims.

B. This Court has jurisdiction over Xcentric pursuant to New York's Long Arm Statute.

New York's "Long-Arm" statute, CPLR §302, provides:

As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. Transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. Commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
3. Commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
 - i. Regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
 - ii. Expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
4. Owns, uses, or possesses any real property situated within the state.

As applied here, personal jurisdiction over XCentric is appropriate with respect to IAM's defamation claim under CPLR §302(a)(1), and under CPLR §302(a)(1) and (a)(3) with respect to IAM's products liability claim.

As a preliminary matter, XCentric's brief misstates or misunderstands the long arm jurisdiction rules of New York at several points. XCentric's contention that it must be shown to have "engaged in such a continuous and systematic course of 'doing business' here as to warrant a finding of its 'presence' in the jurisdiction" (XCentric's Memorandum of Law at pp. 3-4 citing Simonson v. Int'l Bank, 14 N.Y.2d 28, (1964)) is not the proper state of the law. Rather, this is the common law standard for general jurisdiction under CPLR §301, discussed above. Indeed, Simonson involved a claim brought before New York instituted the CPLR. In that case the Court dismissed a 1960 claim for lack of personal jurisdiction. In 1963, New York instituted the CPLR, and thereafter the Simonson Plaintiff re-filed the action, contending that the CPLR should retroactively apply to the original claim. The Court rejected that argument, explaining the state of the law in the very sentence that XCentric cites as authority: "Under our

decisional law *prior* to the adoption of the CPLR, a foreign corporation, not authorized to do business in this State, was held amenable to local suit only if it was engaged in such a continuous and systematic course of “doing business here as to warrant a finding of its “presence” in the jurisdiction. *Id.* (emphasis added). Instead, under CPLR §302(a)(1), long arm jurisdiction is available when a party (1) transacts any business in the state; and (2) the cause of action is directly related to, and arose from, the business so transacted.” State v. McLeod, 819 N.Y.S.2d 213 (Sup. Ct. 2006), *citing* Storch v. Vigneau, 556 N.Y.S.2d 342 (1st Dept. 1990).

While IAM submits that general jurisdictions available over XCentric not based on the operation of its website, but based solely on the systematic and continuous contracts and sales XCentric enters into in New York, IAM also recognizes that jurisdiction over internet websites is an evolving area of the law. Even under these standards, this Court has jurisdiction over XCentric. Here, long-arm jurisdiction over XCentric is proper based on its actions conducted on the internet, which have caused harm in New York. The seminal case on internet-based jurisdiction is Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124 (W.D. Pa. 1997). There, the court devised a “sliding scale” analysis, measured in terms of website passivity or activity. A passive web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. *Id.*, *citing* Bensusan Restaurant Corp. v. King, 937 F. Supp. 295 (S.D.N.Y. 1996). On the other end of the spectrum, if the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. *Id.*, *citing* CompuServe, Inc. v. Patterson, 89 F.3d 1257

(6th Cir. 1996). In the middle, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the website. *Id.*, citing Maritz, Inc. v. Cybergold, Inc., 947 F. Supp. 1328 (E.D. Mo. 1996). New York recognizes the applicability of the Zippo standard. Kaloyeva v. Apple Vacations, 866 N.Y.S.2d 488 (Sup. Ct. 2008). See also, Citigroup, Inc. v. City Holding Co., 97 F. Supp. 2d 549, 566 (S.D.N.Y. 2000). “The guiding principle which has emerged from the case law is that whether the exercise of personal jurisdiction is permissible is directly proportionate to the nature and quality of commercial activity that an entity conducts over the internet.” *Id.* (internal citations and quotations omitted).

Here, XCentric asks the Court to find that it is a passive website. In support of that contention, it offers to the Court an incomplete picture of its business: that the postings made by third parties are free, that it is free to view the postings and that it is free to post a certain number of rebuttals. While all true, XCentric fails to disclose the totality of its business model, and jurisdiction is based on the aggregate of all its activities. Baggs, supra.

XCentric makes money by soliciting business from the companies and individuals who have had negative posts made against them. For a fee, XCentric offers to enroll a victimized entity or individual and will “follow-up” with the aggrieved individuals or entities. XCentric will mark the complaints as resolved, but again, the postings will only be marked as resolved and never removed. Klausner Aff., **Exhibit F**. Of course, were the negative posts simply removable upon request of the author, XCentric would be unable to capitalize on the companies that have been attacked on its website. The economic value of that right to XCentric can be measured by publicly available

documents; Magedson quoted one maligned corporation a total price of \$50,000 plus a \$1,500 monthly retainer. Klausner Aff., **Exhibit I at pp. 4-5**. Thus, critical to XCentric's business model is its policy, unilaterally created, of non-removal of any post – even if the posting violates its other TOS.¹ This affirmative step gives XCentric both a commercial and ownership interest in the content of the post, and makes Ripoff Report much more than a mere passive facilitator of information under the Zippo standard.

In this case, Milewski created the content on XCentric's website. Pursuant to its own TOS, XCentric contracted rights in the content away from Milewski and in favor of itself. XCentric then drafted a headline, defamatory in itself, to draw attention toward Milewski's posting. It also created the web page itself upon which Milewski's posting appeared, including authoring the title Ripoff Report and featuring a prominent link to its Corporate Advocacy Program right below the posting and a click-through advertisement to Ripoff Revenge. The content in which both Milewski and XCentric have an interest gave rise to the harm suffered by IAM. Thus, jurisdiction over XCentric is proper.

Although not binding on this Court, IAM respectfully directs the Court's attention to May v. XCentric Ventures, LLC, 409 F. Supp. 2d 1052 (N.D. Ill. 2006). May had a similar fact pattern; several end users made postings about May's business on XCentric's website, and May sued. As here, XCentric moved to dismiss for lack of personal jurisdiction. The court denied XCentric's motion, applying the Zippo standard and finding that XCentric purposefully availed itself of the protection of the laws of Illinois

¹ Although the Terms of Service and Ripoff Report's home page both state that the posts are permanent, Magedson stated under oath that he has deleted a posting for a company enrolled in the Corporate Advocacy Program. He later stated that he did not remember if he deleted any reports, and subsequently attributed the confusion to an error in the Court Reporter's transcription. Klausner Aff., **Exhibit J at oo.190:3-193:2 and Exhibit K at pp. 8-9**.

and purposefully reached out to the state of Illinois. IAM urges that a similar result be reached here.

XCentric's business model by its very definition means that it is contracting with New York businesses, in New York, to supply the service of reputation repair. XCentric is additionally conducting business in New York by selling its book, "How to get Ripoff Revenge." Finally, ripoffreport.com and the related sites are all freely accessible to any New York based internet user. Although this alone does not impute jurisdiction, New York users, who have to provide personal information and agree to XCentric's TOS, have used the site to author reports. The TOS is a contract between the end user and XCentric, entered into by the end user in New York. There is a bargained-for exchange and valid consideration; XCentric allows the end user to post on its website, and the end user waives his right to remove the posting or otherwise be paid for its creation. These activities make the exercise of long arm jurisdiction appropriate under the Zippo standard.

A. Due Process Considerations do not Prevent this Court from Exercising Jurisdiction.

Once jurisdiction is established, the Court will exercise it only if due process considerations so allow. International Shoe. supra; LaMarca v. Pak-Mor Mfg. Co., 95 N.Y.2d 210, 216 (2000). Due process is not offended "[s]o long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there ... even if not present in that State". Kreutter v. McFadden Oil Corp., 71 N.Y.2d 460, 467 (1988) *citing* McGee v. International Life Ins. Co., 355 U.S. 220, 222-23 (1957). The test for determining due process considerations is a 'reasonableness' test, set forth by the Supreme Court in Asahi Metal Industry Co. v.

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Philip Seldon

Plaintiff.,

vs.

AMENDED COMPLAINT

Index no. 11CIV6218

Edward Magedson a/k/a Ed Magedson,
Ripoffreport.com and Xcentric Ventures L.L.C.

Defendants.

1. Philip Seldon is a resident of the City of New York.
2. Philip Seldon is the author of eight books.
3. Edward Magedson a/k/a Ed Magedson is a resident of the State of Arizona.
4. Ripoffreport.com is a website under the control of Edward Magedson and upon information and belief is owned by Xcentric Ventures L.L.C.
5. Xcentric Ventures L.L.C. is a corporation located in the State of Arizona.
6. Upon information and belief Xcentric Ventures and/or Edward Magedson employ six employees among whose functions are to monitor, read and censor the postings made on ripoffreport.com. Upon information and belief, each and every posting made to the ripoffreport.com website is read by its staff and matter considered objectionable by its staff is deleted or redacted from the postings. Reports considered inappropriate for the website by this staff are not posted and do not appear on the website.

7. Edward Magedson has modified postings made on ripoffreport.com to change negative reports into favorable reports after payment of monetary consideration.

8. On or about July, 2011 Ed Magedson contacted Irina Borisenko asking her to confirm the reports she made about Philip Seldon. She was unable to confirm or prove the truth of her allegations. Accordingly Ed Magedson stated to Philip Seldon that he would remove the disparaging material from her reports about him. Ed Magedson has failed to do this and has continued to publish the reports cited in the First and Second causes of action defaming and libeling Philip Seldon. Similarly, Ed Magedson contacted the individual who made the postings in the Third, Fourth, Fifth and Sixth Causes of action stating that if said individual was unable to confirm or prove the truth of the allegations he would remove the disparaging material from the reports about Philip Seldon. Said individual never contacted Ed Magedson and accordingly Ed Magedson was supposed to remove the disparaging material. As such, Ed Magedson had knowledge that the defamatory material about Philip Seldon on ripoffreport.com was false, yet he continued to publish said material on ripoffreport.com defaming and libeling Philip Seldon. Said conduct also breached an agreement Ed Magedson had with Philip Seldon to remove the defamatory material posted by these individuals.

9. The title tag lines cited below have been created by the defendants and not by third parties.

FIRST CAUSE OF ACTION

10. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "8" hereof, as though set forth in full herein.

11. On April 25, 2011 the defendants published a report by "Irina" on RIPOFFREPORT.COM with the headline "Sexual Pervert" in the title tag of the posting created by the defendants.

12. The foregoing statement published by defendant of and concerning Plaintiff are false and defamatory, being libel *per se*.

13. At the time the defendants published the above defamatory statements, defendants knew that they were false, and they failed to take proper steps to ascertain their accuracy; but, instead, defendants published the same with reckless disregard of whether the same were true or not.

14. In publishing the said defamatory statements, the defendants acted in a grossly irresponsible manner, without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

15. Plaintiff has been held up to contempt and public reproach and has been injured in his reputation and profession, has suffered mental anguish and pain and has been irreparably injured in his profession, all to his damage in the sum of One Million Dollars (\$1,000,000.00), or such other amount proven at trial.

16. By reason of the wrongful and malicious intent by defendant in publishing this said defamatory statements, plaintiff should be awarded punitive damages in the sum of Twenty-five Million Dollars (\$25,000,000.00), or such other amount as awarded by the Court.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, plaintiff demands punitive damages against the defendants in an amount to be determined by this court within the jurisdictional limits of this court but no less than Twenty-five Million Dollars (\$25,000,000).

SECOND CAUSE OF ACTION

17. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "8" hereof, as though set forth in full herein.

18. On April 25, 2011 the defendants published a report by "Irina" on RIPOFFREPORT.COM headlined "Sexual Pervert" which contained the following statement:

"Philip Seldon took nasty photos of me when he got me drunk as his roommate and then told me he deleted the photos. I found out that he didn't delete them and had multiple copies that he kept on his business computer and personal computer. He had multiple photos of me printed out in file cabinets. I asked him why he didn't delete the photos and he said he forgot but now wishes to distribute them to people and sell them back to me. This man has all kinds of perverted photos on his computer and is a menace to women. He tells lies and is obsessed with stalking me. I've issued a warning to him to stay away from me but he continues to harass my family and friends. Nobody took any money from me and all that he says is lies. He tries to control my money and family but I tell him to leave me alone. He won't listen and I am afraid of him. I will notify the police that he is still bothering me."

19. The foregoing statements published by defendant of and concerning plaintiff are false and defamatory, being libel *per se*.

20. At the time the defendants published the above defamatory statements, defendants knew that they were false, and they failed to take proper steps to ascertain their accuracy; but,

instead, defendants published the same with reckless disregard of whether the same were true or not.

21. In publishing the said defamatory statements, the defendants acted in a grossly irresponsible manner, without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

22. Plaintiff has been held up to contempt and public reproach and has been injured in his reputation and profession, has suffered mental anguish and pain and has been irreparably injured in his profession, all to his damage in the sum of One Million Dollars (\$1,000,000.00), or such other amount proven at trial.

23. By reason of the wrongful and malicious intent by defendant in publishing this said defamatory statements, plaintiff should be awarded punitive damages in the sum of Twenty-five Million Dollars (\$25,000,000.00), or such other amount as awarded by the Court.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, plaintiff demands punitive damages against the defendants in an amount to be determined by this court within the jurisdictional limits of this court but no less than Twenty-five Million Dollars (\$25,000,000)

THIRD CAUSE OF ACTION

24. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "8" hereof, as though set forth in full herein.

25. On April 25, 2011 the defendants published a report by "Mike" on RIPOFFREPORT.COM which contained the following statement:

"Seldon has many judgements against him and is currently using corporate shell companies to avoid a judgement against him already approved by the courts. Check New Jersey and NYC court records. If you have information regarding this person, please contact Andrew Spinnel, attorney in NYC so justice can be served."

26. The foregoing statements published by defendant of and concerning plaintiff are false and defamatory, being libel *per se*.

27. At the time the defendants published the above defamatory statements, defendants knew that they were false, and they failed to take proper steps to ascertain their accuracy; but, instead, defendants published the same with reckless disregard of whether the same were true or not.

28. In publishing the said defamatory statements, the defendants acted in a grossly irresponsible manner, without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

29. Plaintiff has been held up to contempt and public reproach and has been injured in his reputation and profession, has suffered mental anguish and pain and has been irreparably injured in his profession, all to his damage in the sum of One Million Dollars (\$1,000,000.00), or such other amount proven at trial.

30. By reason of the wrongful and malicious intent by defendant in publishing this said defamatory statements, plaintiff should be awarded punitive damages in the sum of Twenty-five Million Dollars (\$25,000,000.00), or such other amount as awarded by the Court.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, plaintiff demands punitive damages against the defendants in an amount to be determined by this court within the jurisdictional limits of this court but no less than Twenty-five Million Dollars (\$25,000,000)

FOURTH CAUSE OF ACTION

31. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "8" hereof, as though set forth in full herein.

32. On April 25, 2011 the defendants published a report by "Doctor" on RIPOFFREPORT.COM headlined "Tax Free Money Income" in the title tag of the posting created by the defendants which contained the following statement:

"Philip Seldon hosts wine tasting parties (200-500 people) and takes in cash and never reports it as income to the Federal Government. Philip Seldon gets Federal Express packages and express mail or UPS packages with aproximaely \$11,000 per month cash contents at his home and business address (same buliding apartment #2724 and #3414) from a woman named Kathy whose one of his other companies is located in Oklahoma where Kathy hides his money under a corporate veil (hence his name Norman Oklahoma). Monthly wine tastings are held in NYC under another one of his company names and he is avoiding NYC City taxes as well. Go visit one of his wine tastings all of you prosecutors, it's usually held at the Bulgarian National Hall on the Upper East side so a sting operation would be good for your public relations. His old romate Leslie has a paypal account that she launders the money for Philip monthly from events and Kathy so he can avoid creditors and not pay Federal, State, and City taxes.

Philip Seldon has a stock trading account that he trades approximately \$400,000 worth of stock registered under the corporate veil of Kathy's company in Oklahoma and he is the only person

trading this stock and asset. He only buys and sells Apple Corporation stock so it won't be hard to catch him on the corporate veil corruption he so readily sets up.

Philip takes naked pictures of his ex-romates (always women) and tries to hold them over their head for favors and promises of future friendship. Philips motive is to usually get women drunk at lavish wine tastings and home /office dinners and then to get women to take of their clothes and and then he takes pictures for his files. Philip Seldon has many nude photos of himself on his computer that he shows to women. They are pornography of an old man with his clothes off exposing his penis. The courts would love to see these photos since he is always in court filing harassment lawsuits against people to obtain money to supplement his income."

33. The foregoing statements published by defendant of and concerning plaintiff are false and defamatory, being libel *per se*.

34. At the time the defendants published the above defamatory statements, defendants knew that they were false, and they failed to take proper steps to ascertain their accuracy; but, instead, defendants published the same with reckless disregard of whether the same were true or not.

35. In publishing the said defamatory statements, the defendants acted in a grossly irresponsible manner, without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

36. Plaintiff has been held up to contempt and public reproach and has been injured in his reputation and profession, has suffered mental anguish and pain and has been irreparably injured in his profession, all to his damage in the sum of One Million Dollars (\$1,000,000.00), or such other amount proven at trial.

37. By reason of the wrongful and malicious intent by defendant in publishing this said defamatory statements, plaintiff should be awarded punitive damages in the sum of Twenty-five Million Dollars (\$25,000,000.00), or such other amount as awarded by the Court.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, plaintiff demands punitive damages against the defendants in an amount to be determined by this court within the jurisdictional limits of this court but no less than Twenty-five Million Dollars (\$25,000,000)

FIFTH CAUSE OF ACTION

38. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "8" hereof, as though set forth in full herein.

39. On April 25, 2011 the defendants published a report by "Employee" on RIPOFFREPORT.COM headlined "Philip Seldon Vindictive Harassment" in the title tag of the posting created by the defendants which contained the following statement:

"Philip Seldon is harassing this man since his ex-roommate won't go out with him, have sex with him, or take more alcohol induced photos by himself with her clothes off. This man is unstable and women should be cautious around him. He will use your identity for "Pay Pal" fraud schemes as he's done with many women in the past.

Caution with your SSN, credit cards, and never sign anything for him since his past roommates have been abused with his fraud schemes. Contact Andrew Spinnell, attorney in NYC if you need assistance reporting his fraud schemes. Mr. Spinnell has won many cases against Seldon and knows of his schemes and tricks utilized for money laundering, tax evasion, and cash business operations."

40. The foregoing statements published by defendant of and concerning plaintiff are false and defamatory, being libel *per se*.

41. At the time the defendants published the above defamatory statements, defendants knew that they were false, and they failed to take proper steps to ascertain their accuracy; but, instead, defendants published the same with reckless disregard of whether the same were true or not.

42. In publishing the said defamatory statements, the defendants acted in a grossly irresponsible manner, without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

43. Plaintiff has been held up to contempt and public reproach and has been injured in his reputation and profession, has suffered mental anguish and pain and has been irreparably injured in his profession, all to his damage in the sum of One Million Dollars (\$1,000,000.00), or such other amount proven at trial.

44. By reason of the wrongful and malicious intent by defendant in publishing this said defamatory statements, plaintiff should be awarded punitive damages in the sum of Twenty-five Million Dollars (\$25,000,000.00), or such other amount as awarded by the Court.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, plaintiff demands punitive damages against the defendants in an amount to be determined by this court within the jurisdictional limits of this court but no less than Twenty-five Million Dollars (\$25,000,000)

SIXTH CAUSE OF ACTION

45. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "8" hereof, as though set forth in full herein.

46. On April 25, 2011 the defendants published a report by "Employee" on RIPOFFREPORT.COM headlined "Philip Seldon" which contained the following statement:

"Philip Seldon is harassing his ex-roommate in vindictive manners. He gets women drunk and takes photos of them and then uses them for personal perverted manners. He has been asked to delete the photos but keeps multiple sets on his computer.

Philip Seldon has been asked to stay away from his ex-roommate and friends and family but he continues to harass people. Philip is incapable of falling in love due to the evil hate inside of him."

47. The foregoing statements published by defendant of and concerning plaintiff are false and defamatory, being libel *per se*.

48. At the time the defendants composed and published the above defamatory statements, defendants knew that they were false, and they failed to take proper steps to ascertain their accuracy; but, instead, defendants published the same with reckless disregard of whether the same were true or not.

49. In publishing the said defamatory statements, the defendants acted in a grossly irresponsible manner, without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

50. Plaintiff has been held up to contempt and public reproach and has been injured in his reputation and profession, has suffered mental anguish and pain and has been irreparably

injured in his profession, all to his damage in the sum of One Million Dollars (\$1,000,000.00), or such other amount proven at trial.

51. By reason of the wrongful and malicious intent by defendant in publishing this said defamatory statements, plaintiff should be awarded punitive damages in the sum of Twenty-five Million Dollars (\$25,000,000.00), or such other amount as awarded by the Court.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, plaintiff demands punitive damages against the defendants in an amount to be determined by this court within the jurisdictional limits of this court but no less than Twenty-five Million Dollars (\$25,000,000)

SEVENTH CAUSE OF ACTION

52. Plaintiff repeats and realleges the allegations set forth in Paragraphs "1" through "50" hereof, as though set forth in full herein.

53. On August 24, 2011 the defendants entered into an agreement with Philip Seldon in which they agreed to make the aforecited postings in the First through Sixth Causes of Action unsearchable, to insure that any future postings about Philip Seldon would not be published on ripoffreport.com and in addition to provide advertising for various companies with which Philip Seldon was affiliated in exchange for websites that Philip Seldon was not using.

54. Defendants have refused to honor said agreement and have breached said agreement.

55. By virtue of the foregoing, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the defendants for specific performance of the aforesaid agreement.

WHEREFORE, Plaintiff demands judgment against the defendants in the amount no less than One Hundred and Fifty Thousand Dollars (\$150,000).

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Philip Seldon

Plaintiff.,

vs.

AFFIRMATION OF SERVICE

Edward Magedson a/k/a Ed Magedson,
Ripoffreport.com and Xcentric Ventures L.L.C.

Case No. 11CIV6218

Defendants.

Philip Seldon affirms under the penalty of perjury that on December 21, 2011 that he mailed a copy of Affirmation in Opposition to Motion to Dismiss Amended Complaint to Maria Crimini Speth, 3200 North Central # 1500, Phoenix, AZ 85012, attorney for the defendants by depositing it in a receptacle of the United States Post Office located at 500 East 77th Street, New York, NY.

