3. Barrett and Bradford did not apply the "awaken inquiry" standard articulated in Wilson, Fine and Crouse;

Moreover, Barrett and Bradford are procedurally inapplicable, since both Barrett and Bradford were decided summary judgment based upon a full record, and included fact-intensive determinations respecting, *inter alia*, the circulation of the publications at issue, the public availability of the publications, and the advertising of the publications. By contrast, in this case, no such record has been developed. Finally, Barrett and Bradford are factually inapposite to this case because both involved media publications that were pervasively distributed, sold and advertised across the Country, whereas, in this case, the Overlawyered website is neither sold in stores nor advertised.

Bradford involved a claim made by a married couple relating to an article in *Star* Magazine. The plaintiff-wife was formerly a 1200 pound woman who lost approximately 900 pounds. Thereafter, the *Star* published an August 1993 article depicting her weight loss and the resumption of sexual relations with her husband. The plaintiffs filed suit in September 1994. After full discovery, the *Star* sought summary judgment. Discovery revealed that the subject issue of the *Star* sold a total of 3,003,235 copies, the *Star* was available on virtually every supermarket and newsstand shelf in the plaintiffs' neighborhood, and that the *Star* was the "third most widely circulated weekly publication in America." Based on those facts, the Court found the discovery rule was inapplicable without ever considering when the plaintiffs actually discovered the publication. First, referencing the "Uniform Single Publication Act" ("USPA"), 42 Pa.C.S.A. § 8341,[4] the Court found that the statute of limitations in libel actions always commenced on the date

[4] The Uniform Single Publication Act is not a statute of limitation, but only provides that one defamation cause of action may exist for any single publication.

of publication, such that the discovery rule could **never** apply. Second, the Court found, without analyzing whether the plaintiffs had cause to "awaken inquiry," that "no such person could be deemed unaware of a publication so widely distributed in Pennsylvania...". The Court stated: "We do not believe the Pennsylvania Supreme Court would give Mrs. Bradford the grace of [the discovery rule] for this, the third most widely circulated weekly publication in America." Bradford, 882 F.Supp. at 1519.

In Barrett, the plaintiff was a doctor in the Lehigh Valley who claimed to have been defamed by a book written and published by the defendants. Discovery revealed that printing was completed and the book was ready for sale in April 1997. The defendant authors then embarked upon an enormous publicity tour for the book, which included several appearances on television programs in the Lehigh Valley, including a program on the *Lifetime* Network that was rebroadcast several times. The book and the authors' appearances on radio and television talk shows were widely advertised in the Lehigh Valley. The book was distributed at a national convention for alternative medicine, and thereafter, the authors participated in one of the largest "BookExpo" events in America. There were also a wide range of other sales and promotions of the book, and the book was available to be purchased at several bookstores in the plaintiff's home town. Based on those facts, the Court held, on summary judgment, that the discovery rule was inapplicable. Legally, the Court relied on language from Dalrymple stating that the discovery rule can apply only where "no amount of vigilance" will enable the plaintiff to detect an injury, and therefore, the discovery rule did not apply in a context where "the allegedly defamatory material was published, advertised and distributed freely to any willing purchaser." Barrett, 64 F.Supp. at 445-46.

However, in light of the Pennsylvania Supreme Court's subsequent pronouncements in Wilson, Fine and Crouse, it is clear that Barrett and Bradford were wrongly decided. First, and most obviously, Barrett predicated its decision on the Dalyrmple rule, and therefore applied an "all vigilance" standard, finding that regardless of whether the plaintiff had any actual reason to "awaken inquiry," the plaintiff was under an absolute duty to discover his injury. The "all vigilance" standard articulated in Dalyrmple was expressly rejected in Fine and Wilson. See Wilson, 964 A.2d at 362-63. As Bradford also applied an "all diligence" standard, and never inquired as to whether the plaintiff had actual reason to "awaken inquiry," Bradford is also wrongly decided.

More fundamentally, Barrett and Bradford held, incorrectly, that the discovery rule was inapplicable to libel cases with similar facts. Had the Barrett and Bradford courts had the benefit of the later decisions from the Pennsylvania Supreme Court, the Barrett and Bradford Courts would have discerned that Pennsylvania's discovery rule is applicable to **all** cases involving Pennsylvania statutes of limitation, because it is a rule of statutory construction arising from the "accrual" language in 42 Pa.C.S.A. § 5502 (a). Wilson, 964 A.2d at 363. See also Fine, 870 A.2d at 860 ("[T]he discovery rule applies to toll the statute of limitations in **any** case where a party neither knows nor reasonably should have known of his injury and its cause at the time his right to institute suit arises."). This is particularly true in Barrett, where the Court relied on its interpretation of the USPA to determine whether the discovery rule applied. Because the discovery rule arises out of 42 Pa.C.S.A. § 5502 (a) and its corresponding statutes of limitation, including 42 Pa.C.S.A. § 5523 (1) for defamation, any reliance on the USPA to control the accrual of the statute of limitations is inconsistent with Wilson, Fine and Crouse.

Finally, even if this Court were to hold, against the clear authority of Wilson, Fine and Crouse, that Barrett and Bradford were correctly decided, this Court could still not grant the Defendants' Motion to Dismiss in this case. Barrett and Bradford were only decided on a full record pursuant to a motion for summary judgment, and reflect an (erroneous) decision by the Court that, after all discovery had been taken, the pervasive availability and advertisement of the publications rendered the discovery rule inapplicable. Plainly, this Court cannot even apply Barrett and Bradford on a Motion to Dismiss, because there has been no substantive evidence taken regarding whether the Frank Article was ever disseminated and advertised in a manner consistent with the pervasive advertisement and availability of the publications at issue in Barrett and Bradford. Further, on the state of the present record, the Frank Article, which was disseminated on a website and to certain newsletter subscribers, without any advertisement whatsoever, cannot even approach the level of pervasive availability and advertisement upon which the decisions in Barrett and Bradford were based.

Finally, pursuant to Wilson, Fine and Crouse, the Court in Barrett and Bradford erred as a matter of law because it substituted its judgment for that of the jury. Wilson, Fine and Crouse make it clear that when reasonable minds can differ as to any element of the discovery rule analysis, such a determination is the particular province of the jury. Here, it is clear that reasonable minds can differ as to whether Wolk actually had reason to "awaken inquiry," and whether Wolk acted reasonably in not performing "Google" searches on himself before April 2009. The issue of the discovery rule in this case must be reserved for the jury, and the Court cannot rule as a matter of law. For these reasons as well, the Defendants' Motion to Dismiss must be denied.

D. The Defendants' Motion To Dismiss On Statute Of Limitations Grounds Must Be Denied At This Stage Of The Proceedings Because Of The Applicability Of The Doctrine Of Fraudulent Concealment To Toll The Statute Of Limitations

The doctrine of fraudulent concealment also precludes the Defendants from raising a statute of limitations defense. As also set forth in Fine and numerous other Pennsylvania cases:

> In addition to the discovery rule, the doctrine of fraudulent concealment serves to toll the running of the statute of limitations. The doctrine is based on a theory of estoppel, and provides that the defendant may not invoke the statute of limitations, if through fraud or concealment, he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts. The doctrine does not require fraud in the strictest sense encompassing an intent to deceive, but rather, fraud in the broadest sense, which includes an unintentional deception. Fine, 870 A.2d at 860.

In Fine, for example, the Supreme Court found that the doctrine of fraudulent concealment could properly be applied where a doctor told the plaintiff that her facial numbness was a typical condition of dental surgery. Id.

In this case, the doctrine of fraudulent concealment applies on its face because the Defendants, who now seek refuge under the statute of limitations, **never sought comment from Wolk regarding the allegations made in the Frank Article**. Any responsible journalist, when writing an article about a case involving an attorney, particularly one alleging misconduct by an attorney, would contact the attorney involved to ask for comment or for his side of the story. Clearly, Wolk could have reasonably relied on the expectation that any responsible journalist, as the Defendants purport to be, would have requested such a comment, thereby alerting him that an article about him would be written, and "awakening his inquiry." Because they never sought comment

from Wolk, Wolk's inquiry was never "awakened." Of course, the decision not to seek Wolk's comment was a conscious decision made by the Defendants – they had already made up their minds, and they knew that they were going to write a "hatchet-job" story about Wolk, regardless of its falsity, because that is what they were secretly paid and funded to do by their clandestine and undisclosed benefactors, in order to further their political mission of swaying public opinion in their benefactors' favor. Because it is evident that the Defendants made a conscious decision not to seek comment from Wolk prior to publishing the Frank Article, where such a request would have "awakened inquiry" into the defamatory article, it is clear that the Defendants are now estopped from asserting the statute of limitations as a defense to Wolk's claims.

E. The Defendants' Other Contentions Are Meritless

The next portion of the Defendants' Motion to Dismiss constitutes a hodge-podge of half-hearted assertions without citation to proper authority. Namely, Defendants argue that the Frank Article was not defamatory, that the Frank Article constitutes non-actionable opinion, and that the Frank article was "true." These contentions are meritless.

1. Frank Article Is Defamatory

Defendants' argument that the Frank Article is not defamatory has absolutely no merit whatsoever, and constitutes an impermissible attempt by the Defendants' to remove this issue from the jury and have it decided by this Court. The Frank Article suggests, without any basis in fact, that Wolk effectively and unethically "sold-out" his client in the Taylor case for personal gain: "Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in litigation?" [Complaint, Ex. "A"]. This accusation is defamatory *per se*.

To succeed on a claim for defamation in Pennsylvania, a Plaintiff must establish, *inter alia*, the "defamatory character of the communication." Pelagatti v. Cohen, 536 A.2d 1337, 1345 (Pa.Super. 1988). "A publication is defamatory if it tends to blacken a person's reputation or ... injure him in his business or profession." Green v. Minzer, 692 A.2d 169, 172 (Pa.Super. 1997). "When communications tend to lower a person in the estimation of the community, deter third persons from associating with him, or adversely affect his fitness for the proper conduct of his lawful business or profession, they are deemed defamatory." Id.

Generally, to determine if a statement is defamatory, one must "evaluate the effect [the statement] is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate." Tucker v. Fischbein, 237 F.3d 275, 282 (3d Cir. 2001). Under normal circumstances, the issue of whether a publication is defamatory is for the jury, and should not be made by the Court:

> Where there is any doubt that the communication disparages or harms the complainant in his business or profession, that doubt must be resolved in favor of the complainant, even where a plausible innocent explanation of the communication exists, if there is an alternative defamatory interpretation, it is fur the jury to determine if the defamatory meaning was understood by the recipient. Pelagatti, 536 A.2d at 1345.

In other words, "if the allegedly defamatory statements are susceptible to several interpretations, some of which are benign, some of which are not, it is for the jury to decide how the statement is likely to be interpreted by the intended audience." Valjet v. Wal-Mart, No. 06-01842, 2007 WL 4323377, at *8 (E.D.Pa. Dec. 11, 2007) (Buckwalter, J.) (quoting Smyth v. Barnes, No. 04-930, 1995 WL 576935, at *10 (M.D.Pa. Sept. 25,

1995)). Thus, "a court should not dismiss a complaint unless it is clear that the publication is incapable of a defamatory meaning." Tucker, 237 F.3d at 282.

Moreover, it is well settled in Pennsylvania that statements imputing character that adversely affects fitness for a person's profession, particularly in the context of an attorney, are defamatory *per se*:

> A communication which ascribes to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his business, trade or profession, is defamatory per se ... Clearly, statements to the effect that an attorney has committed improper, illegal actions within the context of his practice would tend to impugn his integrity and thereby blacken his business reputation. Pelagatti, 536 A.2d at 1345.

In Pelagatti, an attorney brought a defamation claim against a law clerk, the law clerk's attorney and attorneys for unsuccessful defendants in two multimillion dollar verdict cases, arising from press reports that, *inter alia*, (1) the plaintiff, Pelagatti, improperly colluded with the trial judge while those cases were pending, (2) Pelagatti actually authored a judicial opinion set forth by the trial judge, and (3) Pelagatti abused process, issued ex parte subpoenas, and engaged in other "improper" and "possible [sic] illegal" conduct. Addressing whether the statements were defamatory, the Pennsylvania Superior Court found that the statements were defamatory *per se*, and therefore required no further discussion of defamatory meaning. Id.

Likewise, in Capozzi v. Lucas, No. 03-811, 2004 WL 5572908, at *7 (M.D.Pa. 2004), the Middle District of Pennsylvania found that statements implying that an attorney overbilled his clients were defamatory *per se*. The plaintiff, Capozzi, represented nursing home facilities in class action litigation. Thereafter, Capozzi initiated fee collection litigation against them, arising from the nursing homes' failure to

pay certain fees received from the County under an "IGT Program." The defendant, Lucas, was an attorney who published a monthly newsletter to approximately 700 subscribers, and represented the nursing homes in the fee litigation. In his newsletter, Lucas stated "[W]e believe that if the court finds that the receipt of IGT funds by these facilities is not within the contingency set forth in the Capozzi contingent fee agreements, other facilities that have already paid Capozzi a percentage of their IGT funds would be entitled to a refund." After Capozzi sued the defendant for defamation, the defendant argued that the statement was not defamatory. The Court disagreed because the statement was defamatory *per se*, as it suggested business misconduct:

> The statement suggests that Plaintiffs improperly billed their clients. Certainly a reasonable person reading the Letter might determine that Plaintiffs' conduct with respect to improper billing was unethical and could, on that basis, decide not to seek legal representation from Capozzi and Associates. As such, we conclude that the Letter is capable of a defamatory meaning. In light of the fact that the Letter charges Plaintiffs with improper billing of their clients within the scope of their business, we conclude that the relevant statement is defamatory *per se*. Id.

See also Muirhead v. Zucker, 726 F.Supp. 613, 617 (W.D.Pa. 1989) ("[T]he news release contains allegations of criminal activity and fraud which would be defamatory *per se* under Pennsylvania law"); Gutman v. TICO Insurance Co., No. 97-5694, 1998 WL 306502, at *5 (E.D.Pa. Jun. 9, 1998) (considering a statement from an insurance company to policyholders that "agent exceeded his binding authority to market the TICO program" and finding it defamatory *per se* because the "statement would suggest to a reasonable policyholder that TICO canceled her auto insurance policy because of some improper business conduct undertaken by the plaintiff in his professional capacity.").

Pelagatti and Lucas are directly on point in this case. The defamatory statement at issue suggests that Wolk unethically "sold-out" his client in the Taylor Case for personal gain: "Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in litigation?" [Complaint, Ex. "A"]. This statement plainly and unambiguously suggests that Wolk contravened his client's interests, and acted to his client's detriment, to benefit himself personally. Reasonable persons reading that statement would conclude that Wolk was unethical, and decide not to seek legal representation from Wolk. In fact, in at least one documented instance (of which Wolk is aware), this very thing occurred.

Pennsylvania law is clear that "statements to the effect that an attorney has committed improper, illegal actions within the context of his practice would tend to impugn his integrity and thereby blacken his business reputation," and are therefore defamatory *per se*. The suggestion by Frank that Wolk unethically contravened his client's interest by accepting a lesser settlement for personal gain is the very kind of statement that is defamatory *per se*. Accordingly, the Defendants' argument (without citation to authority), that the Frank Article is not defamatory, is meritless, and the Defendants' Motion to Dismiss on this point must be denied.

2. The Frank Article Is Actionable

Defendants' next argument, that the statement at issue is non-actionable opinion, is just as unavailing. As discussed above, the defamatory statement at issue suggests that Wolk "sold-out" his client in the Taylor case for personal gain: "Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in litigation?" [Complaint, Ex. "A"]. This statement does not constitute a mere

"opinion," but instead, is a direct **accusation** that Wolk acted to his client's detriment for his own personal gain, which is not afforded protection as "opinion." Moreover, the statement is not opinion because its suggestion – that Wolk forced his client to accept an inadequate settlement for personal gain – is provable as false. Also, even if the statement could be considered opinion, which it cannot, the statement implies that it draws upon unstated facts for its basis, and even to the extent that facts are stated to support the statement, those facts are incorrect and incomplete, and the assessment of them erroneous. Therefore, the statement is actionable as a matter of law.

First, the statement at issue is actionable because it constitutes a direct accusation, rather than an opinion. Valjet, 2007 WL 4323377, at *8. In Valjet, a Wal-Mart employee was accused by a supervisor, Cordray, of stealing documents that did not belong to her. After the plaintiff was terminated, the plaintiff brought a defamation against Cordray and others, arising from Cordray's statements. Cordray contended that he could not be liable for defamation because he was merely expressing an opinion that a document was his, and not the plaintiff's. Judge Buckwalter of this Court disagreed, finding that an **accusation** of misconduct was different in kind from an opinion, and the former is actionable as a matter of law:

> The Court, in this case, deems Defendant's argument unmeritorious. Mr. Cordray's statements could not reasonably be interpreted as an expression of his opinion, as they constituted a direct accusation of the Plaintiff. Id.

Valjet is directly on point here. The statement at issue accuses Wolk of selling out his clients by accepting a lesser settlement for Wolk's own personal benefit. This cannot reasonably be interpreted as an expression of opinion, as the statement is a **direct**

accusation of Wolk impugning his professional integrity. Therefore, following Valjet, the Defendants' accusation is not protected "opinion."

Second, the statement cannot be considered opinion because it suggests something that is "provable as false," and even if it could be considered "opinion," the opinion would still be defamatory and actionable. "It is true that opinion, without more, does not create a cause of action in libel." Id. This, however, does not mean that there is "a wholesale defamation exemption for anything that might be labeled 'opinion.'" Petula v. Mellody, 588 A.2d 103, (Pa.Cmwlth. 1991) (quoting Milkovich v. Lorain Journal Co., 497 U.S. 1, 18-19 (1990)). "Expressions of 'opinion' may often imply an assertion of objective fact." Id. "A defamatory communication may thus consist of a statement in the form of an opinion and is actionable if it implies an allegation of undisclosed defamatory facts as the basis therefore." Id. In this regard, the Third Circuit explained:

> Although there may be no such thing as a false opinion, an opinion which is unfounded reveals its lack of merit when the opinion-holder discloses the factual basis [therefor] ... If the disclosed facts are true and the opinion is defamatory, a listener may choose to accept or reject [the proffered opinion] on the basis of an independent evaluation of the facts. However, if the opinion is stated in a manner that implies that it draws upon unstated facts for its basis, the listener is unable to make an evaluation of the soundness of the opinion. Redco v. CBS, Inc., 758 F.2d 970, 972 (3d Cir. 1985), cert. den., 474 U.S. 843 (1985).

Further, as described by the United States Supreme Court:

> If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the

> statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar." As Judge Friendly aptly stated: "[It] would be destructive of the law of libel if a writer could escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words 'I think.' " It is worthy of note that at common law, even the privilege of fair comment did not extend to a false statement of fact, whether it was expressly stated or implied from an expression of opinion. Milkovich v. Lorain Journal Co., 497 U.S. at 18-19.

In Milkovich, the United States Supreme Court clarified the "protected opinion" standard, and boiled down the "protected opinion" inquiry into one simple question: whether the statement at issue expresses or implies a fact such that it is "provable as false." Id. For example, the statement "John Jones is a liar" is actionable (if false) because it implies a verifiable fact – that John Jones does not tell the truth. Id. By contrast, an assertion that a person is "ignorant" would be opinion, because it could not be verified by objective inquiry and proven to be false. Id. Milkovich involved the aftermath of a brawl at a high school wrestling meet. Following the brawl, the coach of the team testified before the State Sports Board regarding whether the team should be suspended. After the testimony, a local reporter wrote that the coach's testimony was wholly at odds with the reporter's recollection of events, and therefore stated:

> Anyone who attended the meet, whether he be from Maple Heights, Mentor, or impartial observer, knows in his heart that Milkovich and Scott lied at the hearing after each having given his solemn oath to tell the truth.

Thereafter, the coach filed a defamation lawsuit against the reporter. The reporter claimed that her assertions constituted a non-actionable opinion. The Supreme Court disagreed. Applying the analysis described above, the court found that even if the reporter stated the facts on which her opinion was based – i.e., that she was at the brawl,

saw what happened, and knew that the coach was lying, and even if her assertion was couched as an "opinion" that the coach was lying, the implication that the coach was a liar was provable as false, and therefore, was not constitutionally protected "opinion." Id. The Supreme Court concluded: "We ... think the connotation that petitioner committed perjury is sufficiently factual to be susceptible of being proved true or false." Id.

Milkovich is directly on point in this matter. Whether or not Wolk violated his professional duty by forcing his client to accept a "lesser settlement" to serve Wolk's own ends is "sufficiently factual to be susceptible of being proved true or false," and therefore, is not constitutionally protected opinion. Quite simply, the statement implies that Wolk sold out his client for his own personal gain – possibly the worst accusation that could ever be hurled at a lawyer. Merely because the Defendants phrased it as a question does not cause it to be non-actionable. Because the issue of whether or not Wolk acted unethically can be proven false, the Defendants' Motion to Dismiss cannot be granted on "opinion" grounds.

Moreover, the Defendants cannot avoid liability merely because they hurled this false accusation in the context of discussing Judge Carnes' opinion. Indeed, Judge Carnes' opinion **never** once accuses Wolk of accepting a lesser settlement to benefit himself. Further, while Judge Carnes did state that at one point she was concerned about a **conflict of interest** (but not that a lesser settlement was accepted), the Judge, in her opinion, stated that she satisfied herself that there was, in fact, no conflict of interest. **Disagreeing** with that assessment, and relying on undisclosed facts and their own asserted superior knowledge and legal acumen, the Defendants suggested that **despite** Judge Carnes' opinion, Wolk had acted improperly. This clearly suggests reliance on

undisclosed facts and knowledge beyond that described in Judge Carnes' opinion. In short, there is no way for the reader to determine, from the content of the Frank Article, just how false, baseless, misleading and malicious the accusations in the article were.

Moreover, the **primary undisclosed fact** that is not addressed in the Frank Article (but simply assumed therein), not discussed or reflected in Judge Carnes' opinion, and upon which the Frank Article predicated the defamatory statement, is the actual size of the settlement and the assertion that **the settlement itself was inadequate**. As discussed in the Complaint, and as must be taken as true for purposes of this Motion, the settlement itself was more than "adequate" -- it constituted an excellent result for the client that far exceeded the value of the case placed upon it by a federal magistrate. Thus, the statements in the Frank Article relating to the value of the settlement plainly imply "an allegation of undisclosed defamatory facts as the basis therefore," and are actionable, even if they could be considered opinion.

Further, the facts that were disclosed in the Frank Article were inaccurate, incomplete and misleading. For example, the Frank Article asserts that Wolk settled the Taylor case "on the condition" that the discovery order be vacated, but fails to mention that when settlement discussions began in that case, Wolk had already filed a Motion to Vacate the order that was pending and ripe for determination that the time the issue of settlement was raised. Furthermore, the Frank Article never once mentions that all of the attorneys in the Taylor case agreed that Wolk did not commit any unethical conduct. In fact, the Frank Article never once mentions that the discovery violations that were initially at issue in the Taylor case were committed by an associate, and Wolk had no involvement with the supervision of the associate at the time the alleged conduct was

committed. In all, the Frank Article is a one-sided "hatchet-job" that wholly misrepresents the Taylor case. Therefore, even if the accusation that Wolk sold out his client for his own gain was made in the context of the Taylor opinion, and in addition to the fact that the subject assertion is not "opinion" at all, the disclosed facts are both "incorrect and incomplete," and the Defendants assessment of those facts was erroneous.

Finally, it must be noted that this issue, like the other issues discussed above, is an issue that must be left to the jury. In Pennsylvania, "in cases where a plausible innocent interpretation of the communication coexists with an alternative defamatory interpretation, the issue must proceed to a jury." Green, 692 A.2d at 169. In this case, at the very least, there are two separate interpretations of the subject statement which would require determination by a jury. For this reason as well, the Defendants' Motion to Dismiss must be denied.

3. The Statement Is False

Finally, the Defendants' make the bald and unsupported assertion that Wolk's Complaint must be dismissed because the statement suggesting that Wolk forced his client to accept a lesser settlement to further Wolk's own ends is "true." This argument is almost not worthy of a response. Wolk has alleged that the statement is false. [Complaint, ¶ 43]. This assertion must be taken as true for purposes of this motion. Phillips, 515 F.3d at 231. Moreover, the statement is objectively, verifiably, and outrageously false as a factual matter, as Wolk's client did not in any way "suffer from a reduced settlement." At the very least, the truth or falsity of the statement is a disputed issue of fact that is a question for the jury. Merkle v. Upper Dublin School District, 211 F.3d 782, 797 (3d. Cir. 2000). Accordingly, this argument is wholly meritless as well.

IV. CONCLUSION

For any and all of the foregoing reasons, as set forth more fully above, Plaintiff Arthur Alan Wolk respectfully requests that this Court deny the Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12 (b) (6) in its entirety, and grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on September 22, 2009, I sent a copy of Plaintiff's Opposition to Motion to Dismiss, to the following via .ecf and U.S. mail.

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