SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

P.D. & ASSOCIATES and P.D.,

Plaintiffs,

-against-

HALANA RICHARDSON,

Defendant.

Index No.: 53694/2019

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TAKEDOWN ORDER

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PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted in support of the application of P.D. & ASSOCIATES and P.D. ("Plaintiffs") for an injunction and takedown order against HALANA RICHARDSON ("Richardson" or "Defendant"), the individual responsible for posting defamatory reviews concerning Plaintiffs on multiple websites.

This relief is urgently needed to protect P.D. and his firm's character and professional endeavors and to preserve Plaintiffs' reputation and goodwill in the legal sphere. The false and defamatory statements made by the Defendant accuse Plaintiffs of a litany of wrongdoings, and include claims that P.D.:

- was "working for the other side[;]"
- attempted to "sue [Ms. Richardson] for non payment[;]"
- "sabotaged" Ms. Richardson's lawsuit to harm her;
- is a "liar" and "thief[;]"
- "takes bribes[;]"
- "sent [a] letter [to the judge in her personal injury case] with false statements to cover himself[;]"
- "knew the individual rear ended me and had another man in its place[;]" and
- "fixed the paper to address someone had hit me instead of [N.B.]"

these comments are libelous *per se*.

Defendant's defamation of Plaintiffs, which has been pervasive, widespread, and vindictive, has been undertaken with the specific intent of targeting P.D. both personally and professionally. Worse yet, the Defendant has threatened, in writing, to "inform[] the world" of her lies, and told P.D. that he "will have YAHWEH to answer to very soon."

The Defendant's conduct damages Plaintiffs' reputations each and every day the comments remain on the internet. Because the statements are libelous *per se,* immediate injunctive relief designed to safeguard Plaintiffs' reputations by removing the websites is absolutely necessary. The Defendant has intentionally published these statements in order to

destroy Plaintiffs' reputations and professional prospects out of the sole motivation to harass Plaintiffs in order to exact personal revenge and obtain monetary gain.

As demonstrated herein and in the accompanying papers, Plaintiffs are likely to succeed in this action based on the defamatory statements written by the Defendant. Unless this Court issues the injunctive relief requested herein, Defendant's words will simply continue to remain in circulation, leaving Plaintiffs to face the unenviable prospect of imminent and severe damage to their professional reputations and personal wellbeing.

Accordingly, the injunctive relief requested, which is designed to preserve Plaintiffs' reputations and wellbeing is both necessary and appropriate.

STATEMENT OF FACTS

The facts and circumstances relevant to the instant application are contained in Complaint attached as Exhibit "1[,]" the Affirmation of Daniel S. Szalkiewicz, Esq., and the Affidavit of P.D., to which this Court is respectfully referred.

ARGUMENT

POINT I

PLAINTIFFS ARE ABLE TO ESTABLISH THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS, THAT THEY WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF, AND A BALANCING OF THE HARDSHIP TIPS IN PLAINTIFFS' FAVOR

A preliminary injunction and temporary restraining order may be granted where, as here, the moving party demonstrates (1) a likelihood of ultimate success on the merits of the action, (2) that it will suffer irreparable injury absent the issuance of a preliminary injunction, and (3)

that the balance of equities is in its favor (*see Invesco Inst. (N.A.), Inc. v Deutsche Inv. Mgt. Ams., Inc.*, 74 AD3d 696, 697 [1st Dept 2010]).

New York courts have granted preliminary injunctions removing libelous internet postings and preventing further future defamatory comments (s*ee e.g. Dae Hyun Chung v Google, Inc.,* 153 AD3d 494, 495 [2d Dept 2017]; *Tan v. mirandatanandhassanmiah*, [Sup. Ct. N.Y. 2014]; *Dennis v. Napoli*, 148 AD3d 446, 447 [1st Dept 2017]; *Sachs v. Matano*, 2015 NY Slip Op 25355 [N.Y. Sup. Ct., 2015]).

It is respectfully submitted that Plaintiffs have satisfied all of the requisite elements warranting the issuance of a temporary restraining order and preliminary injunction as requested herein.

A. Plaintiffs Have Established A Likelihood of Success on the Merits Based on the Defendant's Defamatory Statements that Constitute Libel Per Se.

In order to establish a claim for libel, a plaintiff must demonstrate "(1) a false and defamatory statement of fact; (2) regarding the plaintiff; (3) which is published to a third party; and which (4) results in injury to plaintiff" (*Salim v. Manczur,* 2012 NY Slip Op 32146 [N.Y. Sup. Ct., N.Y. Co., 2012]).

1. The Defendant Published the Statements to Third Parties

There is no question of fact that the Defendant published the statements concerning the Plaintiffs as Defendant has placed the statements on no fewer than four different websites and in at least one direct message to P.D. and another to a former client of P.D.'s with the intention of receiving wide-spread viewership of her claims.

A defamatory statement must be read, heard, or seen by a third party in order for the statement to be actionable but, with this in mind, "[p]ublication to even one person other than the defamed is sufficient" to establish publication (*Torati v Hodak*, 147 AD3d 502, 504 [1st Dept 2017]). New York courts routinely deem internet postings to be published to third parties, recognizing that the far-reaching nature of the internet and finding that audiences for online posts:

> resemble those contained in traditional mass media, only on a far grander scale. Those policies are even more cogent when considered in connection with the exponential growth of the instantaneous, worldwide ability to communicate through the internet…Communications posted on Web sites may be viewed by thousands, if not millions, over an expansive geographic area for an indefinite period of time.
> (*Firth v State*, 98 NY2d 365, 370 [2002]).

The libelous statements are published online. By posting the writings, the Defendant transmitted the defamatory statements on the internet and clearly published and broadcasted the statements to many more people than just Plaintiffs. The statements were broadcast to anyone who could find the pages, particularly people researching information about personal injury attorneys or Plaintiffs on the internet.

When searching for the Plaintiff's name online, the Defendant's statements appear as the 3rd and 8th results out of 41,900 Google results (see Exhibit "2"). Clicking on the Yelp search result on a smartphone reveals the cache, "Horrible law firm takes bribes and the judge won my case…"

2. The Statements Published by the Defendant are False and Defamatory Statements of Fact that Amount to Defamation Per Se

Certain statements are considered so egregious by the courts that they are libelous *per se*. Two categories of libelous *per se* statements are those that "charg[e]" plaintiffs with a serious crime" and those that "tend to injure another in his or her trade, business or profession" (*Liberman v. Gelstein*, 80 N.Y.2d 429 [1992]). When statements are libelous *per se*, the law presumes that damages will result and they need not be separately proved (*see Martino v. HV News, LLC*, 114 AD3d 913, 913 [2d Dept 2014]). Defendant's statements concerning Plaintiffs meet both of the aforementioned categories of defamation per se.

(i) Defendant Accuses Plaintiffs of Committing a Serious Crime

First, an allegedly defamatory statement may constitute libel per se if it charged the defamed person with an indictable crime (*see Klein v. McGauley*, 29 A.D.2d 418, 421 [2d Dept. 1968]). "While slanderous language need not consist of the technical words of a criminal indictment it is necessary that the language be reasonably susceptible to a connotation of criminality" (*Caffee v. Arnold*, 104 A.D.2d 352, 353 [2d Dept. 1984]). Statements regarding serious, as opposed to minor offenses, are actionable as libel per se. Serious crimes such as murder, burglary, larceny, fraud, arson, rape, and kidnapping fall within the list of crimes that are actionable as libel per se (*Liberman*, 80 N.Y.2d at 435). Further, courts have held that serious misdemeanors may form the basis for a claim of libel per se (*see, e.g., DeFilippo v. Xerox Corp.*, 223 A.D.2d 846 [3rd Dept. 1996]).

Even in their simplest forms, the comments Defendant posted on P.D.'s Yelp page and other sites accuse Plaintiffs of "taking bribes" and submitting false documents to the court. Additionally, Defendant claims that Plaintiffs committed other crimes, including harassment,

witness tampering, and collusions, such crimes are sufficiently serious to be actionable as libel per se. New York State Penal Law Section 155.05 states that an individual commits larceny when he:

> obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will…perform [an] act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

(ii) Defendant's Statements Tend to Injure Plaintiffs in Their Trade, Business, or Profession

The Defendant's statements are intended to, and do, defame Plaintiffs in their trade and are injurious to their profession. "Words which affect a person in his or her profession by imputing to him or her any kind of fraud, dishonesty, misconduct or unfitness in conducting one's profession may be actionable" (*Wasserman v. Haller*, 216 A.D.2d 289 [2d Dept. 1995]; s*ee also Four Star Stage Lighting, Inc. v. Merrick*, 56 A.D.2d 767 [1st Dept. 1977]). A sampling of Defendant's attacks against P.D.'s abilities as an attorney and the firm, generally, include statements such as:

- He stated that I owed him $35k, [P.D.] lied. The bill was $15K (Compl. ¶ 53);
- [P.D.] & Associates is the horrible law firm takes bribes (Compl. ¶51);
- [P.D.] is not a honest lawyer very corrupt and read the fine print This law firm should not require a rating but she have its license revoked. (Compl. ¶51);
- This lawyer sabotaged a law suit Nicolas Berggruen rear ended me because he was on his cell phone and this lawyer fixed the paper to address someone had hit me instead of Nicholas Berggruen he was working for the other side corrupt lawyer can not be trusted will take your money knowing he is wrong horrible little man (Compl. ¶48)

The above statements are false, and complete fabrications. Each statement goes to the heart of Plaintiffs' profession and operation as an attorney and law firm, both of which are in good standing and without a single disciplinary blemish on their records.

3. Defendant's Statements Are False and Defamatory Statements of Fact

A statement is defamatory if it "tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society" (*Mohen v. Stepanov*, 59 A.D.3d 502 [2d Dept. 2009], *citing Rinaldi v. Holt, Rinehart & Winston, Inc.*, 42 N.Y.2d 369 [1977]). When determining whether a statement is an expression of opinion or an assertion of fact, the factors to be considered are: "(1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal . . . readers or listeners that what is being read or heard is likely to be opinion, not fact" (*Davis v Boeheim*, 24 NY3d 262, 270 [2014]).

New York courts have long held that "[w]hether particular words are defamatory presents a legal question to be resolved by the court in the first instance" (Aronson v Wiersma, 65 NY2d 592, 593 [1985] citing Sprecher v Dow Jones & Co., 88 AD2d 550 [1st Dept. 1982]). "The words must be construed in the context of the entire statement or publication as a whole [and] tested against the understanding of the average reader" (Id. at 594).

It is only when the statements are "susceptible to more than one meaning" it is for the jury "to determine the sense in which the words were likely to be understood by the ordinary and average reader" (Rosen v Piluso, 235 AD2d 412, 412 [2d Dept 1997]).

The Court need only examine the contents of the statements, which are contained in the Complaint annexed as Exhibit "1" to confirm that the postings are libelous statements of fact concerning Plaintiffs.

The statements are clear statements of fact. The theme is a simple but moving one: Ms. Richardson claims P.D. accepted a bribe in order to throw her lawsuit, as part of this scheme, Ms. Richardson asserts that P.D. called someone wholly unrelated to the lawsuit to the stand to protect the other party and made misrepresentations to the judge in her case. Even P.D. miraculously obtaining a settlement for Ms. Richardson after the jury and judge sided against her becomes a nefarious tale for Ms. Richardson, as she then claims P.D. stole her money.

The location, content, and repetitious nature of the libelous statements clearly tend "to expose the Plaintiffs to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive [them] of their friendly intercourse in society" (*Mohen, supra*).

B. Plaintiffs will Face Immediate Irreparable Injury if the Injunction is not Granted

The evidence set forth in the accompanying Complaint and exhibits demonstrates Plaintiffs' entitlement to a judgment against the Defendant. However, Plaintiffs recognize that it will take a significant amount of time before a final determination of this action is rendered on the merits. In the interim, Defendant's relentless defamation of Plaintiffs continues as she attempts to make good on her threat to "inform[] the world to not call [P.D.] as a lawyer[,]" and Plaintiffs' names are damaged every day the ever-growing collection of statements is allowed to

grow and remain in public view. For these reasons, this case requires immediate relief to prevent further and permanent damage, for which a money judgment would be inadequate.

Courts have held that "harm to one's business reputation is a sufficient harm providing a basis seeking an injunction" (*Henry v Gustman*, 2018 NY Slip Op 31914[U], *5 [Sup Ct, Kings County 2018]). Defendant has plagued Plaintiffs' business reputation with her lies. P.D. has sworn that the reviews are costing him his hard-earned goodwill and respect in the legal community and causing him to lose client and after client – such losses cannot be repaired solely by money.

C. The Equities Clearly Balance in Favor of Plaintiffs, Thereby Further Warranting the Issuance of a Temporary Restraining Order and Preliminary Injunction.

By submitting this application, Plaintiffs are not seeking any advantage. Rather, Plaintiffs simply seek a Court Order that will allow them to continue representing clients and grow their practice free from the Defendant's incessant disruption and interference. Defendant apparently believes that she is on a mission from "Yahweh" to destroy Plaintiffs and, to this end, has been posting and has threatened to continuing posting her lies about Plaintiffs. Ms. Richardson believes that "[s]ince this has become the age of accountability this is your turn[.]" Plaintiff is undeterred by the truth and has every intention to continue publishing her falsities as part of her campaign to harm Plaintiffs.

The request is not overly broad and is narrowly tailored. The injunction request in this case is substantially similar to that of *Dennis v. Napoli*, 2015 NY Slip Op 31540 [Sup. Ct. N.Y. August 12, 2015]. In *Dennis*, Judge Kern, finding that a communication creates irreparable harm "when it is capable of injuring plaintiff's standing and reputation in all aspects of her personal

and professional life, and of inflicting serious psychological and emotional damage to plaintiff" granted a narrowly tailored preliminary injunction that restrained the defendant from:

> (1) sending unsolicited written or verbal communications concerning plaintiff to plaintiff's current employer, including but not limited to her current employer's partners and employees and their respective spouses or immediate family members; (2) posting any derogatory or degrading statements to plaintiff's Google pictures, or to any picture plaintiff may be tagged in, or otherwise posting such comments to plaintiff's public Google profile or other social media sites, including, but not limited to, Linked In; and/or (3) sending unsolicited Google or LinkedIn messages concerning plaintiff to plaintiff's contacts on those sites.
>
> In 2017, the First Department upheld the injunction, finding:
>
> [t]he record supports plaintiff's claims that these communications cause injury to her reputation, jeopardize her employment, and otherwise unnecessarily intrude upon her right to privacy. Moreover, contrary to defendant's contention that it is overly broad, the preliminary injunction is narrowly tailored to protect plaintiff's privacy.
> (Dennis, 148 AD3d at 447).

Like in *Napoli*, the Defendant has undertaken a multifaceted approach to harassing and defaming Plaintiffs. Not only has Defendant written statements on her personal Facebook page, but she has also published them on Yelp, PissedConsumer, and InternetCheaters. In addition to the postings, Defendant has sent direct messages to both Plaintiffs and at least one former client. Defendant has stated she has no intention of stopping her actions even in the face of court documents that contradict the claims she is making. She has further ignored a cease and desist letter sent to her on January 3, 2019

The First Department has also upheld injunctive relief where preventing a defendant "and all persons acting on their behalf or in concert with them from interfering with plaintiff's business by approaching, accosting, initiating communications with, distributing written communications to, or otherwise disturbing visitors to the [plaintiff's building] for the purpose of discouraging sales or rentals of apartments at the [plaintiff's building]" (*Ansonia Assoc. Ltd.*

Pshp. v Ansonia Tenants' Coalition, Inc., 253 AD2d 706, 706-707 [1st Dept 1998]). In *Ansonia*, the First Department determined that the "defendants' conduct was not protected speech but merely an instrument of and incidental to wrongful conduct, calculated to injure plaintiff's business and interfere with the condominium owners' recognized interest in residential privacy."

The injunction requested is also similar to the one issued in *Sachs v. Matano*, 2015 NY Slip Op 25355 [Sup Ct. Nassau 2015]. In *Sachs*, the plaintiff created a website entitled "Matano Kills?" whereby the plaintiff compared a doctor to a nazi, and stated "Beware, he is stubborn, act like a mule, and will discriminate against you if you are not Italian with a Mercedes Benz." The court held:

> This is not a website whereby plaintiff seeks other individuals similarly situated that may have been injured by an alleged malpractice in order to establish a class action, but rather this website is couched in terms designed to irreparably damage the reputation and business of defendants. The comparison of Dr. Matano to the nazi doctor, Josef Mengele, and bald conclusory claims of anti semitism and "Matano-Kills" is not a protected qualified privilege, but rather bald reckless assertions in disregard of the truth. Dr. Josef Mengele was a notorious nazi doctor during WWII who selected Jews for the gas chambers, and performed deadly human experiments on prisoners. To compare any one in the medical profession to such a criminal is beyond the pale. The tone of plaintiff's statements, and the statements themselves, are nothing more than an attack on the defendants designed to injure their reputation and business. As such, plaintiff does not have a qualified privilege to make those statements.
> *Id.*

Similarly, the Defendant's statements have been and continue to be nothing more than an attack on Plaintiffs designed to injure their personal and professional reputations and to discourage individuals from associating with, hiring, or working with them in the future.

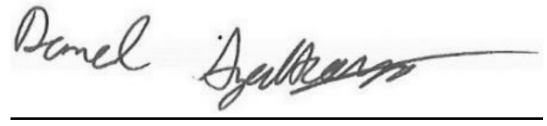
To the extent that the Court has any reservations about issuing a temporary restraining order pending its ultimate decision of this application, Plaintiffs would welcome an expedited hearing so that this application can be fully submitted as soon as possible. However, in light of

the egregious and uncontroverted defamatory acts committed by the Defendant that have been plainly documented in the accompanying Affidavit, it is respectfully submitted that the issuance of a temporary restraining order pending such a hearing is absolutely necessary.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that Plaintiffs' application for injunctive relief and for discovery be granted in its entirety.

Dated: March 8, 2019
New York, New York



By: Daniel S. Szalkiewicz, Esq.