UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUSAN SELTZER

Plaintiff

Civil Action No. 1: 22-cv-0330 (JMC)

Honorable Judge Jia M. Cobb

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

Defendant

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND PLEADINGS (SECOND)

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PRELIMINARY STATEMENT

In accordance with Fed. Civ. R.15, Plaintiff respectfully requests leave of Court to file this second amended Complaint, attached with red-lined changes. *Foman v. Davis*, 371 U.S. 178, 182 (1962) cited the reasons a Court may deny an amended Complaint. Plaintiff does not believe such amendment meets

any of these categories from *Foman,* "The Court went on to enumerate several situations where denying leave to amend might be justified, including "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment."

Plaintiff files this amended Complaint, as a direct result of ongoing harm from FINRA's violation of the Privacy Act, that Plaintiff discovered the week of March 7, 2023. (See ECF 26, Plaintiff's Response to FINRA's non-response to Plaintiff's Memorandum to Seal) In sum, Plaintiff understands there was no cause of action until Plaintiff understood the factual elements that caused the harm-*FINRA violated the Privacy Act* and engaged in repeated harassment and cyberbullying through their assumed agents in a public publishing of defamation per se and Plaintiff's PII. The delay from August 2020 to present in sealing Plaintiff's PII and subsequent harm and injury is a direct result of FINRA's violation of the Privacy Act and intentional concealment of such violations from Plaintiff.

Plaintiff seeks leave to file the second amended Complaint for two purposes:

(1) Plaintiff files a new pleading for the unauthorized disclosure of personal information and FINRA's refusal and failure to properly secure personal information, upon repeated request by Plaintiff, and a pleading for FINRA's repeated cyberbullying and harassment and

(2) Eliminate duplication and confusing statements from the Original (ECF 1) and first amended Complaint.(ECF 20 and ECF 22) and include the citation for harm from defamation per se which resulted from blocking Plaintiff's "right to be heard"; a violation of U.S. Constitution, Fifth Amendment.

Plaintiff references the original Complaint (ECF 1) and Memorandum of Points (ECF 14) but for ease of communication of Plaintiff's legal arguments, Plaintiff summarizes the key legal points and cases for

each cause of action in this Memorandum of Points and Authority and presents the redlined Amended Complaint (Second), attached.

February 2, 2022, Plaintiff filed Complaint (ECF 1) against Defendant for violation of defamation per se. Plaintiff understands standards under D.C.D. common law violations in the District of Columbia and files evidence of the four mandated elements:

- FINRA made (1) false and defamatory statements; (See attached amended Complaint, P. 16 & 17, § 46), (2) about the plaintiff; (3) publication of the statement to a third party; and (4) harm to the plaintiff's reputation. Some statements may be considered defamatory per se, meaning they are inherently harmful and do not require proof of actual damages.
- **FINRA's falsehoods are actionable.** Plaintiff has detailed the numerous false statements derived from FINRA's staff engagement in a scheme to defame Plaintiff, personally and professionally, through false and defamatory statements published in FINRA Arbitration (17-01857) to defame a competitor. Plaintiff provided extensive examples of the defamation per se (Complaint (ECF 1, P. 6-7 §18 - §23, P. 8, §25, §26, §30, §32, §33). In addition to accomplish this fraudulent scheme, FINRA's Director of Arbitration violated Title II, Americans with Disabilities Act (ADA) by refusing to provide Plaintiff requested ADA accommodation for hearing loss during the Hearing; that was discriminatory and prohibited Plaintiff from access to a fair and just proceeding. FINRA then employed the document, littered with falsehoods, posted at AWARDS Online to conceal Richard Berry's (FINRA Director of Arbitration) violation of ADA Title II, and to engage in ongoing anti-competitive behavior.

On July 19, 2022, Plaintiff filed an amended Complaint (ECF 20 and 22) to add the Statute (Clayton Act, Sec. 4) for Defendant's violation of anti-competitive behavior that forced Plaintiff to dissolve her business, a Statute which had been inadvertently not included in the Original Complaint (ECF 1).

"**FINRA engaged in anti-competitive business practices through Google Marketing tools** through its proprietary website to tag FINRA-created defamation per se to Plaintiff and her business, two years *after* FINRA Arbitration 17-01857 had concluded. FINRA engaged in excessive publication (through Google Tags to Plaintiff) of false and odious defamatory per se statements in a document filed in FINRA's entitlement system with full knowledge of the statements' falsity." ECF. 22, P. 1) to defame Plaintiff Seltzer's personal reputation and business. (ECF 14-6, P.1, "Exhibit – False Statements FINRA Published.")

Plaintiff's personal identifiable information(PII), (Social security number, birth date, maiden name) and current address were visible, despite a court-ordered seal of this PII

March 7, 2023, Plaintiff discovered private databases were publishing her PII through "snippets" at search engines DuckDuckGo and Bing.com; despite the February 16, 2022, Court-ordered seal. Plaintiff immediately worked with D.C.D. Clerk of Court's staff to determine the vehicle to obtain seal of this information, through private data bases, like Law360.com. Plaintiff determined in this process the scope of the harm; given technology today and swift changes (ChatGPT/OpenAI) and private data bases, Plaintiff's ability to accomplish protection from further harm appears irreversible. Plaintiff determined March 7, 2023, the cause of the irreversible harm is Defendant's refusal to comply with the Privacy Act of 1974, commencing in August 2020 when Plaintiff first notified FINRA that her PII had been filed publicly without her knowledge and permission. Plaintiff requested FINRA and/or their regulator, the SEC, seal Plaintiff's PII immediately. FINRA refused despite three written requests and calls to Ombudsman. The SEC's Ombudsman did not respond to repeated requests for assistance.

STATEMENT OF FACTS

1. Plaintiff filed a Statement of Claim in a FINRA Arbitration (17-01857) on July 17, 2017, for breach of fiduciary duty, negligence, and other causes against FINRA Member Firm, US Bancorp

Investments, Inc. (USBI). FINRA staff engaged in a planned scheme in FINRA Arbitration 17-01857 to create a defamation per se document that FINRA would post at FINRA AWARDS Online and then maliciously and excessively publish through FINRA's proprietary website tagged to Plaintiff's name in Google Search, to defame Plaintiff for anti-competitive purposes.

2. September 5, 2018, FINRA filed a document purporting to be an AWARD document. The document was not fact-based, and improperly published in accordance with SEC rules at FINRA Awards Online. Such document did not meet FAA standards(9 U.S.C. § 1 and 9 U.S.C. § 2) for an "Award" (nor FINRA rules) as the document was (1) not fact-based and (2) did not resolve any of the claims before the Panel as mandated in the contract between USBI and Plaintiff and (3) included fabricated "Sanctions" that did not derive from a Panel Order as FINRA R. 12212 (c) mandate and violated Plaintiff's rights under U.S. Constitution, Fifth Amendment.

3. The Award violated FINRA Rule 12212 (c) as it dismissed all Claims with prejudice without any Panel Order and any "material or intentional" violation of ---a non-existent Panel Order; a violation of Plaintiff's due process rights in a quasi-judicial proceeding. The Panel determined *the Claims had merit, after the Case in Chief* and refused to dismiss the claims despite Respondent's Motion to Dismiss, *after* the Case in Chief.

4. The FINRA Complaint was dismissed based on the instructions of FINRA staff, (per Hearing digital recordings) based on numerous false and defamatory statements concerning a fabrication of a Plaintiff's "inappropriate behavior" as defined by (1) a digital recording between the security guard, Ray Pezolt and Panel Chair Ilene Gormly that was created on the first day of the Hearing, by FINRA staff, to lay the groundwork for FINRA's planned scheme to defame Plaintiff. Evidence of such fabrication of "inappropriate behavior" is in Hearing (17-01857) digital

recordings, #143 and #144, between Ms. Gormly and Mr. Pezolt, as initiated, per Ms. Gormly, *by* FINRA.

5. Plaintiff tried to work with FINRA Staff from September 6, 2018, until the February 2, 2022, to correct the defamation per se causing harm to personal and professional reputation. FINRA's Office of Ombudsman informed Plaintiff- February 2021, "FINRA will not cease and desist from the ongoing harassment through online marketing tags to odious defamation, "Sue them." Plaintiff had no choice but to file this action to eliminate further harm and restore personal and professional reputation after three years of repeated requests to cease and desist from such online harassment.
6. July 2020 Plaintiff filed a second formal Complaint with FINRA (and the SEC) concerning the underlying harm and false statements, postal code violations, and apparent attempted extortion to force Plaintiff to remove named Respondents. A month later, August 2020, Courtlistener.com filed a Google snippet to a newly created Courtlistener.com summary of related 2002 case, *Kosen et al v. American Express Financial Advisors.* Plaintiff viewed this Docket and learned for the first time, that in 2004, without her knowledge, Plaintiff's U-4, and U-5 and EEOC Complaint had been filed publicly, disseminating Plaintiff's PII-social security number, birth date, maiden name, address, and 10-years of previous addresses, in addition to her height, weight and eye color.
7. Plaintiff contacted Ameriprise on October 6, 2020, to request they remove or seal this personal identifiable information. Ameriprise refused. Exhibit A, attached.
8. Plaintiff then contacted FINRA and SEC, October 22, 2020, concerning FINRA's refusal to seal Plaintiff's PII, filed by a FINRA Member Firm, Ameriprise; the source of the ongoing harm.[1]

[1] *October 22. 2020* email from Plaintiff to Ameriprise with copy to FINRA, Director of Enforcement, Jessica Hopper, the SEC, and SEC Ombudsman in a separate Whistleblower Complaint: "As you are

Legal authorities are already posting notices about expanded data privacy issues from the recent introduction of ChatGPT, OpenAI and other Internet data aggregators.

9. Plaintiff's public filing of her unredacted personal identifiable information was accomplished through a fraud on the court (See related case *Seltzer v Lieder* et al, 1-22-cv-00329.)
10. FINRA's assumed agent, courtlistener.com, after tagging the personal identifiable information to Plaintiff's name in Google Searches, *refused* to remove the PII from their "private databases" taken from the Federal Judiciary's PACER system and provided the data for free in multiple key instances, causing ongoing harm to Plaintiff. (See Case 1:22-cv-0330, ECF 26, P. 1).
11. Private databases, taken from the Federal PACER system, are not only providing some court-ordered sealed-data for free, (while requesting non-profit donations for their unethical practices) such entities, such as courtlistener.com and Law360.com, apparently refuse to invest in proper systems to update their "private data bases" unless the document is "discovered" by the individual that has been harmed.
12. As one instance of cyberbullying, the day after FINRA filed "Proposed Sanctions" against Plaintiff, ECF 27, FINRA's proprietary website highlighted in Google Search, a FINRA-created Google Tag to *"Seltzer v FINRA,"* tagging to a 2003 Disciplinary Case against another "Seltzer,"

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aware, I am not an attorney. I have done everything I can to "file a Petition" to seal the private records, without response from the Court. (See *Kosen et al*, 1:02-cv-00082, ECF 59, Motion for Leave to Seal Confidential Documents, on November 16, 2020.) Ameriprise (then American Express Financial Advisors) filed information that was submitted confidentiality in a NASD Arbitration. Most certainly, I would have sealed the information back at that time, if I had been provided that opportunity. I was not. I respectfully request that Ameriprise file the Petition for Sealing all documents that were filed confidentiality in the NASD Arbitration and should have been redacted. As a non-attorney, Plaintiff does not have the ability to access the court…"(See Case 22-cv-00330, ECF 26, P. 2-3.)

as a form of Google prohibited "manipulated media." This is ongoing cyberbullying, which FINRA has engaged in since August 2020 through Google snippets and tags, created by FINRA. (Google Tags, also known as Google Tag Manager) are a tool that allows website owners to publish and track user behavior on their own website by placing tags or scripts on their web pages.) It is important to note this cyberbullying cited here, derives from FINRA's website.

13. Plaintiff filed a cause of action in first Amended Complaint (ECF 20 and 22) that defines the anti-competitive behavior, under the Clayton Act, Section 4, that forced Claimant to dissolve Plaintiff's small business, Check the Ticker SBC, due to FINRA's creation of a knowledge graph.

LEGAL ARGUMENT

I. Cause of Action; FINRA's Violation of the Privacy Act of 1974

FINRA collected private data (PII) for Plaintiff's U-4 and permitted such publication at *Kosen et al*, Related Case 1:02-cv-00082, ECF 35-1). The collection of such data by the SEC (and FINRA) is subject to the Privacy Act, 5 U.S.C §522a (1994 & Supp. IV 1998) and as codified at 5 U.S.C. 552a.

The Privacy Act of 1974 is a federal law in the United States that governs the collection, maintenance, use, and dissemination of personally identifiable information (PII) about individuals maintained by federal agencies. Under the Privacy Act of 1974, Plaintiff has the right to sue a federal agency for a violation of the act.

(1) Defendant was harmed by FINRA's willful and malicious dissemination of personal information (Plaintiff's PII) and refusal to seal Plaintiff's PII. The Statute cited "the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information" and (3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are

endangered by the misuse of certain information systems and (4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States;

If a Federal Agency violates the Privacy Act of 1974, an individual is entitled to seek damages. FINRA as overseen by the SEC, a Federal Agency, collected and published tags through Google tools to Plaintiff's personal identifiable information (PII) such as Plaintiff's social security number, birth date, and other *very* private and sensitive personal information. FINRA, considered a "federal agency" for purposes of the Privacy Act, entered a 1999 Memorandum of Understanding with the SEC; and "Under 5 U.S.C.552a (M), NASD assumes all responsibilities under the Privacy Act." (SEC Release SEC-49); with respect to the Web CRD records (PII), collected by FINRA, as was collected for Plaintiff's U-4.

Under the Privacy Act and such Memorandum of Understanding with the SEC, FINRA is required to comply with a set of privacy principles, including providing individuals with notice of the collection, use, and disclosure of their PII; obtaining individuals' consent before disclosing their PII to third parties; and maintaining the accuracy, completeness, and security of PII. If FINRA fails to comply with these principles, it is subject to potential violations of the Privacy Act.

FINRA's policies are clear if a Member Firm or FINRA violate the Privacy Act:

"C. **Consequences** - Failure to meet FINRA, SEC and firm recordkeeping requirements may result in serious consequences for firms and their associated persons, including fines and other disciplinary action." The Privacy Act of 1974 mandated such fines commencing with the creation of this Statute by Congress in 1974. FINRA and the SEC are aware of such mandates in the Privacy Act of 1974 but intentionally concealed from Plaintiff such information about FINRA's obligation under the Privacy Act commencing in October 2020 to present.

The Privacy Act prohibits the disclosure of a record about an individual from a system of records absent the written consent of the individual.

Plaintiff did not provide written consent to Ameriprise for disclosure of Plaintiff's PII.

Despite Plaintiff's Social Security number and other PII being public for over 16 years, DC Circuit has ruled it is still protected by the Act.

Plaintiff's situation is unique as the PII was disclosed in a Court document without Plaintiff 's knowledge of the disclosure in 2004 (ECF 35-1, *Kosen et al*). There was no permission for such blatant disclosure of Plaintiff's PII.

1. The Third, Ninth, Tenth, and D.C. Circuits, however, have held that the release of information that is "merely readily accessible to the public" *does* constitute a disclosure under subsection (b). *See, e.g., Quinn v. Stone*, 978 F.2d 126, 134 (3d Cir. 1992) (holding that "[t]o define disclosure so narrowly as to exclude information that is readily accessible to the public would render superfluous the detailed statutory scheme of twelve exceptions to the prohibition on disclosure") Further D.D.C. LCvR 5.4 (f) (1)-(4) confirms Plaintiff's PII is protected.
2. *Pilon v. DOJ*, 796 F. Supp. 7, 11-12 (D.D.C. 1992) (rejecting argument that information was already public and therefore could not violate Privacy Act where agency had republished statement that was previously publicly disavowed as false by agency). In sum, privacy interests at stake outweighed the public interest in disclosure.

FINRA refused to seal the PII they had collected from Plaintiff, upon notice of their Member Firm, Ameriprise's, refusal to seal the PII. The opening clause of §552a(g)(4) prescribes two conditions on which liability depends. *First*, the claimant's suit must lie under §552a(g)(1)(C) or (D); both provisions require an agency action "adverse" to the claimant. Section 552a(g)(1)(C) authorizes a civil action when an agency "fails to maintain [a] record concerning [an] individual with [the] accuracy, relevance, timeliness, and completeness" needed to determine fairly "the qualifications, character, rights, or opportunities of, or benefits to the individual," if the agency's lapse yields a "determination … *adverse*

to the individual." (Emphasis added.) Section 552a(g)(1)(D) allows a civil action when an agency "fails to comply with [a] provision of [§552a], or [a] rule promulgated thereunder, in such a way as to have *an adverse effect on an individual*." (Emphasis added.) *Second*, the agency action triggering the suit under §552a(g)(1)(C) or (D) must have been "intentional or willful." §552a(g)(4). If those two liability-determining conditions are satisfied (suit under §552a(g)(1)(C) or (D); intentional or willful conduct), the next clause specifies the consequences: "[T]he United States shall be liable to the individual in an amount equal to the sum of" …the recovery allowed under §552a(g)(4)(A) and the costs and fees determined under §552a(g)(4)(B). See 5 U.S.C. § 552a(e)(3)(C), *Covert v. Harrington*, 876 F.2d 751, 754-56 (9th Cir. 1989). FINRA's refusal to seal Plaintiff's PII was intentional; enacted for anti-competitive purposes, under the Clayton Act, Section 4.

3. 5 U.S.C. § 552a(b)(3) - Routine Uses

"No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains[2]. In a Release by FINRA, August 15, 1999, FINRA assumed responsibilities for safeguarding PII, under Privacy Act. (SEC-49)

FINRA maliciously and willfully permitted Plaintiff's PII to be published and communicated repeatedly tagged to Plaintiff's name and business in a Google Search. It was in no way a routine use permitted by the Act. Subsection (a)(7) defines the term "routine use" to mean "with respect to the

[2] "Under 5 U.S.C. 552a(M), the NASD has entered into a Memorandum of Understanding with the Commission, under which the NASD also assumes, among other things, all responsibilities for compliance with the Privacy Act with respect for those records."

disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected."

A public filing of records with a court during litigation constitutes a disclosure.

When an agency (FINRA) publicly files protected records with a court during litigation without consent of the subject of the records, the disclosure constitutes a subsection (b) disclosure. FINRA Member engaged in this improper disclosure of Plaintiff's PII.

The public filing of records with a court, during litigation, *does* constitute a subsection (b) disclosure. See *Laningham v. Navy*, No. 83-3238, slip op. at 2-3 (D.D.C. Sept. 25, 1984), summary judgment granted (D.D.C. Jan. 7, 1985), aff'd per curiam, 813 F.2d 1236 (D.C. Cir. 1987. Accordingly, any such public filing must be undertaken with written consent or in accordance with either the subsection (b)(3) routine use exception or the subsection (b)(11) court order exception.

The "single publication rule" in Plaintiff's case.

The Ninth Circuit held in a subsection (b) case that the "single publication rule" applies to postings on an agency's web site such that "the aggregate communication can give rise to only one cause of action." See *Oja v. Army Corps of Eng'rs*, 440 F.3d 1122, 1130-33 (9th Cir. 2006) (affirming summary judgment for Army Corps which had posted employees' personal information on its public website). However, the court also ruled that about "the same private information at a different URL address [within the same Web site] . . . that disclosure constitutes a separate and distinct publication – one not foreclosed by the single publication rule – and [the agency] might be liable for a separate violation of the Privacy Act." Id. at 1133-34.

Plaintiff's PII was posted and published at numerous URL addresses, including courtlistener.com, Law360.com, University of Michigan's Civil Rights Clearinghouse (through courlistener.com) tagged to Plaintiff's name in a Google Search.

Agencies may affirmatively disclose Privacy Act-protected records during litigation, so long as the disclosure is made in accordance with the Privacy Act's disclosure provision.

Plaintiff's PII disclosure was not made in accordance with the Privacy Act's disclosure provision. When an agency wishes to make an affirmative disclosure of information during litigation it may either rely on a routine use permitting such disclosure or seek a court order. In the case before the Court, Plaintiff's permission to publish the PII was not authorized and there was not a court order to permit such publication.

Courts have permitted disclosure of Privacy Act records if "ordered by the Court". Plaintiff provided the protected data to FINRA. The disclosure of PII was *not* ordered by the Court.

Data privacy laws can easily be breached if any of the terabytes of data used to train a particular bot inadvertently contained protected information. FINRA and their assumed agents willfully published and tagged to Plaintiff's PII; it was not "inadvertent" as legal scholars are cautioning with the emergence of ChatGPT.

FINRA's Member firm contends Plaintiff provided implied consent since Plaintiff's U-4 and U-5 were provided by Plaintiff in NASD Arbitration 17-01857

The subject arbitration was confidential and FINRA rules did not permit disclosure of documents from the Arbitration. Plaintiff was not informed and did not give any consent to disclose Plaintiff's unredacted U-4 and U-5 from the NASD Arbitration with Plaintiff's PII.

The Act does not define the "written consent" needed to permit disclosure under the Privacy Act. Implied consent, however, is insufficient. See *Taylor v. Orr*, No. 83-0389, 1983 U.S. Dist. LEXIS 20334, at *6 n.6 (D.D.C. Dec. 5, 1983) (addressing alternative argument, stating that: "Implied consent is never enough" as the Act's protections "would be seriously eroded if plaintiff's written submission of [someone's] name were construed as a voluntary written consent to the disclosure of her [medical]

records to him") There was not a "need to know" that could justify such a Privacy Act violation. It was done with malice.

An analysis of Privacy Act Complaints provide for multiple forms of damages for the injury, to be determined by the Court.

1. *DHS Watch v. U.S. Dept. of Homeland Security (2019):* In this case, the Department of Homeland Security was found to have violated the Privacy Act when it released the personal information of immigration advocates and journalists who were critical of the agency's policies.

Plaintiff is entitled to damages for FINRA and assumed agents repeated harassment and cyberbullying through ongoing PII on the Internet. Actual damages can include financial losses, harm to reputation, or emotional distress. Courts have awarded damages for emotional distress caused by unauthorized disclosures under the Privacy Act. Plaintiff can provide evidence of the distress and show a causal connection between the unauthorized disclosure and the emotional harm.

II. Violation of Defamation Per Se

1. FINRA made numerous false statements of facts about the plaintiff and excessively published such defamation per se through their proprietary website.
2. These statements are actionable. They express or imply a verifiable falsehood about the Plaintiff. *Milkovich v Lorain Journal Co*., 497 U.S. 1, 19-20(1990). Plaintiffs have detailed the numerous false facts about the Plaintiff, that FINRA, without absolute immunity, published tagged to Plaintiff's Name (ECF 1, Exhibit A, Page 34) that has caused unconscionable injury to Plaintiff's personal and professional reputation. FINRA then repeatedly published these statements to a third party, through their proprietary website, FINRA Awards Online, which is unusual as logins are required to do so; discovery will reveal what FINRA staff or member firm repeatedly would use FINRA's proprietary website to defame Plaintiff.

3. The false statements were so egregious, humiliating, and harmful, Plaintiff's personal and professional reputation were destroyed; forcing Plaintiff to dissolve her corporation.
4. Plaintiff suffered damages because of FINRA's excessive publications of defamation per se with full knowledge of each statement's falsity. Plaintiff was forced to dissolve her business, Check the Ticker SBC, since FINRA refused to cease and desist from such ongoing cyberbullying, harassment, and Google marketing tags tied to the odious defamation in a document created by defendant, FINRA.
5. FINRA's defamation per se is not protected from D.D.C. "truth" doctrine, since Plaintiff has indisputable evidence the statements were false; FINRA's statements were not protected by absolute or qualified privilege since they were intentionally created for an illegitimate purpose derived from violation of Plaintiff's Fifth Amendment right to due process in Arb 17-01857.
6. FINRA maliciously published defamation per se over the Internet repeatedly tagged to Plaintiff's name through FINRA-created Google Search Tags to alert public to such defamation per se for anti-competitive purposes. Due to FINRA's excessive and malicious marketing of odious, disparaging, and false statements attached to Plaintiff's name in a Google Search, Plaintiff began to dissolve her business in early 2021; which was effective on November 15, 2021. (See 1: 22-cv-0330, ECF 20, P. 2, §2.)
7. FINRA used Google knowledge graphs to tie their defamation per se document to Plaintiff's name and business in a Google search, "FINRA Awards Seltzer"; ECF 1, P. 34. The Court may find instructive that ChatGPT-4's has a far more logical response to that Search or question, as compared to FINRA's knowledge Graph(KG), ECF 1, P. 34: *"FINRA Awards Seltzer" is not a complete question or sentence, and I am not sure what information you are seeking. FINRA (Financial Industry Regulatory Authority) is a regulatory organization that oversees and*

regulates broker-dealers and securities firms in the United States. "Seltzer" may refer to a person, a company, or a product, but without more context or information, I cannot provide a meaningful response." FINRA's Google Search provided a FINRA created KG.

Absolute Immunity Lost due to False Statements of Fact in an Arbitration and ADA Violations

FINRA claims they are entitled to absolute immunity since the false statements were made in their Arbitration Forum. FINRA, as forum provider, acted with actual malice, and intentionally fabricated false statements as part of a fraudulent scheme to defame Claimant. FINRA used their "Forum" for an illegitimate purpose; anti-competitive behavior. In addition, FINRA's actions were outside the scope of their official duties and exceeded their authority, in violation of Plaintiff's 5th amendment right. FINRA's connection to FINRA Arbitration 17-01857 was extensive; from FINRA Director Richard Berry filing documents in the DR Portal to influence the Panel, without Plaintiff's permission, to conferring with the Panel Chair on false statements and threats concerning Plaintiff's behavior and financial status, to instructing the Panel Chair to "adjourn the Hearing" based solely on hearsay and defamatory statements initiated by FINRA; with prohibiting a response by Claimants.

FINRA's immunity is not absolute and is limited in certain circumstances.

Arbitral immunity is like the immunity granted to judges and is intended to promote impartial decision-making and protect the integrity of the arbitration process. However, arbitral immunity is not absolute, and in this instance FINRA faces liability for their actions. FINRA engaged in a fraudulent scheme for anti-competitive reasons; that violated Clayton Act Section 4, FAA, ADA Title II and U.S. Constitution, Fifth Amendment, right to due process.

In D.D.C. cases, defamation per se occurs when a statement imputes a crime, a loathsome disease, or other serious misconduct to an individual. Plaintiff was falsely accused of serious misconduct in

FINRA arbitration 17-01857. See 1:22-cv-0330, ECF 22, P. 14; why FINRA has no immunity for statements made in an Arbitration forum in this action before the Court.

1. See *Rosenblatt* v. *Baer*, 383 U.S. 75, 86 (1966), Justice Stewart in that case put it with his customary clarity: "The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being, a concept at the root of any decent system of ordered liberty. "The destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives to a man whose reputation has been falsely dishonored." *Id*., at 9293 (Stewart, J., concurring)."
2. Plaintiff has a private right of action as evidenced by *Weissman v. National Ass'n of Sec. Dealers*, 468 F. 3d.1306, 1307-8 (11th Cir 2006.) for defamation in FINRA Arb 17-01857, since FINRA was acting *outside* of its regulatory capacity as an SRO by using its proprietary website, FINRA AWARDS Online, for an illegitimate purpose; the publication of defamation per se to harm a competitor; that was created by FINRA in their Forum for an illegitimate purpose. Self-regulatory organizations (SROs) like FINRA are granted immunity from civil liability for their actions when performing their regulatory and adjudicatory functions.

The defamation per se in Arbitration 17-01857 had no relationship to the claims before the Panel. This broad scope of attorney litigation privilege is memorialized in the Restatement (Second) of Torts, which states that: "An attorney at law is absolutely privileged to publish false and defamatory matter of another concerning communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, **if it has some relation to the proceeding**. §586 at 247 (1997)."

3. In *Ramstead v. Morgan*, a California appellate court held that a statement made by an attorney to a third party, accusing the plaintiff of stealing from his employer, was not protected by the litigation privilege. The court found that the statement was defamatory per se, as it imputed the commission of a crime, but was not made during litigation, as it was not connected to an ongoing lawsuit or relevant to any contemplated legal action. Therefore, the litigation privilege did not apply, and the plaintiff could pursue a defamation claim. FINRA's defamation per se statements were in violation of U.S. Constitution, 5th Amendment, as they were fabricated after the Hearing was adjourned and had no relationship to the claims before the Panel.
4. Further, SRO, FINRA would lose immunity as FINRA acted outside the scope of their regulatory functions and engaged in conduct, (anti-competitive behavior) not protected by the immunity. In the case of *Weissman v. National Association of Securities Dealers*, 468 F.3d 1306 (11th Cir. 2006), the Eleventh Circuit held that the NASD, now known as FINRA, was not immune from liability for allegedly breaching a contract with the plaintiff because the conduct in question was outside the scope of the NASD's regulatory functions. In that case, the court found that the NASD's alleged breach of contract involved a business dispute between the NASD and the plaintiff, rather than the NASD's performance of its regulatory functions. Therefore, the court held that the NASD was not immune from liability for its actions in that situation. Similarly, FINRA is not immune from liability for its anti-competitive actions against Plaintiff as described in the Complaint and Exhibit, History of FINRA's anti-competitive behavior, ECF 22-6.

The first Amended Complaint (1:22-cv-0330) ECF 22, P. 2, reiterated the claims derive from FINRA's role in non-regulatory actions, not protected by immunity, that arose two to three years *after* an Arbitration through FINRA's for-profit proprietary website in violation of the Clayton Act anti-competitive behavior prohibitions.

This second Amended Complaint asserts FINRA violated U.S. Constitution 5th Amendment by filing Sanctions under R. 12212(c) after the Hearing concluded, blocking Plaintiff's right to due process in a quasi-judicial proceeding.

Courts have recognized FINRA's privilege is "subject to limitations" if a party maliciously asserts false and defamatory charges in judicial proceedings for the purpose of publicizing them in the press.

1. *Bridge C.A.T. Scan Associates v Ohio Nuclear Inc.,* 608 F. Supp. 1187 (S.D.N.Y. 1985). FINRA created a defamation per se document and then repeatedly published it for anti-competitive purposes. In the *Bridge* case, the court held that the absolute privilege applicable to statements made in judicial proceedings did not extend to statements made for the purpose of publicizing them in the press.
2. *Park Knoll Associates v. Schmidt*, 59 N.Y.2d 205, 464 N.Y.S.2d 424, 451 N.E.2d 182 (1983). In this case, the New York Court of Appeals held that the absolute privilege for statements made in judicial proceedings applied only to statements made during the litigation and not to statements made to the press. The court also recognized that the privilege could be lost if the statements were made for an improper purpose or were unrelated to the litigation. FINRA's sanctions were created by FINRA *after* the Hearing had concluded, not during the litigation. The defamation per se was then used for an improper purpose; to defame Plaintiff and her business, Check the Ticker SBC that FINRA and its Member firms deemed a competitor.
3. *Tavoulareas v. Piro, 527 F. Supp. 676 (D.D.C. 1981)* In this case, William Tavoulareas, then-president of Mobil Corporation, sued *The Washington Post* for defamation after it published an article alleging that he had used his influence to secure a lucrative business deal for his son. Tavoulareas claimed that the article defamed him per se by accusing him of nepotism and unethical business practices. The jury initially found in favor of Tavoulareas and awarded him

substantial damages. However, the trial court judge set aside the verdict, finding that Tavoulareas had not proven actual malice, which is required in defamation cases involving public figures. The decision was upheld on appeal by the U.S. Court of Appeals for the D.C. Circuit. In the Case before the Court, it appears FINRA has lost their absolute immunity as described previously. Plaintiff does not have to prove actual malice; Plaintiff is not a "public figure," thus the Jury damages would have been retained.

Courts have ruled as to why in certain instances a case is not a collateral attack against an arbitration.

Courts have been reluctant to interfere with FINRA's arbitration process, as it is considered a valid and efficient method for resolving disputes within the securities industry. However, there are instances where courts have allowed claims to proceed that do not constitute an impermissible collateral attack on the arbitration forum. In this case, FINRA created the defamation per se, *after* the Hearing, without Plaintiff's knowledge or "right to be heard." For absolute immunity to apply in a quasi-judicial context, the process must make available a mechanism for the party alleging defamation to challenge the allegedly false and defamatory statements." Plaintiff was denied that right; the "sanctions" under FINRA R. 12212 (c) were created over a month after the Hearing was adjourned; without Plaintiff's knowledge.

1. FINRA Arb 17-01857 lacked all the safeguards traditionally associated with a quasi-judicial. proceeding" (*Toker*, 44 NY2d at 222). As the Court expressed the central principle underlying its ruling, "[t]o clothe with absolute immunity communications . . . [that] because of the absence of a hearing may often go unheard of, let alone challenged, by their subject — would provide an unchecked vehicle for silent but effective character assassination." The significance of *Toker* is that, for absolute immunity to apply in a quasi-judicial context, the process *must* make available a

mechanism for the party alleging defamation to challenge the allegedly false and defamatory statements. *Toker* ensures that the expansion of the scope of absolute privilege, from testimony at judicial proceedings to the wide range of statements made to administrative agencies, is kept within narrow bounds: the privilege extends only if procedural safeguards enable the defamed party to contest what is said against her." Plaintiff was not provided any right to respond to the defamation per se, since FINRA violated Plaintiff's right to due process under the 5th Amendment. The "Sanctions" and defamation per se were fabricated *after* the Hearing was adjourned and had no relationship to the Claims before the Panel.

2. *Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119 (9th Cir. 2005): In this case, the Ninth Circuit held that claims brought under California's unfair competition law and false advertising law against a brokerage firm for alleged misconduct in the arbitration process were not an impermissible collateral attack on the arbitration forum. The court reasoned that the claims were based on independent legal duties and were not an attempt to undermine the arbitration process. Plaintiff's Complaint is based on independent legal duties; it is not an attack on FINRA's arbitration forum. The independent legal duties are confirmed in causes of action for ADA Title II violations by FINRA and FINRA's violation of Clayton Act, Section 4—not a collateral attack on an Arbitration.
3. *Weisman v. National Association of Securities Dealers, Inc*., 468 F.3d 1306 (11th Cir. 2006): In this case, the Eleventh Circuit held that the plaintiff's breach of contract claims against NASD (now known as FINRA) was not an impermissible collateral attack on the arbitration forum. The court found that the claim involved a business dispute between the plaintiff and NASD, rather than an attack on the arbitration process itself. Plaintiff's claims derive from FINRA's anti-

competitive actions and FINRA's publication of FINRA-created defamation per se two to three years after the Arbitration concluded for anti-competitive purposes.

The legal landscape related to defamation per se, and the internet is complex and rapidly evolving. There have cases related to publication of defamation per se over the Internet, particularly through search engines and Google tags.

1. *e360Insight, LLC v. The Spamhaus Project, 500 F.3d 594 (7th Cir. 2007*): In this case, e360Insight, an email marketing company, sued The Spamhaus Project, a non-profit organization that maintains a list of known spammers, for defamation and other claims. *e360Insight* alleged that Spamhaus falsely listed the company on its spammer list, causing damage to its business.

FINRA's Creation of the knowledge graph(KG) was anti-competitive behavior and published with malice.

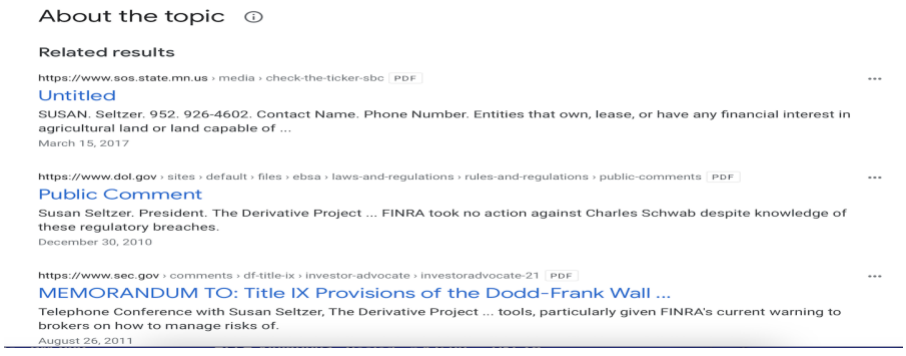
The recent Jonathan Turley case that involved ChatGPT defamation is different than the defamation case before the Court. Unlike in the Turley situation, FINRA's knowledge graph was *not* a random algorithm. FINRA-created the knowledge graph through (1) FINRA's proprietary website, AWARDS Online and (2) Google tags and repeated "hits" to Plaintiff's business Check the Ticker SBC and (3) Plaintiff's advocacy comments filed with the SEC and Department of Labor. This statement is confirmed by the analysis of Google Tags to FINRA arbitration 17-01857 and to Plaintiff's business that do not appear at other search engines, Bing.com and DuckDuckGo. Further, discovery will detail the actions through FINRA's staff and its proprietary website that were and are the foundation for the knowledge graph, ECF 1, P. 34 (at the bottom) Exhibit A. This knowledge graph created by FINRA, was displayed in a Google Search, "FINRA Awards Seltzer". Google gave the option(created by FINRA) ECF.1, P. 16, "more about this page". P. 34, ECF 1 that links the FINRA-created defamation in the Award document to Plaintiff's business and writings as shown in

this footnote.[3] In sum a general Google Search, "more about FINRA Awards" has nothing to do with Plaintiff's business or her public comments. Compare a Microsoft Bing "knowledge graph" to the Bing.com search engine results "FINRA AWARDS Seltzer" search, which demonstrates the knowledge graphs was *created by FINRA*, through their proprietary website and Google tools.

FINRA's Statements in the Subject Arbitration are Not Subject to Privilege- Defamation per Se In certain situations, statements made during quasi-judicial proceedings may be protected by absolute privilege, which shields participants from defamation claims. In this case, FINRA made the statements for an illegitimate purpose and outside the scope of the proceeding. FINRA's statements apparently were not absolutely privileged since they did not relate and were not pertinent to the matter before the Arbitration Panel, based on the Arbitration Contract. The statements were fabricated and never disclosed to Plaintiff during the Hearing; also a violation of due process, under the Fifth Amendment, Plaintiff's "right to be heard."

Here are cases that support FINRA's loss of absolute immunity in FINRA Arbitration 17-01857:

1. *Bridge C.A.T. Scan Associates v. Ohio Nuclear, Inc*., 608 F. Supp. 1187 (S.D.N.Y. 1985): In this case, the court held that absolute privilege did not extend to statements made for the purpose of publicizing them in the press. The court reasoned that if a party *maliciously* asserts false and defamatory charges in judicial proceedings, the absolute privilege does not apply. Once filed,



3

the complaint is a public document with access to it available to the public and the news media. "But for the plaintiff, purposely and maliciously, to stimulate press coverage and wide publicity of a complaint with its allegedly false and malicious statements is beyond the pale of protection."

2. Further in *Bridge,* "The delivery of a copy or report of a complaint to the press is not a statement made during judicial proceedings and therefore is not protected by the common law privilege afforded such statements. The common law privilege offers a shield to one who publishes libelous statements in a pleading or in open court for the purpose of protecting litigants' zeal in furthering their causes". Similarly, FINRA "tagged" the complaint to the "press" -the internet - and is therefore not protected by common law privilege afforded such statements.

3. "*The privilege does not cover the publication of defamatory matter that has no connection whatsoever to the litigation". Kurczaba,* 318 Ill.App.3d at 701, 252 Ill.Dec. 175, 742 N.E.2d at 439, citing Restatement (Second) of Torts, § 586, Comment c, at 247(1977). The privilege is available only when: the publication "was made in a judicial proceeding; had some connection or logical relation to the action; was made to achieve the objects of the litigation; and involved litigants or other participants authorized by law. " *Kurczaba,* 318 Ill.App.3d at 702, 252 Ill.Dec.

4. *Kirschner v. Zoning Board of Adjustment,* 707 A.2d 870 (N.J. Super. Ct. App. Div. 1998), in which the court held that the absolute privilege did not apply to a letter sent by a lawyer to his client's neighbors. The letter threatened legal action against the neighbors if they continued to object to the client's zoning application. The court found that the absolute privilege did not apply because the letter was not a communication made during a judicial proceeding. Similarly, FINRA's "tagging" through Internet public communications, two years after the Hearing, were not communications made during the quasi-judicial proceeding; the absolute privilege should not

apply to publications created outside of the Hearing, without Plaintiff's right to be heard, due process, to refute the defamation per se; a Fifth Amendment violation.

5. FINRA used its Arbitration Forum for an Illegitimate Purpose, had a conflict of interest, and should result in loss of Arbitral Immunity

The Supreme Court of the United States case of *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968).

It is relatively rare for an arbitration forum provider to be accused of using the Forum for an illegitimate purpose. FINRA had a conflict of interest and used their Forum for anti-competitive purposes to protect its member firms from potential loss of revenue; $10 billion annually from 12b-1 fees.

In *Commonwealth*, the petitioner challenged the award from an arbitration proceeding, arguing that one of the arbitrators had not disclosed a potential conflict of interest. The Supreme Court held that the arbitration award should be set aside because the arbitrator had not disclosed the conflict and that an arbitrator must disclose any potential conflicts of interest to the parties. The Court stated that "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." The Court acknowledged that arbitrators need not sever all their ties to the business world, but they should disclose any significant dealings that might create an impression of possible bias. "Statements made *in* a pleading and fair and true reports of such pleadings are absolutely privileged." However, FINRA crafted defamation, not part of the Hearing, delivered the defamation per se, over the Internet, tagged to Plaintiff's name and business, for the purpose of publicly maligning her reputation and business. Once filed, the complaint is a public document with access to it available to the public and the news media. But for the plaintiff, purposely and maliciously, to stimulate press coverage and wide publicity of a complaint with its

allegedly false and malicious statements is beyond the pale of protection. *Bridge C.A.T. Scan Associates v. Ohio-Nuclear Inc.*, 608 F. Supp. 1187, 1195 (S.D.N.Y. 1985)

FINRA has acted outside its regulatory role, as a private entity in publication of defamation per se, which may prohibit absolute immunity.

1. *Fiero v. FINRA (2d Cir. 2011)* The Second Circuit held that FINRA, as a private entity acting pursuant to its contractual relationship with its members, was not entitled to absolute immunity for seeking a money judgment in a court of law. The court determined that FINRA's effort to collect fines through the court system was outside the scope of its regulatory capacity, and therefore, it was not protected by absolute immunity. FINRA acted outside its regulatory authority in engaging in anti-competitive behavior against Plaintiff's firm in FINRA Arb. 17-01857. *Fiero* illustrates that the scope of absolute immunity for self-regulatory organizations (SROs) like FINRA can be limited, depending on the specific facts and circumstances of the case.

Entities that enjoy absolute immunity when performing governmental functions cannot claim that immunity when they perform non-governmental functions. Because they perform a variety of vital governmental functions, but lack the sovereign immunity that governmental agencies enjoy, SROs are protected by absolute immunity *when they perform* their statutorily delegated adjudicatory, regulatory, and prosecutorial functions. FINRA's private for profit website marketing activities through Google tags do not enjoy absolute immunity; it is a non-governmental function.

2. *Weissman v. National Ass'n of Sec. Dealers*, 468 F.3d 1306, 1307-8 (11th Cir. 2006):

"NASD and NASDAQ ("Appellants") claim absolutely immunity from *Weissman's* suit. They argue that Weissman complains of conduct undertaken pursuant to their quasi-governmental role as market regulators under the Securities Exchange Act (SEA), 15 U.S.C. § 78a et seq. The district court

rejected this defense, explaining that while Appellants do enjoy absolute immunity for statutorily mandated regulatory or disciplinary functions, they are not entitled to such immunity in this case because *Weissman's* complaint relates to private commercial conduct not mandated by the Act". Similarly, Plaintiff's Complaint against FINRA is for "private commercial conduct not mandated by the Act." The Eleventh Circuit reversed the district court's decision, finding that NASD was not entitled to absolute immunity for the alleged due process violation. The court reasoned that absolute immunity applied to NASD when it performed its delegated regulatory functions, but it did not extend to constitutional violations. The court held that Weissman's due process claim could proceed, and it remanded the case to the district court for further proceedings. FINRA's quasi-judicial proceeding violated Plaintiff's right to due process; by ordering of fabricated Sanctions, without Plaintiff's opportunity "to be heard." See *Seltzer v Gensler*, Writ of Mandamus, related case, 21-cv-02093, ECF 1) and this Memorandum, P. 7 § 3. Violation of Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." This provision applies to the federal government and its agencies, as well as to private organizations, like self-regulatory organizations (SROs), when they act under color of federal law or perform functions traditionally reserved to the government.

FINRA refused to Provide Plaintiff a requested accommodation under ADA, Title II. FINRA denied this fair request Changing the Course of the Arbitration

FINRA's Director of Arbitration, Richard Berry, refused to provide Plaintiff an ADA accommodation for her hearing disability. As the documents in the DR Portal confirm, such a denial changed the course of the Arbitration (17-01857) and resulted in the removal of the three individual USBI respondents through a scheme that Plaintiff deemed extortion. (See Amended Complaint, attached to this Memorandum of Points and Authorities, §89-§96.) FINRA's Forum refused to

provide the in-person testimony, thus Plaintiff would have been unable to understand and meaningfully engage in the arbitration, potentially resulting in an unfavorable outcome; due to a decades long hearing disability.

If the court finds that the FINRA Arbitration Forum failed to provide a reasonable accommodation, FINRA may be ordered to pay compensatory damages, or pay punitive damages in cases of intentional discrimination.

There have been several relevant cases where quasi-judicial or judicial entities have been found to have violated the Americans with Disabilities Act (ADA) and caused harm to the plaintiff.

1. *Tennessee v. Lane (2004):* In this case, the Supreme Court held that the state of Tennessee violated Title II of the ADA by failing to provide adequate access to its courts for individuals with disabilities. The plaintiff, a paraplegic, was unable to access the second-floor courtroom in the courthouse and was forced to crawl up the stairs to attend his trial. The Supreme Court held in a 5-4 decision that Title II of the ADA was a valid exercise of Congress's power under Section 5 of the Fourteenth Amendment insofar as it applied to cases involving access to the courts. The Court found that Congress had the authority to enact the ADA to address a history and pattern of unequal treatment and discrimination against people with disabilities, particularly in the context of access to judicial services. The Court concluded that Tennessee could be sued for monetary damages for failing to provide adequate accommodations for people with disabilities to access the courts.

III. **Violation of Clayton Act, Section 4, Anti-Competitive Behavior**

FINRA engaged in defamation per se in their Arbitration Forum in a broad scheme and pattern of conduct aimed at eliminating a small business competitor, Check the Ticker SBC. FINRA, through its proprietary website, AWARDS Online, engaged in a two-year unrelenting campaign of promoting false

and defamatory statements about a smaller competitor, to damage Check the Ticker's reputation and eliminate Plaintiff's ability to compete in the market.

ECF 1, Exhibits A, A-1, and B**,** P. 34-36**,** demonstrate unequivocally the anti-competitive actions by FINRA through its entitlement system and FINRA created-Google tags. The knowledge graph, (ECF 1, Exhibits A and A-1, P, 34), created through FINRA's Google Marketing strategies and proprietary website/entitlement system, to defame Plaintiff and her business is prima facie evidence of the derivation of the ongoing injury that forced Plaintiff to dissolve her business.

In addition to tagging to defamation created by FINRA in their arbitration forum, FINRA tagged to Plaintiff's PII, as part of their broader scheme and pattern of conduct. It was additional anti-competitive behavior under the Clayton Act. FINRA's tagging of Plaintiff's PII was also done with the intent to harass Plaintiff; FINRA also engaged in repeated cyberbullying to force Plaintiff to dissolve her business. Cyberbullying involves the use of electronic communication to harass or bully an individual, and it can have serious consequences for the victim's emotional well-being and personal safety; particularly when it includes tagging PII to a victim's name through search engine tags and technology. Such harmful actions have become very invasive through knowledge graphs on an individual and through the emergence of new ChatGPT, OpenAI and other Internet aggregators.

FINRA Created a Knowledge Graph to Defame Plaintiff Personally and Professionally.

Google's knowledge graphs are designed to provide users with information about entities such as people, places, and things, based on semantic search techniques. While it is possible for a company to manipulate the search results to make certain information about an individual more prominent or to present that information in a particular way, this would generally be considered a violation of Google's policies and could potentially result in penalties such as removal from the search engine results. A year following Plaintiff filing their Complaint in D.D.C., Plaintiff was successful in

having Google remove Plaintiff's PII and defamation per se, created by FINRA through Google's marketing tags and knowledge graphs; as Google deemed such defamatory actions as harassment and a violation of the Privacy Act of 1974. However, FINRA and its assumed agents began to promote Plaintiff's PII at other search engines, DuckDuckGo and Bing.com which Plaintiff discovered the week of March 7, 2023.

Courts have generally found that SROs are immune from antitrust liability under the doctrine of regulatory immunity, particularly when their conduct is taken pursuant to their regulatory authority. Plaintiff's Complaint demonstrates FINRA's anti-competitive actions were *not* executed by its regulatory authority; the anti-competitive actions were through FINRA's proprietary website, FINRA Awards Online, through marketing tags, Google tools and knowledge graphs, all created by FINRA for anti-completive purposes to aid FINRA and its Member firms by defaming and eliminating a small business competitor, Check the Ticker SBC. (See Case 1: 22-cv-0330) ECF 22, commencing P. 1)

Section 4 of the Clayton Act[4] provides a private right of action for individuals who have been injured by anti-competitive conduct. The Clayton Act, enacted in 1914, is a federal antitrust law in the United

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[4] Clayton Anti-Trust Act: See 22-cv-0330, *Seltzer v FINRA*, ECF 22, P. 2, Footnote:

According to the FTC, the Clayton Act also allows private parties to take legal action against companies and seek triple damages when they have been harmed by conduct that violates the Clayton Act. It also addresses issues that the Sherman Act didn't cover by outlawing *incipient forms of unethical behavior*. One may also seek and get a court order against any future anticompetitive practice. In accordance with the injunctive relief request in ECF 1, P. 31 § (c), Original Complaint, Plaintiff will request the Court remove the document FINRA published in their AWO that FINRA has used for anti-competitive and *unethical* and anti-competitive purposes through a proprietary website.

States that aims to prevent anti-competitive behavior and promote fair competition in the marketplace. The Clayton Act is codified in 15 U.S.C. §§ 12-27 and supplements other antitrust laws, such as the Sherman Act and the Federal Trade Commission Act. The District Court for the District of Columbia has heard many cases related to alleged anti-competitive behavior in violation of Section 4 of the Clayton Act. See Exhibit D, ECF 22-6, P. 1. "Plaintiff attaches Exhibit D, *Timeline of the Anti-Competitive Behavior* that establishes FINRA *intentionally* targeted Plaintiff's reputation through their for-profit website and Google tags and refused to cease and desist from such abhorrent actions until Plaintiff removed her business (website) from public view.

Section 4 of the Clayton Act, codified at 15 U.S.C. § 15(a), provides private parties with the right to sue for damages resulting from violations of U.S. antitrust laws, including the Sherman Act and the Clayton Act itself. The legal basis for commencing a private federal antitrust action is contained in the Clayton Act 15 U.S.C ("any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States.

1. *Charles Schwab & Co., Inc. v. Financial Industry Regulatory Authority, Inc*., No. 3:12-cv-03288 (N.D. Cal. 2012): In this case, Charles Schwab, a FINRA member firm, sued FINRA for alleged anti-competitive practices. Schwab claimed that FINRA had violated federal antitrust laws by enforcing a rule that prohibited the use of class action waivers in customer agreements, thereby allegedly favoring plaintiffs' attorneys and disadvantaging brokerage firms. The court dismissed the case, holding that FINRA's conduct was immune from antitrust liability under the doctrine of regulatory immunity, as its actions were taken *pursuant* to its regulatory authority.

Plaintiff's case is distinct from *Charles Schwab & Co., Inc.* since Plaintiff's corporation, Check the Ticker SBC is not subject in any manner to FINRA's regulatory authority. While there have

been instances where FINRA rules or actions have been challenged on the grounds of anti-competitive behavior, these challenges are typically resolved through administrative proceedings within the SEC, rather than through court findings of anti-competitive behavior by FINRA itself. Check the Ticker SBC is not subject to FINRA or SEC regulatory authority. FINRA's authority is limited to entities and individuals registered with them or subject to SEC regulation. Therefore, FINRA's actions against an entity that is not subject to their regulatory authority or the SEC's jurisdiction is unusual; however FINRA Arb 17-01857 digital recordings confirm FINRA Member firm's counsel insistence on peppering questions of Plaintiff concerning Check the Ticker's revenues and "role" in the brokerage industry; it was deemed competitor.

FINRA's actions were not taken pursuant to its regulatory authority.

In the Complaint before the Court, FINRA's anti-competitive behavior is not immune from anti-trust liability under the doctrine of regulatory immunity since FINRA's actions were not taken pursuant to its regulatory authority. The anti-competitive actions were taken by FINRA through FINRA's for-profit website, FINRA Awards Online, that is (1) not a regulatory function and (2) does not have immunity for actions by its for-profit marketing arm, designed to assist Member firms.

FINRA choose to harm Plaintiffs' business through a FINRA-created knowledge graph and defamation per se, since FINRA and its Member Firms deemed Plaintiff's business, Check the Ticker SBC, a competitor, as established in the digital recordings for FINRA Arbitration 17-01857.

As in *FTC v. Staples,* the Clayton Act prohibits actions that substantially lessen competition. *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997) was a significant antitrust case in which the Federal Trade Commission (FTC) sought to block a proposed merger between Staples, Inc. and Office Depot, Inc., two of the largest office supply superstore chains in the United States at the time. The FTC alleged that the merger would violate Section 7 of the Clayton Act, which prohibits mergers or

acquisitions that may substantially lessen competition or tend to create a monopoly. While Plaintiff's corporation was small it had a potentially immense effect on FINRA Member Firms' 12b-1 revenues; estimated at over $10 billion annually. It is instructive that FINRA (1) tied the defamation case to Plaintiff's business in a knowledge graph and Plaintiff's business and "inappropriate behavior" which was the "defense" by FINRA Member firm in FINRA Arbitration 17-01857.

FINRA was Repeatedly Warned They Were Harming a Small Business Competitor; yet refused to cease/desist until Plaintiff filed this Complaint on February 2, 2022

1. *United States v. Microsoft Corp. (D.D.C. 2001):*, The case focused on two main aspects of the Sherman Act: Section 1, which prohibits agreements in restraint of trade, and Section 2, which prohibits monopolization and attempts to monopolize a market. FINRA's harm to a competitor is a restraint of trade and an attempt to monopolize a market through false advertising, conflicted consumer "education" and in this case, elimination of a competitor. See 1:22-cv-0330, ECF 20, P. 5-7, § 1-17 and ECF 22, P. 1-26 and 22-6.
2. *Reiter v. Sonotone Cor*p., 442 U.S. 330 (1979), was a United States Supreme Court case that clarified the definition of "injured in his business or property" under Section 4 of the Clayton Act (15 U.S.C. § 15), which allows private parties to sue for treble damages and obtain an injunction if they have been injured by an antitrust violation. The Supreme Court, in a unanimous decision, held that consumers who have been overcharged due to an antitrust violation have indeed suffered an injury to their "property" within the meaning of Section 4.

IV. FINRA's Violation of Cyber Bullying is an action included in both FINRA's violation of the Privacy Act of 1974 and the Violation of the DCD Tort of Defamation

Cyberbullying and defamation cases involving online search results and knowledge graphs can be complicated, as they may involve multiple parties, such as the individuals posting defamatory content,

the website hosting the content, and search engines like Google that display the content in search results or knowledge graphs. However, in this Case, it is not complicated. (1) FINRA created the defamation per se through an illegitimate use of its Arbitration forum. (2) FINRA then posted the defamation per se at its proprietary website, FINRA AWARDS Online(AWO), (3) FINRA staff or FINRA member firms then logged into their proprietary website(AWO) through FINRA's DR Portal and (4) FINRA or Member firms then created Google Snippets and Google "marketing tags" to publish and republish the defamation per se through Google's search engine tied to Plaintiff's name, which Plaintiff believes is a form of cyberbullying.

Cyberbullying is not a specific law or tort recognized in the United States District Court for the District of Columbia or any other federal court. FINRA engaged in a form of harassment, defamation per se, and the intentional infliction of emotional distress that may be actionable under the D.D.C. tort of defamation.

FINRA Engaged in Online Harassment and Cyberbullying for anti-competitive purposes.

Cyberbullying for anti-competitive purposes refers to the use of intimidation, harassment, or other aggressive online behavior with the intent to gain an unfair advantage over competitors, often in a business or professional context. FINRA's cyberbullying included a range of tactics: FINRA spread false information about a competitor to damage Plaintiff's reputation for anti-competitive purposes.

1. FINRA's cyberbullying for anti-competitive purposes has had serious consequences for Plaintiff; Plaintiff has suffered from reputational damage, financial loss, and emotional distress due to FINRA's attempt to destroy and maintain a fair competitive environment.
2. In Plaintiff's case, the issues include invasion of privacy, defamation, intentional infliction of emotional distress, and may involve violations of state and federal laws that prohibit online harassment or stalking.

FINRA's repeated refusal to seal Plaintiff's PII is a potential form of "doxing" to harm Plaintiff. There have been cases involving the repeated publication of an individual's Personally Identifiable Information (PII) with the intent to harass and harm them. This type of conduct often falls under the category of "doxing," which refers to the act of publicly revealing someone's private or personal information without their consent, typically with malicious intent. In *United States v. Theldrick Cameron (2015*), Theldrick Cameron, a former employee of an insurance company, pleaded guilty to one count of computer fraud under the Computer Fraud and Abuse Act (CFAA) for unauthorized access to his former employer's computer systems. After being fired, Cameron accessed the company's computer systems, obtained the PII of several employees, and posted their information online, including names, addresses, phone numbers, and Social Security numbers.

V. Statutes of Limitations

The Privacy Act of 1974 - According to 5 U.S.C. § 552a(g)(5), a civil action must be filed "within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation."

In summary, the statute of limitations for a violation of the Privacy Act of 1974 is generally two years from the date the cause of action arises. FINRA materially and willfully misrepresented to Plaintiff, information about their obligation under the Privacy Act in October 2020. The two-year period starts from the date Plaintiff discovered the misrepresentation or March 7, 2023.

Defamation per Se – The statute of limitations for defamation per se in the District of Columbia is one year from the date of publication. This time limit is established by the District of Columbia Code § 12-301(4), which sets the statute of limitations for libel and slander. However, the idea of republication is that when defamatory material is republished or redistributed, a new cause of action for defamation arises, resetting the statute of limitations.

Courts have considered republication in various contexts, such as when an allegedly defamatory statement is republished in a different medium or when a statement is substantially altered or modified.[5] Knowledge graphs are a complex and evolving area of the law; yet intuitively, republication through a knowledge graph, created by the entity that created the defamation, that is linking new data points through Search Engines, with the intent to expand the scope of defamation per se, to a Plaintiff's business, most clearly would meet the definition of a

[5] The idea of republication is that when defamatory material is republished or redistributed, a new cause of action for defamation arises, resetting the statute of limitations. Generally, republication can occur when: (1)An allegedly defamatory statement is republished in a different medium; (2)A statement is substantially altered or modified; (3) A statement is republished by a third party with the authorization or encouragement of the original publisher. The application of the single publication rule in Plaintiff's situation depends on the facts and circumstances. The defamatory(per se) statements were published in a new context or with a different meaning, such that it constitutes a new cause of action.(The knowledge graph in ECF 1, P. 36) In such cases, the plaintiff may be able to bring a separate lawsuit for each new publication.

very harmful republication. Further, one could deem a knowledge graph as a "different medium" and since the republication was through FINRA's proprietary website and FINRA DR Portal log-in, it was with the authorization and encouragement of the original "publisher", FINRA.

As for the specific issue of Google tags to an individual's name, it is possible that courts may consider such tags as a separate cause of action if they constitute a new publication of the defamatory statement. In this case before the Court, it appears that republication and the single publication rule does not apply to a quasi-judicial proceeding's proprietary website that employs "logins" to defame Plaintiff. Again, the logins and creation of the Google tags, FINRA's Google Analytics will define the scope and provide the raw data of FINRA and its Member firms excessive publication of an Award that was created and then published to defame Plaintiff and her business.

Cyberbullying and Harassment- For civil claims related to cyberbullying and harassment, the statute of limitations depends on the specific cause of action, in this instance, defamation, per se. As the statute of limitations for defamation in the District of Columbia is one year, as per D.C. Code § 12-301(4) it would be one year from the last publication; in this instance the Knowledge Graph on January 26, 2021. However, the conduct also involves intentional infliction of emotional distress; repeated publication of Plaintiff's PII and FINRA's refusal to seal the PII; the statute of limitations is three years, as per D.C. Code § 12-301(8).

In civil cases, the statute of limitations would depend on the specific cause of action being pursued. Plaintiff's claims for cyberbullying include **Defamation** (libel and slander): 1 year which is one year from the publication of the Knowledge graph for anti-competitive purposes on January 26, 2023, **Personal injury**: 3 years for the last cyberbullying event or March 7, 2023 **Intentional infliction of emotional distress**: 3 years from last event or March 7, 2023

Americans with Disability Act, Title II - Statute of Limitations for Americans with Disability Act, Title II

Under the Americans with Disabilities Act (ADA), the statute of limitations for an ADA II violation by a quasi-judicial unit of government is generally two years from the date of the alleged discrimination. Title II of the ADA prohibits discrimination against individuals with disabilities by state and local governments, including quasi-judicial units of government.

It is important to note that the statute of limitations for an ADA II violation by a quasi-judicial unit of government may be subject to certain tolling or equitable doctrines, which can extend time in which a claim must be brought. Plaintiff filed her ADA Complaint with the Department of Justice, within two years of the date of the discrimination (December 2019) and filed the Complaint with the Securities and Exchange Commission, FINRA's regulator, within two years. Plaintiff understands the tolling or equitable doctrines should apply in this instance; since due to the egregious defamation and defamation per se created by FINRA, through a false and defamatory document, (not an "AWARD" document) was also used to conceal FINRA's Director of Arbitration's two violations of ADA, Title II, that changed the course of the Arbitration and prohibited Plaintiff from a fair and just proceeding prohibiting Plaintiff to recover damages to their retirement accounts in FINRA Arb. 17-01857.

Clayton Act – Statute of Limitations under Section 4 of the Clayton Act

Section 4 of the Clayton Act allows private parties who have been injured by anti-competitive conduct to sue for damages. The statute of limitations for claims under Section 4 begins to run from the time the cause of action accrues, which is typically the time when the plaintiff first suffers an injury because of the anti-competitive conduct. Plaintiff was forced to dissolve the business, Check the Ticker SBC, in December 2021 and the statute of limitations is four years from that time of injury.

VI. Plaintiff has suffered an injury in fact and has standing to pursue her claim.

The relief sought in the Amended Complaint, attached, is warranted under the relevant Statutes, and based on the facts of the case. In the District Court of the District of Columbia, Plaintiff summarizes the injury by cause of action, entitlement to relief, the injury and requested relief.

1. Violation of Privacy Act

- The Act permits the recovery of actual damages sustained by the individual because of the agency's violation, seeking damages pursuant to 5 U.S.C. § 552a(g)(4) (1982).
- Plaintiff has a right to claim damages for emotional harm; particularly since FINRA had every opportunity to seal Plaintiff's PII and repeatedly refused. This has caused irreversible harm. Courts have ruled that "adverse effect"–in this case and typically, emotional anguish–from a federal agency's intentional or *willful* Privacy Act violation, (but has proved no "actual damages" beyond psychological harm), qualifies as "a person entitled to recovery" within the meaning of §552a(g)(4)(A).

2. Defamation per Se by FINRA

Plaintiff is permitted to claim both compensatory and punitive damages. For compensatory; Plaintiff has suffered lost wages, damage to reputation, and emotional distress.

- Plaintiff claims punitive damages, in addition. Plaintiff has demonstrated that defendant acted with actual malice and reckless disregard for the truth. Investors will lose all faith in FINRA's arbitration Forum when it is used to defame a retail investor who has filed a Complaint and deserves a fair and just Forum, that complies with Arbitration rules approved by the SEC and is not employed for an illegitimate purpose.
- Plaintiff was denied the right to recover damages for the securities law violations in FINRA Arbitration 17-01857; due to FINRA's illegitimate use of the Forum. Plaintiff would defer to the

Court if any damages under ADA Title II are warranted for Plaintiff due to denial of right to an accommodation for two protected disabilities by FINRA in their Forum.

3. Violation of Clayton Act-Section 4

- The Clayton Act also allows private parties to take legal action against companies and seek triple damages when they have been harmed by conduct that violates the Clayton Act. It also addresses issues that the Sherman Act didn't cover by outlawing *incipient forms of unethical behavior*. One may also seek and get a court order against any future anticompetitive practice. In accordance with the injunctive relief request in ECF 1, P. 31 § (c), Original Complaint, Plaintiff will request the Court remove the document FINRA published in their AWO that FINRA has used for anti-competitive and *unethical* and anti-competitive purposes through a proprietary website.

4. Violation of Cyberbullying and Harassment (In D.C.D. potentially under Defamation Claim)

Plaintiff is entitled to both economic and non-economic damages, and claims such damages as defined on Page 55, § *h*, of the Amended Complaint attached to this Memorandum.

VII . Jurisdiction and Venue is proper in the U.S. District Court of the District of Columbia

28 U.S.C. § 1332 grants federal courts the authority to hear cases involving disputes between parties from different states or countries, if the monetary value of the dispute meets the threshold, $75,000. Plaintiff's citizenship, as disclosed in 1: 22-cv-0330, ECF 24, is Plaintiff's address filed under Seal in accordance with Honorable Judge Cobb's Minute Order, on February 14, 2022. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendant.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests leave to file this Amended Complaint for the reasons summarized in this Motion for Leave and in the attached redlined Amended Complaint, dated

April 18, 2023.. The Original Complaint is in ECF 1, and first Amended Complaint is in ECF 20. The Proposed Order is attached.

Respectfully submitted, **DATED:** April 18, 2023

/s/_____

Susan Seltzer
Pro Se Plaintiff
Seltzers1971@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of Points and Authorities in Support of Plaintiff's Motion for Leave to file attached Plaintiff's redlined Amended Complaint (Second) and Proposed Order for Leave to File, will be filed with the Clerk of Court of the United States District Court of the District of Columbia, using the CM/ECF system on April 18, 2023. Notification of such filing will be sent to registered ECF filers through the CM/ECF system, listed below.

Respectfully submitted**,** DATED: April 18, 2023

/s/_____

Susan Seltzer
Pro Se Plaintiff
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