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

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MICHAEL ARNSTEIN,
Plaintiff,

-against- **Index No. 157910/2025-NY**

Stein Saks, PLLC, Judah Stein, Esq., and John Does 1-5,
Defendants.

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PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND FOR COSTS AND FEES

I. PRELIMINARY STATEMENT

Defendants' invocation of litigation privilege is both legally and factually meritless. It is well established that litigation privilege does not extend to statements made in violation of a court order. See Tenore v. Kantrowitz, Goldhamer & Graifman, P.C., 121 A.D.3d 775 (2d Dep't 2014). Nor may privilege shield deliberate misuse of court pleadings to publish defamation. See Sexter & Warmflash, P.C. v. Margrabe, 38 A.D.3d 163, 173 (1st Dep't 2007). Such conduct is not protected but rather condemned by courts as an abuse of judicial process.

Notably, Defendants' conduct is the subject of a pending contempt proceeding in Goldberg v. Rozenberg, Index No. 809970/2025 (Sup Ct, Bronx County), in which Defendants inserted defamatory statements about Plaintiff Arnstein into court filings in direct violation of a Temporary Restraining Order issued on June 18, 2025 (NYSCEF Doc No. 51). The misuse of Mr. Arnstein's name in that case—where he is not a party—has been central to that violation.

Defendants' invocation of litigation privilege is both legally and factually meritless. It is well established that litigation privilege does not extend to statements made in violation of a court order. See Tenore v. Kantrowitz, Goldhamer & Graifman, P.C., 121 A.D.3d 775 (2d Dep't 2014). Nor may privilege shield deliberate misuse of court pleadings to publish defamation. See Sexter & Warmflash, P.C. v. Margrabe, 38 A.D.3d 163, 173 (1st Dep't 2007). Such conduct is not protected but rather condemned by courts as an abuse of judicial process.

Plaintiff's well-pled Complaint alleges facts and offers documentary evidence demonstrating defamation, retaliation, and intentional infliction of emotional distress.

The motion to dismiss must be denied in its entirety.

II. STATEMENT OF FACTS

Plaintiff commenced this action to address egregious misconduct committed by Defendants, including:

Defendants' intentional and irrelevant injection of Plaintiff's name into an unrelated litigation (Goldberg v. Rozenberg) for the sole purpose of defaming and retaliating against him.

False and misleading accusations referencing Plaintiff's past criminal conviction—long resolved—to paint him in a false light and mislead the court and public.

The making of such statements after the issuance of a TRO in the Goldberg matter, which specifically prohibited such conduct.

The defamatory statements were made in a knowing violation of the TRO issued June 18, 2025 (Doc No. 51) in Goldberg. This order forbade any retaliatory or defamatory court filings. Nonetheless, Defendants published a document referencing Mr. Arnstein's criminal record and falsely suggesting ongoing fraud—despite Mr. Arnstein's conviction being wholly unrelated, long since resolved, and having no bearing on the issues in either case.

This abuse of process reflects a pattern: Defendants have already been sanctioned in federal courts for their ADA litigation schemes. Now, they are doubling down on misconduct by retaliating against whistleblowers and attempting to hide behind procedural defenses.

III. ARGUMENT

A. The Complaint States Viable Legal Claims

The Complaint sufficiently pleads causes of action for:

Defamation
Abuse of Process
Intentional Infliction of Emotional Distress

Each claim is supported by specific allegations, attached evidence, and legal authority. The standard on a motion to dismiss requires the court to afford Plaintiff every favorable inference and deny dismissal where any cause of action is viable. See Leon v. Martinez, 84 N.Y.2d 83 (1994).

B. Litigation Privilege Does Not Apply

Defendants' claim of absolute privilege is inapplicable under these facts. The privilege does not protect:

Statements made in violation of a court order;
Statements with no legal relevance or necessity;
Statements made with retaliatory or malicious intent.

See Sexter & Warmflash, P.C., 38 A.D.3d at 173; Tenore, 121 A.D.3d at 775.

Here, Defendants admit to including defamatory content in court filings;
Concede the statements were made within judicial filings;
Attempt to justify the conduct based on form rather than substance.

Defendants' invocation of litigation privilege is both legally and factually meritless. It is well established that litigation privilege does not extend to statements made in violation of a court order. See Tenore v. Kantrowitz, Goldhamer & Graifman, P.C., 121 A.D.3d 775 (2d Dep't 2014). Nor may privilege shield deliberate misuse of court pleadings to publish defamation. See Sexter & Warmflash, P.C. v. Margrabe, 38 A.D.3d 163, 173 (1st Dep't 2007). Such conduct is not protected but rather condemned by courts as an abuse of judicial process.

C. Judicial Notice of Related Sanctions is Appropriate

Plaintiff requests the Court take judicial notice of:

The TRO and contempt proceedings in Goldberg v. Rozenberg;
Federal court sanctions issued against Stein Saks, PLLC and its attorneys;
Related patterns of frivolous ADA lawsuits.

See Matter of Khatibi v. Weill, 8 A.D.3d 485 (2d Dep't 2004).

These materials support Plaintiff's allegations of bad faith, retaliation, and improper purpose.

D. Defendants' Motion for Fees is Meritless

Defendants' request for costs is outrageous and baseless. Their own conduct is the subject of disciplinary proceedings. They now seek to punish Plaintiff for exposing their misconduct—an effort that must be rejected in the strongest terms.

IV. CONCLUSION

For the foregoing reasons, Plaintiff Michael Arnstein respectfully requests that this Court:

DENY Defendants' motion to dismiss;
DENY Defendants' request for fees and costs;
Take judicial notice of the pending contempt motion in Goldberg;
Award any further relief the Court deems just and proper.

Respectfully submitted,
MICHAEL ARNSTEIN

Michael Arnstein, Pro Se
Plaintiff

Dated: July 28, 2025
New York, New York