SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

ELENA RUTH SASSOWER, DORIS L. SASSOWER, and CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,	:	
Plaintiffs,	:	Index No. 10-12596
- against -	:	
GANNETT COMPANY, INC., THE JOURNAL NEWS, LOHUD.COM, HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS, D. SCOTT FAUBEL, KEITH EDDINGS, and DOES 1-10,	:	
Defendants.	:	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT

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The Memorandum of Law submitted in opposition to Defendants' Motion to Dismiss (the "Opposition Brief") is long on invective and short on substance. In the Opposition Brief, Plaintiff Elena Sassower[1] devotes over sixty pages to a paragraph-by-paragraph assault on Defendants' filing, peppering a rambling diatribe with the repeated declarations that Defendants' motion is "frivolous," a "fraud on the court," and "a deceit." Ms. Sassower concludes her Opposition Brief with a sustained *ad hominem* attack on the undersigned counsel, whom she accuses of "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation," and against whom she asserts an unabashedly baseless cross-motion for sanctions. Finally, the Opposition Brief takes a turn from the untenable to the bizarre in asserting that this law firm is, in fact, a defendant in this lawsuit: "In other words, Satterlee is a defendant DOE, directly responsible for generating this lawsuit against its clients, who are here its fellow defendants." Opp. Br. at 56.

Given Ms. Sassower's vehemence in asserting her claims, it is perhaps easy to lose sight of the publication that provoked this professed outrage and prompted this lawsuit. Upon a review of the May 6, 2009 *The Journal News* article (the "Article"), one can be struck only by how fundamentally innocuous it is – the Article's language simply cannot serve as a foundation for a sustainable defamation action. The "gist or sting" of the Article is that Elena and Doris Sassower spoke vehemently and out of turn in protesting the confirmation of Judge Brian Hansbury, a characterization which is borne out by Plaintiffs' admission that they shouted "a corrupt judge" during the proceedings and that their remarks "recap[ping] Judge Hansbury's

[1] As discussed in more detail below, while the Opposition Brief is ostensibly submitted on behalf of all plaintiffs, it is signed only by Elena Sassower – and not by James DeFelice, counsel for Doris Sassower and the Center for Judicial Accountability, Inc. See Opp. Br. at 61. In the absence of Mr. DeFelice's signature, the Opposition Brief must be deemed submitted solely on Elena Sassower's behalf.

misconduct in office" drew the instruction of a City Councilwoman that Council rules did not allow for personal attacks. The Article makes no suggestion whatsoever that the Sassowers' conduct was illegal; at worst, the Article depicts them as ill-mannered in their opposition to Judge Hansbury.[2]

The Opposition Brief has no response to this irrefutable point; indeed, what is conspicuously absent from the Opposition Brief is any substantive rebuttal of the arguments set forth in Defendants' motion. Specifically, the Opposition Brief does not effectively contest that (1) plaintiffs' own account of the events surrounding the May 4, 2009 White Plains Common Council meeting (the "Meeting") substantially mirrors the description of those events in the May 6, 2009 article in *The Journal News* (the "Article"); and (2) the Article's characterizations of Elena and Doris Sassower as "hecklers" who "took on the Common Council and a city judge," and whose comments were "slings and arrows," are figurative statements or vigorous epithets, and are not, as a matter of law, defamatory statements of fact. Unable to point to any *false and defamatory* statements of fact, Ms. Sassower resorts to trivially insisting that the Sassowers' protest occurred not "during" Judge Hansbury's confirmation, but in the "citizens' half hour" preceding the Meeting – exactly the type of "minor inaccuracies" that New York courts routinely recognize do not give rise to a defamation claim. See, e.g., Croton Watch Co. v. Nat'l Jeweler

[2] The Sassowers' attacks on the judiciary extend far beyond Judge Hansbury to encompass large portions of the judicial bench in Westchester County. As Justice Lauer noted in his Decision and Order denying plaintiffs' motion to reargue the dismissal of their claims in the strikingly similar case Sassower v. The New York Times Co., "[i]t appears that at least nine members of the Supreme Court or Acting Supreme Court Judges in this courthouse had issued standing recusal orders recusing themselves from any action involving plaintiffs." See Dec. and Order at 2 (Sup. Ct. West. Co. Sept. 27, 2006) (No. 05-19841); see also id. (noting that the Sassowers accused Judge Nicolai of "engag[ing] in an on-going retaliatory vendetta against [them] due to their crusade against judicial corruption"). Unsurprisingly, Ms. Sassower characterizes Justice Lauer's rulings as "a complete fraud." Opp. Br. at 45 (citing Sassower v. New York Times, *supra*, aff'd, 852 N.Y.S.2d 180 (2d Dep't 2008)). This history may explain plaintiffs' decision to file this action in Suffolk County, where their attacks on the judiciary are relatively unknown.

Magazine, Inc., No. 06 CV 662 (GBD), 2006 WL 2254818, at *5 (S.D.N.Y. Aug. 7, 2006) ("The purportedly defamatory statements need only be substantially true, so that minor inaccuracies cannot give rise to an actionable defamation claim."); see also Def. Br. at 11-13 and cases cited therein. Ms. Sassower also fundamentally misconstrues the axiomatic rule that "only statements alleging facts can properly be the subject of a defamation action," Gross v. New York Times Co., 82 N.Y.2d 146, 603 N.Y.S.2d 813 (1993), incorrectly suggesting that the only publications to which this rule applies are "opinion piece[s]." Opp. Br. at 8, 26-29.

For these reasons, discussed more fully herein, Defendants respectfully request that the Court (i) grant their motion to dismiss in its entirety; and (ii) dismiss Ms. Sassower's cross-motion with prejudice.

I. THE OPPOSITION BRIEF DOES NOT – AND CANNOT – EXPLAIN AWAY THE FATAL DEFECTS IN PLAINTIFFS' CLAIMS.

A. Exhibit 7 To The Complaint Corroborates The Article's Account Of The Meeting In All Material Respects.

The chart included in Defendants' Motion to Dismiss offers a side-by-side comparison of the Article's allegedly false statements with Plaintiffs' own description of the Meeting. See Def. Br. at 13-14. As demonstrated by this chart, Plaintiffs themselves effectively, if inadvertently, admit the substantial truth of the Article's account. Id. (noting that, for example, while Plaintiffs claim that the characterization of them as "hecklers" is defamatory, **Plaintiffs themselves admit that** (i) they "recapt[] [*sic*] for the Mayor and Common Council Judge Hansbury's misconduct in office" (Compl. Ex. 7 at 9); (ii) a council member stated that Sassower was making improper personal attacks on Judge Hansbury (id.); (iii) Sassower directed her comments to Judge Hansbury, demanding that he "justify his decisions" (id. at 10); and (iv) Elena Sassower called out "he is a corrupt judge" as she and her mother left the Council Chamber (Compl. ¶ 34)).

Although Ms. Sassower quotes extensively from the Complaint's conclusory allegations that "[the analysis] demonstrates that . . . the article . . . is knowingly false and misleading" (Opp. Br. at 22 (quoting Ex. 7 at 1)), the Opposition Brief fails to refute the fundamental similarity, in all pertinent respects, between Plaintiffs' version of what happened during the May 4, 2009 Common Council meeting in Exhibit 7 and the Article's account. Ms. Sassower simply cannot escape the dispositive effect of the "analysis" drafted by Plaintiffs and incorporated in the Complaint as Exhibit 7; to the contrary, the Opposition Brief expressly acknowledges that Exhibit 7 is "the heart of the Complaint." Opp. Br. at 6. Because the attachment is Plaintiffs' own pleading, and confirms that the "gist or sting" of the Article is substantially true, Plaintiffs' defamation claims fail as a matter of law. See, e.g., Love v. William Morrow & Co., Inc., 193 A.D.2d 586, 587, 597 N.Y.S.2d 424, 426 (2d Dep't 1993) ("A comparison of the disputed language employed by [author] Prados in *Presidents' Secret Wars* with the plaintiffs own words in his term paper for the Princeton graduate course demonstrates the 'substantial truth' of Prados' words, rather than their falsity.").

Unable to quarrel with the substantial similarity between the events as described in the Article and their own account of those events, Plaintiff seizes on miniscule purported discrepancies related to the timeline of the Meeting – insisting that the majority of Plaintiffs' *ad hominem* protest did not take place "during" the actual confirmation of Judge Hansbury, but in the "citizens' half hour" preceding the meeting. In other words, Plaintiff bases her claim for defamation on the convenient perception that the Sassowers' protest of Judge Hansbury's confirmation – including their comments during the "citizens' half hour" and Ms. Sassower's undisputed outburst "a corrupt judge" – did not occur "during" the part of the Meeting in which Judge Hansbury was confirmed, but in the moments preceding and immediately following. Opp.

Br. at 24 ("[P]laintiff Elena Sassower's words were not spoke [*sic*] 'during' the confirmation, but 'following the confirmation'"); *id.* at 25 ("NONE of this occurred 'during' Judge Hansbury's confirmation").

Ms. Sassower's feeble attempt to parse the meaning of the term "during" – and to claim that the Article's discussion should have been limited to what happened during the actual confirmation of Judge Hansbury – only confirms that the "gist or sting" of the Article is substantially true. See, e.g., Love, 193 A.D.2d at 587, 597 N.Y.S.2d at 426 ("Provided that the defamatory material on which the action is based is substantially true (minor inaccuracies are acceptable), the claim to recover damages for libel must fail.") Sharon v. Time, Inc., 609 F. Supp. 1291, 1294 (S.D.N.Y. 1984); Printers II, Inc. v. Professionals Publishing, Inc., 784 F.2d 141, 146 (2d Cir. 1986) ("[I]t is not necessary to demonstrate complete accuracy to defeat a charge of libel. It is only necessary that the gist or substance of the challenged statements be true."). The Opposition Brief makes no effort whatsoever to distinguish these cases and the others cited in support of this principle, and instead simply deems them of "no relevance." Opp. Br. at 26.

Oddly, although the Complaint makes repeated reference to a videotape recording of the White Plains Common Council meeting (see, e.g., Compl. at ¶¶ 31-35), Ms. Sassower also accuses Satterlee of "conceal[ing]" the existence of this videotape. Even if the DVD had been submitted by Plaintiffs in connection with their Complaint, its inclusion would have done little more than provide additional confirmation of the substantial truth of the Article. While the videotape does not include footage of all of the events described in the Article – those that occurred during the "citizens' half hour" preceding Judge Hansbury's confirmation are omitted – the events that the DVD does show clearly corroborate the Article's account of what happened

while the cameras were rolling. Specifically, the video clearly shows Ms. Sassower's reaction during the Reverend Carol Huston's invocation, and unmistakably confirms that either Ms. Sassower or her mother called out "a corrupt judge and a corrupt process" as Judge Hansbury and his wife were leaving the Meeting.

B. News Articles Are Equally Subject To The Rule That Statements Must Be Factual To Give Rise To Claims For Defamation.

Buried on page 32 of the Opposition Brief is a belated yet welcome clarification: for the first time, Plaintiffs clearly state that the defamation claims asserted in the Complaint are **not** based on either the Article's mention that one of the Plaintiffs "interrupt[ed] Reverend Carol Huston's invocation" with a "Hummph" or the statements in the Article relating to the Sassowers' past litigation over their eviction. Opp. Br. at 32 ("[P]laintiffs' defamation claims are not based on these [statements.]"). The Opposition Brief goes on to explain that plaintiffs' defamation claims are based on the news article's use of the following words: "hecklers," "pursuit," "fireworks," "slings and arrows," and "in vain." Opp. Br. at 32 ("Rather . . . plaintiffs' defamation claims are based on the news article's cumulatively false depiction of them as: 'hecklers', whose behavior was unruly, disrespectful, impertinent, argumentative, harassing, and 'pursu[ing]', creating a spectacle by their 'fireworks' and 'slings and arrows' – all 'in vain'.").

As Defendants' motion to dismiss explains, none of these figurative statements or vigorous epithets can constitute actionable statements of fact, as is required for a statement to give rise to a claim for defamation under well-established New York law.[3] See Def. Br. at 15-

[3] Because Plaintiffs have not alleged that they suffered any special damages, the defamatory nature of the alleged libels must appear on the face of the words themselves, without resort to extrinsic facts – that is to say, the statements must be found to constitute libel *per se*. See, e.g., Serratore v. Am Port Servs., Inc., 293 A.D.2d 464, 465, 739 N.Y.S.2d 452 (2d Dep't 2002). While Ms. Sassower complains that Defendants' motion to dismiss did not address Plaintiffs' purported libel *per se* count, they fail to recognize that the point of Defendants' brief is that there has been no libel at all – *per se* or *per quod*.

18; see also The Renco Group, Inc. v. Workers World Party, Inc., 13 Misc. 3d 1213(A), 824 N.Y.S.2d 758 (Sup. Ct. N.Y. Co. 2006) (dismissing libel claim based on publication of article that accused companies of "robbing" pension funds, noting "statements couched in loose, figurative or hyperbolic language in charged circumstances have been held to be rhetorical hyperbole and therefore nonactionable opinion."); Gross v. New York Times Co., 82 N.Y.2d 146, 156, 603 N.Y.S.2d 813, 819-20 (1993) ("[W]e stress once again our commitment to avoiding the hypertechnical parsing of written and spoken words for the purpose of identifying possible facts that might form the basis of a sustainable libel action."), Lukashok v. Concerned Residents, 160 A.D.2d 685, 554 N.Y.S.2d 39, 40 (2d Dep't 1990) (statements that plaintiff has "chosen the malicious method of personal lawsuits to intimidate members ... [and] has resorted to ... terrorism by suing every member" constituted a nonactionable statement of opinion); Cohn v. Nat'l Broadcasting Co., Inc., 50 N.Y.2d 885, 887, 430 N.Y.S.2d 265 (1980) ("[C]ourts will not strain to find a defamatory interpretation where none exists.").

The allegedly defamatory words used in the Article – "hecklers," "fireworks," and "slings and arrows" – have neither a precise meaning nor are they capable of being proven true or false. These terms are, in this sense, similar to epithets such as "immoral" and "unethical," which New York courts have held to be "indefinite, ambiguous, and incapable of being objectively characterized as true or false" and, thus, nonactionable. Hollander v. Cayton, 145 A.D.2d 605, 606, 536 N.Y.S.2d 790 (2d Dep't 1988); see also Park v. Capital Cities Comms., Inc., 181 A.D.2d 192, 196, 585 N.Y.S.2d 902 (4th Dep't 1992) (phrase "rotten apple" was vague and thus nonactionable opinion). Any reader of the Article would conclude that these words amount to no more than "rhetorical hyperbole" and "vigorous epithets" – "the sort of loose, figurative or hyperbolic language" that is protected even under the less protective standards of federal law.

See Immuno AG v. Moor-Janknowski, 77 N.Y.2d 235, 255, 566 N.Y.S.2d 906 (1991); see also Zysk v. Fidelity Title Ins. Co., 14 A.D.3d 609, 610, 790 N.Y.S.2d 135 (2d Dep't 2005) (statements that plaintiff was "disgusting," "disgraceful," and "ought to be ashamed" were nonactionable rhetorical hyperbole).

In the strikingly similar case of Sassower v. New York Times Co., the New York Supreme Court in Westchester County dismissed Ms. Sassower's claims of libel and "journalistic fraud" in response to an article characterizing Ms. Sassower as:

> "a 'gadfly,' 'something of a handful,' possessed of a 'relentless' and 'exhausting' conversational style; that she specializes in 'frontal assaults' against judicial nominees; that her disruption of Senate hearings was 'unseemly;' that she 'launched into polite but fulminating assaults' when debating legal issues; but was 'harmless.'"

See Dec. and Order at 7 (Sup. Ct. West. Co. Jul. 6, 2006) (No. 05-19841) (attached to Sullivan Oct. 22, 2010 Aff. as Ex. B). The Court properly concluded that, "[c]ontrary to plaintiffs contentions, the challenged statements are not reasonably susceptible of a defamatory meaning, and were, in any event merely rhetorical hyperbole constituting pure opinion." Id. at 8. In short, Plaintiffs may view themselves as vocal, principled protesters, but the fact that the Article describes them instead as "hecklers" is a difference in word choice that cannot sustain a claim for libel.

Contrary to Plaintiff's suggestion, news articles are not exempted from the opinion defense; comments included therein that are inherently opinion or qualify as vigorous epithets are simply not actionable. See Palmieri v. Thomas, 29 A.D.3d 658, 659, 814 N.Y.S.2d 717, 718 (2d Dept. 2006) (affirming dismissal of defamation complaint against newspaper publisher because "[t]he complained-of statements appearing in the news article were either absolutely privileged . . . or consisted of non-actionable opinion"); see also White v. Berkshire-Hathaway, Inc., 10 Misc. 3d 254, 255, 802 N.Y.S.2d 910, 912 (Sup. Ct. Erie Co. 2005) (holding that news

article headline "Unscrupulous operation gouges nursing home" is not defamatory as a matter of law). Moreover, while Ms. Sassower attempts to muddy the waters by insisting that the distinction between "pure opinion" and "mixed opinion" is relevant to the question of whether the words such as "heckle," and "slings and arrows" could feasibly constitute statements of fact, it is clear from even a cursory reading of the Article that these characterizations were "accompanied by a recitation of the facts on which [they] are based, . . . [and therefore] are not actionable." Gross v. New York Times Co., 82 N.Y.2d 146, 153, 603 N.Y.S.2d 813 (1993).

C. Plaintiffs Provide No Basis For The Creation Of An Entirely Unprecedented Cause Of Action For "Journalistic Fraud".

Citing to no case law whatsoever, Ms. Sassower urges this Court to become the first to embrace a heretofore unrecognized cause of action for "journalistic fraud." See Opp. Br. at 41-48. Although Ms. Sassower admits that "no court has recognized a journalistic fraud cause of action," see Opp. Br. at 44, she insists that this is no bar to the Court doing so here – and dismisses a New York Supreme Court judge's express refusal to embrace this cause of action as "a complete fraud." Opp. Br. at 45 (citing Sassower v. New York Times, *supra*, aff'd, 852 N.Y.S.2d 180 (2d Dep't 2008)).

The Court should decline Ms. Sassower's invitation. There is simply no justification for basing the creation of an entirely new cause of action on allegations as meritless as those asserted here. See Dec. and Order at 9, Sassower v. New York Times Co., (Sup. Ct. West. Co. Jul. 6, 2006) (No. 05-19841).

D. Plaintiffs' Purported Service Of Defendant Eddings Is Ineffectual.

Although Ms. Sassower insists that the service of the Summons with Notice on certain Defendants constitutes proper service on all of the named Defendants, this argument is legally and factually incorrect. Ms. Sassower does not dispute that Plaintiffs were required to serve their Complaint "within one hundred twenty days after the filing of the summons with notice" pursuant to CPLR § 306-b, and that this section also provides for the dismissal of claims where a plaintiff fails to comply with its service requirements. Id. ("If service is not made upon a defendant within the time period provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant...."). As evidenced by the Affidavit of Minnie Stanley, attached hereto as Exhibit A, Defendant Eddings was not employed by *The Journal News* at the time Ms. Sassower effected service at *The Journal News* headquarters; indeed, Mr. Eddings has not been employed by *The Journal News* since August 28, 2009. See Stanley Aff. at 2.[4]

Implicitly admitting that Defendant Eddings has not been timely served, Ms. Sassower seeks an order from this Court extending Plaintiffs' time to serve Defendant Eddings under CPLR § 306-b. This request should be denied: courts routinely hold that, where plaintiffs fail to make a showing of a meritorious cause of action, the requirement that extensions of time to serve be granted only "in the interest of justice" is not met. See, e.g., Della Villa v. Kwiatkowski, 293 A.D.2d 886, 887, 740 N.Y.S.2d 533, 535 (3d Dep't 2002) (affirming court's denial of request to extend time for service "on the basis that plaintiffs had failed to make any showing of a meritorious cause of action"); Leader v. Maroney, Ponzini & Spencer, 97 N.Y.2d 95, 105, 736 N.Y.S.2d 291 (2001) (recognizing that a court may consider "the meritorious nature of the cause

[4] Moreover, Plaintiffs' process server was advised that *The Journal News* would not accept service on Mr. Eddings' behalf.

seeking sanctions, costs, disciplinary referral, and damages for filing what Ms. Sassower deems a "frivolous" motion to dismiss.

Ms. Sassower's cross-motion treads what is, for her, familiar ground: counsel for defendants in the case of Sassower v. The New York Times Co. faced virtually identical claims. See Dec. and Order at 9-10, Sassower v. The New York Times Co., (Sup. Ct. West. Co. Jul. 6, 2006) (No. 05-19841) ("As best as the Court can decipher plaintiffs' argument, it is that all of the members of The Times Legal Department including [in-house counsel] Freeman are liable with the named defendants as unnamed "Does" for the above-alleged journalistic fraud....The plaintiffs have also cross-moved to sanction Freeman pursuant to 22 NYCRR 130-1.1 on the basis that the motion to dismiss is frivolous."). There, the Court rightly concluded that these claims had no merit whatsoever, and dismissed them. Id. (denying motion to disqualify and for sanctions).

A. Plaintiff's Cross-Motion For Costs And Sanctions Against This Firm Pursuant to 22 NYCRR § 130-1.1.

Plaintiff asserts that Defendants' Motion to Dismiss and accompanying memorandum of law were "frivolous" pursuant to all three prongs of NYCRR § 130-1.1(c). This provision states that conduct is "frivolous" if:

> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
> (3) it asserts material factual statements that are false.

Defendants' Motion to Dismiss simply does not meet any of these criteria. First, as thoroughly demonstrated by Defendants' filings, Defendants' Motion to Dismiss is meritorious and supported by established law; indeed, the fatal flaws inherent in the Complaint render Plaintiffs' claims untenable as a matter of law. Second, it defies logic for Plaintiff to assert that

Defendants' Motion *to Dismiss* was "undertaken primarily to delay or prolong the resolution of the litigation." NYCRR § 130-1.1(c)(2). Moreover, the Motion to Dismiss and accompanying memorandum of law were not undertaken to "harass or maliciously injure" Plaintiff, but rather to bring about a swift judicial resolution of the dispute Plaintiff's meritless allegations have created. Finally, Plaintiff herself concedes that "the legal presentation" in Defendants' Motion to Dismiss was "not itself materially false and misleading." Opp. Br. at 51.

Notably, as part of Plaintiff's cross-motion for costs and sanctions against Satterlee, Plaintiff cites 22 NYCRR § 130-1.1-a(a), which states, "Every pleading, written motion, and other paper, served on another party or filed or submitted to the court" must be signed. In flagrant disregard of this rule, both the Opposition Brief and the Notice of Cross-Motion are signed only by Plaintiff Elena Ruth Sassower and contain blank spaces on which James A. DeFelice, Esq.[5] failed to sign. In the absence of a signature by counsel for Doris Sassower and the Center for Judicial Accountability, Inc., the Opposition Brief is deemed submitted on behalf of Elena Sassower alone. See, e.g., N.Y. 22 NYCRR § 130-1.1a(a) ("Every pleading, written motion, and other paper, served on another party or filed or submitted to the court shall be signed by an attorney, or by a party if the party is not represented by an attorney. . . . Absent good cause shown, the court shall strike any unsigned paper if the omission of the signature is not corrected promptly after being called to the attention of the attorney or party."). By e-mail dated December 5, 2010, the undersigned counsel requested that Ms. Sassower or Mr. DeFelice provide a copy of the Opposition Brief signed by Mr. DeFelice. See Sullivan Dec. 8, 2010 Aff.

[5] Mr. DeFelice is counsel for Doris L. Sassower (individually and as President of the Center for Judicial Accountability, Inc.), Center for Judicial Accountability, Inc., and Elena Ruth Sassower (as Director of the Center for Judicial Accountability, Inc.).

Ex. A. Although Ms. Sassower responded that "fully executed signature pages will be forthcoming," to date, this document has not been provided.

B. Plaintiff's Cross-Motion For Disciplinary Referral Of This Firm.

Not content to pursue her meritless motion for costs and sanctions, Ms. Sassower also insists that this law firm's advocacy for its clients in seeking the dismissal of claims that do not state causes of action under New York law justifies the referral of undersigned counsel to "disciplinary authorities." Opp. Br. at 53-54. This suggestion warrants little discussion: Defendants' Motion to Dismiss unquestionably establishes that it is based in law and fact. Accordingly, Ms. Sassower's accusation that the undersigned counsel has engaged in, *inter alia*, "ma[king] a false statement of fact or law," "offer[ing] or us[ing] evidence evidence that the lawyer knows to be false," and "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation," is pure and simple fabrication.[6] In short, Defendants' counsel have not engaged in any unethical conduct, and Plaintiff has no grounds for asserting that she is entitled to disciplinary referral of either this law firm or the undersigned counsel.

[6] Nor have Defendants failed to disclose to the Court any "controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." NY Rule of Professional Conduct 3.3(a)(2). Plaintiff asserts in the Opposition Brief that Defendants have concealed two law review articles that allegedly support Plaintiff's claim for "journalistic fraud" "because they are dispositive." Opp. Br. at 2 (emphasis in original). Plaintiff has absolutely no basis for asserting that law review articles are "dispositive" of any issues in this litigation, as they are merely speculative writings that are not in any way binding on the Court. Because the articles are not "controlling legal authority", and because Ms. Sassower herself attached these two articles to the Complaint as Exhibits 16 and 17, Rule of Professional Conduct 3.3(a)(2) is wholly inapplicable.

C. Plaintiff's Cross-Motion For Damages against This Firm Pursuant To Judiciary Law § 487.

In light of the fact that Defendants' counsel have committed no ethical violations, misconduct, or deceit, Plaintiff is not entitled to damages against this law firm pursuant to Judiciary Law § 487 or any other law or rule of professional conduct.

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that the claims in the Verified Complaint fail as a matter of law and must be dismissed.

Dated: New York, New York
December 8, 2010

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