

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

----- X
GEORGE OUZOUNIAN, P/K/A MADDOX
And JANE DOE,

Plaintiff,

-against-

DAX HERRERA P/K/A/ DICK MASTERSON,
FOUNDATION DIGITAL, LLC, GREG BOSNER,
LOREN BAKER, CMGRP, INC. D/B/A/ WEBER
SHANDWICK, JOSHUA KAUFMAN, ASTERIOS
KOKKINOS, TREVOR BIRT, PATREON, INC., and
JORDON COPE,

Defendants.
----- X

Index No. 656779/2017

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and accurate copy of a May 16th,
2018 oral argument transcript containing the Court’s decision (Hon. Charles E. Ramos).

Dated: New York, New York
May 21, 2018

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PESKOE LLP

By: /s/ Elizabeth C. Conway
Elizabeth C. Conway

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In The Matter Of:

Ouzounian v.

Herrera

May 16, 2018

Anne Marie Scribano

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 NEW YORK COUNTY : CIVIL TERM : PART 53

3 -----
4 GEORGE OUZOUNIAN, P/K/A MADDOX, and
5 JESSICA BLUM,

6 Plaintiffs,

7 -against-

Index No.
656779/2017

8 DAX HERRERA P/K/A DICK MASTERSON,
9 FOUNDATION DIGITAL, LLC, GREG BOSER,
10 LOREN BAKER, CMGRP, INC., D/B/A
11 WEBER SHANDWICK, JOSHUA KAUFMAN,
12 ASTERIOS KOKKINOS, TREVOR BIRT,
13 PATREON, INC., and JORDAN COPE,

14 Defendants.

PROCEEDING

15 -----
16 May 16, 2018
17 60 Centre Street
18 New York, New York

19 B E F O R E:

20 HON. CHARLES E. RAMOS, Justice

21 A P P E A R A N C E S:

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(Appearances continued on the next page)

1 A P P E A R A N C E S: (Continued)

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Anne Marie Scribano
Senior Court Reporter

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1 THE COURT: We have a number of motions here. We
2 got rid of the corporation and Cope yesterday, so now we're
3 down to -- I think we have motions for sanctions,
4 cross-motions for sanctions, we have motions to dismiss.

5 The question is, which one do I hear first?

6 Obviously, the motions to dismiss are the first
7 ones I want to hear.

8 MR. GREENBERGER: Your Honor, Jordan Greenberger
9 for Defendant Asterios Kokkinos.

10 There are three motions to dismiss pending. I was
11 technically assigned motion sequence 1, but Defendant
12 Herrera and her clients also moved first, under the
13 first-named defendant, so it's your preference who makes --

14 THE COURT: There are some -- I believe there is a
15 motion being made by some New York-based defendants.

16 MR. GREENBERGER: That's right, your Honor.

17 I represent Asterios Kokkinos, who is here in the
18 courtroom now. He's a New York City resident and he has no
19 jurisdictional -- there's no jurisdictional arguments for
20 Defendant Kokkinos. It's purely a motion to dismiss for
21 failure to state a claim.

22 THE COURT: And you represent?

23 MR. MUNOZ: Good morning.

24 I represent CMGRP, also known as Weber Shandwick,
25 which is a New York-based corporation, and their own counsel

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1 is Joshua Kaufman, who is a New York resident. We have no
2 jurisdictional defense.

3 THE COURT: If those two New York defendants or
4 three New York defendants -- actually, the attorney plus the
5 individual and the entity -- are dismissed from the case,
6 are there any other defendants, other than Nevada or
7 California defendants?

8 MS. MATZ: No, your Honor.

9 I represent Mr. Herrera, Mr. Boser and Foundation
10 Digital, the other company.

11 THE COURT: They're all West Coast?

12 MS. MATZ: They're all West Coast, Nevada and
13 California.

14 THE COURT: Is there a motion -- I know there was
15 a mention somebody wanted to be considered forum non
16 conveniens. Is there a separate motion?

17 MS. MATZ: Yes, your Honor. In my motion, we made
18 a motion to dismiss for lack of personal jurisdiction and we
19 also included a forum non conveniens argument.

20 THE COURT: I have a hard time hearing a forum non
21 conveniens argument if I have defendants here. It's as
22 inconvenient for them to go to Nevada or California as it is
23 for you folks to be here.

24 I think what I want to do is I want to hear the
25 New York defendants first. If there is a basis on which I

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1 can dismiss them, then I can consider sending the case to
2 California.

3 MS. MATZ: Absolutely, your Honor.

4 I have some additional argument, but I'll let you
5 hear from them first.

6 THE COURT: We're going to be busy.

7 Who wants to go first?

8 MR. MUNOZ: If I can suggest, my clients are here
9 for allegedly failing to supervise Mr. Greenberger's client.
10 If the complaint against Mr. Greenberger's client is
11 dismissed, there can't be liability for us. So I would
12 suggest that he go first.

13 THE COURT: Fine.

14 Kevin, could you set up the lectern?

15 MR. GREENBERGER: Would you like me --

16 THE COURT: As you may have noticed, the court
17 reporter has difficulty hearing you. I'm a good lip reader,
18 but we're going to move the lectern over closer to the court
19 reporter, because the acoustics in this room are horrible.

20 I think this is motion number --

21 MR. GREENBERGER: Sequence 1, your Honor.

22 THE COURT: -- 1.

23 And you're representing?

24 MR. GREENBERGER: Asterios Kokkinos.

25 THE COURT: There are three New York defendants,

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1 Weber Shandwick, Joshua Kaufman and Kokkinos?

2 MR. GREENBERGER: Correct.

3 THE COURT: And that's your client?

4 MR. GREENBERGER: Correct.

5 THE COURT: Very good.

6 Okay, any time you're ready.

7 MR. GREENBERGER: Thank you, your Honor.

8 Mr. Kokkinos is a comedian. He distributes his
9 content on many different platforms, including occasionally
10 appearing as a guest on the podcast that's called The Dick
11 Show.

12 There may be some colorful language in this case,
13 and I apologize in advance, but they're the allegations and
14 it is what it is.

15 This lawsuit essentially seeks to quash his First
16 Amendment rights to comment on a self-described internet
17 personality and public persona, who is the plaintiff, George
18 Ouzounian, who performs under the name Maddox, as well as
19 his now girlfriend, who was originally identified as Jane
20 Doe, but has now identified herself.

21 Basically, your Honor, in New York, there is a
22 strong tradition of criticizing people who put themselves
23 into the public spotlight. You can turn on Saturday Night
24 Live to see Alec Baldwin lampooning President Trump. You
25 can read Mad Magazine, which I believe is headquartered in

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1 midtown. There are so many media outlets based in New York
2 City whose content involves criticizing, commenting on,
3 lampooning people who put themselves in the public arena.

4 Who is Mr. Ouzounian? Okay. He was formerly
5 podcast co-host with Defendant Herrera, who is represented
6 by Ms. Matz over there, and they had a falling out. My
7 understanding is it has to do with Mr. Herrera having a
8 romantic relationship with a prior partner of Mr. Ouzounian.

9 Mr. Herrera then goes and starts a competing
10 podcast called The Dick Show that I believe just celebrated
11 it's hundredth episode. It's very, very popular to a
12 certain community. I couldn't tell you the numbers, but
13 there are a lot of followers and they're very avid
14 followers. The fans of the show are very dedicated and they
15 create their own content, commenting on the show, parodying
16 songs, pictures. It's really -- if I was Herrera, you
17 couldn't ask for better fans because they're so engaged in
18 the show.

19 Mr. Kokkinos is a friend of Mr. Herrera and
20 formerly of the plaintiff, Mr. Ouzounian, who, when Herrera
21 and Ouzounian had their falling out, went with Herrera to
22 The Dick Show and occasionally appears as a guest on The
23 Dick Show. Part of his comedy and part of what he says on
24 air, both on the The Dick Show and I guess potentially
25 elsewhere, concerns Mr. Ouzounian.

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1 THE COURT: There are a lot of allegations here
2 about harassment, using the internet as an instrument.

3 What, in particular, is your client accused of
4 doing?

5 MR. GREENBERGER: Great question, your Honor,
6 because the complaint has very sparse allegations as to the
7 alleged defamatory content of Mr. Kokkinos.

8 Basically, what he's alleged to have done is
9 inciting the fans of The Dick Show to both create content
10 that makes fun of Mr. Ouzounian and to harass him, which, of
11 course, Mr. Kokkinos -- those are the allegations, okay, but
12 Mr. Kokkinos does not control his fans, they are not
13 lemmings who follow his every -- everything that he says.

14 In fact, if you actually read the allegations --

15 THE COURT: What's the allegation as to
16 harassment? How has the plaintiff described the harassment
17 he's suffering?

18 MR. GREENBERGER: The gist of the harassment
19 allegations are actually specific to people who are not
20 Mr. Kokkinos. They're specific to either Defendant Herrera
21 or fans.

22 THE COURT: That's why I asked the question,
23 because I wasn't able to parse from the complaint
24 specifically what your client was being accused of.

25 Are you aware?

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1 MR. GREENBERGER: So, when you read through
2 everything in there, what I can distill is basically two
3 things.

4 One is he created a comedy album that charted on
5 iTunes called Cuckmas Carols. Now, the word cuck, C-U-C-K,
6 is going to come up a lot today. It is central to their
7 defamation claims and really at the core of this case. It's
8 internet slang. It's a new term that basically could be
9 equated to jerk or, you know, there's colorful Yiddish words
10 that you could use, okay, that we have to say them.

11 Mr. Kokkinos created an album called Cuckmas Carols that
12 basically makes fun of Mr. Ouzounian to the tune of
13 Christmas carols and uses the word "cuck" repeatedly.

14 It is our position that cuck is not defamatory.
15 It's either opinion or something like calling somebody a
16 jerk. And we cite numerous cases where if you just call
17 somebody a scumbag or a jerk or a terrorist, it's
18 hyperbolic, it's not defamatory, okay.

19 So that's number one.

20 Number two is that he allegedly created this
21 advertising campaign to get fans of the plaintiff to switch
22 to become fans of The Dick Show. Now, you can't steal fans.
23 There is no such thing under New York law about stealing
24 fans. Right? You're either popular and people like your
25 content or you're not.

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1 And at the root of this \$20 million case against
2 my client is the fact that the plaintiff is losing fans and
3 he's unhappy about it, okay, but it's not Mr. Kokkinos's
4 fault. It's -- he is appearing on the podcast, putting out
5 humorous content. And, frankly, I think the claim for
6 \$20 million seems to have been pulled out of thin air.
7 Although I'm frankly happy to be in the Commercial Division
8 to argue this motion before you.

9 The claims against my client, there are eight,
10 invasion of privacy, defamation, misappropriation,
11 intentional infliction of emotional distress, tortious
12 interference with contract, tortious interference with
13 business relations, conversion and a Consumer GBL 349.

14 THE COURT: So he's lumped in with all the
15 defendants?

16 MR. GREENBERGER: He's lumped in with all of them.
17 I'm happy to go --

18 THE COURT: I'll tell you what, let's go to the
19 plaintiffs' attorney, he can explain to me what the specific
20 allegations are against your client, and we'll come back to
21 you. That would be a more organized way of doing it,
22 because I'm having some difficulty in understanding exactly
23 what's being claimed here.

24 MR. GREENBERGER: If I may, just before I sit
25 down, as the Court is aware, at least with defamation

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1 claims, there's a heightened pleading standard and, of
2 course, we address that in our motion papers, CPLR 3016(b).
3 If you look at the complaint, there's like nothing
4 attributable to Mr. Kokkinos.

5 THE COURT: I understand.

6 MR. GREENBERGER: Thank you, your Honor.

7 THE COURT: Plaintiff, please explain to me, as
8 best you can, what Mr. Kokkinos is accused of doing or
9 saying and we can deal with these causes of action
10 specifically one at a time.

11 We don't have a jurisdictional issue, so that's
12 out.

13 MR. K. LANDAU: Certainly, your Honor.

14 As additional context to the plaintiffs' position,
15 there are several causes of action that are being alleged.
16 Among them are claims for invasion of privacy and injunctive
17 relief under the Civil Rights Law, Section 5051.

18 THE COURT: How do you claim that Mr. Kokkinos has
19 violated the Civil Rights Law with regard to the use of your
20 client's either picture or identity?

21 MR. K. LANDAU: Sure, yes.

22 The defendants have used plaintiffs' name,
23 portrait, picture or voice. And by defendants in this
24 context, Mr. Kokkinos and Mr. Herrera have specifically used
25 our clients', Mr. Ouzounian as well as Ms. Blum's, name,

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1 portrait, picture or voice for purposes of advertising or
2 trade without our clients' written permission.

3 THE COURT: They're not using your client's name
4 as saying "Look, your client is endorsing our product."

5 MR. K. LANDAU: No, but what --

6 THE COURT: They're making fun of your client.

7 MR. K. LANDAU: Well, they're doing a bit more
8 than making fun, your Honor.

9 They misappropriated, commercially exploited his
10 name and image, his photograph likeness in a variety of ways
11 to attract fans and sell goods. So such a monthly
12 subscription fee is what each of these defendants charge to
13 their listeners --

14 THE COURT: He's a public figure. You allege that
15 your fellow is basically a celebrity. Fine.

16 Celebrities can't criticize one another?

17 MR. K. LANDAU: In the context of the way the
18 defendants have conducted their campaign for now almost two
19 years, no, they cannot, because what they're doing, which is
20 different, is they are intentionally spreading false ads,
21 harassment campaigns. And numerous examples, which we can
22 go through in greater detail. But they're doing it to
23 promote their business at our clients' personal and
24 professional expense.

25 THE COURT: Well, essentially they're competitors.

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1 They're on the internet and they're trying to get clicks. I
2 suppose that's how you folks get reimbursed. People come on
3 your sites and they look at whatever ads your clients are
4 putting on the website -- no, yes?

5 MR. K. LANDAU: Actually, I can speak to that.

6 MS. MATZ: I'm not entirely sure that's the case.
7 I know the podcast is available for free. There's also
8 Patreon, yesterday that was being discussed. That's a
9 website where fans can contribute monetarily to artists they
10 like.

11 THE COURT: Like a Fund Me page?

12 MS. MATZ: Yeah, like a kick starter.

13 But I'm a YouTube personality and if people want
14 to contribute, they like my show, et cetera, they can
15 contribute money to keep it going.

16 MR. K. LANDAU: It's beyond that. What they do
17 is --

18 THE COURT: I think -- for example, I'm thinking
19 of the way that Saturday Night Live makes fun of President
20 Trump. In a way, they're using his image and likeness and
21 name to make money because they're selling that criticism to
22 the fans of Saturday Night Live.

23 MR. K. LANDAU: Your Honor, what they're doing is
24 they're misappropriating personal, private information.
25 They're spreading false and slanderous accusations about

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1 him.

2 THE COURT: Let's -- you say "personal and private
3 information".

4 MR. K. LANDAU: Correct.

5 THE COURT: This is -- are you trying to --

6 MR. K. LANDAU: But let me --

7 THE COURT: I'm thinking in terms of Civil Rights
8 Law right now, New York State Civil Rights Law 5051.

9 What specifically are the -- is this defendant,
10 Kokkinos, distributing with regard to your client?

11 MR. K. LANDAU: They have disclosed --

12 THE COURT: No. He, he.

13 MR. K. LANDAU: He has disclosed very specific and
14 false rhetoric as it relates to our client and his
15 girlfriend.

16 Let me give you an example.

17 THE COURT: Excuse me.

18 MR. K. LANDAU: Please, your Honor.

19 THE COURT: False rhetoric is not what I'm talking
20 about. I'm talking about truth; facts that you say are
21 confidential and should not be disclosed that are being
22 disclosed --

23 MR. K. LANDAU: Their address.

24 THE COURT: -- like a social security number.

25 MR. K. LANDAU: Their address. I believe, birth

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1 date information. They're indicating that they have
2 sexually transmitted diseases, which they do not.

3 THE COURT: That's not -- that's false information
4 category.

5 MR. K. LANDAU: Understood.

6 THE COURT: I'm trying to focus in on Civil Rights
7 Law.

8 MR. K. LANDAU: What the album goes through is it
9 specifically positions our client as being a particular way.

10 What a cuckold is --

11 THE COURT: But he's a public figure. He holds
12 himself out --

13 MR. K. LANDAU: That doesn't --

14 THE COURT: -- as a celebrity --

15 MR. K. LANDAU: Your Honor, the law --

16 THE COURT: -- it means he's a target --

17 MR. K. LANDAU: -- the law supports our position.

18 THE COURT: I'm sorry.

19 MR. K. LANDAU: The law does support our position
20 because of the type of campaigns that they use. If it was
21 simply all good-natured fun, that's fine.

22 THE COURT: It doesn't have to be all good
23 natured. Believe me, what is said on Saturday Night Live
24 about President Trump is not.

25 MR. K. LANDAU: Right.

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1 But they are intentionally making things up. They
2 are intentionally going after his sponsors --

3 THE COURT: Sounds like --

4 MR. K. LANDAU: -- interfering with his --

5 THE COURT: -- it sounds like fake news.

6 Come on.

7 MR. K. LANDAU: They are intentionally going after
8 his sponsors, tortiously interfering with any type of
9 professional wherewithal.

10 THE COURT: Can we possibly focus on the Civil
11 Rights Act?

12 MR. GREENBERGER: Your Honor, can I --

13 THE COURT: Yes, of course.

14 MR. K. LANDAU: They're using his name.

15 THE COURT: Hang on. This is my courtroom.

16 MR. GREENBERGER: Thank you, your Honor.

17 There's actually a non-substantive way to dispose
18 of that claim, which is the plaintiffs are California
19 residents, so the statute doesn't even protect them.

20 THE COURT: You're right.

21 MR. GREENBERGER: So I think -- that's why I
22 wanted to intervene, rather than spin our circles as to
23 painting certain conduct by defendants --

24 THE COURT: Why should New York State be concerned
25 that a California resident is having his civil rights

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1 violated?

2 MR. K. LANDAU: Because Mr. Kokkinos is doing it
3 in New York. He's doing it in New York.

4 THE COURT: The victim is in California.

5 MR. K. LANDAU: So he has business contacts here.

6 MR. GREENBERGER: Your Honor, the law is clear
7 that the statute applies only to New York residents. In
8 fact, there's a bill pending in the New York State
9 Legislature right now that's going to open the statute up
10 for non-domiciliaries.

11 There's a famous case involving Marilyn Monroe,
12 who tried to get California's right of publicity statute,
13 because it applies post-death and New York doesn't. And the
14 Court said "Well, you were a New York domiciliary when you
15 died, so you're stuck with New York law."

16 The New York statute only protects New York
17 residents. The case law is clear about that.

18 MR. K. LANDAU: Your Honor, that's not true.

19 THE COURT: You disagree. Fine.

20 You're also alleging defamation --

21 MR. K. LANDAU: Correct, your Honor.

22 THE COURT: -- right?

23 What defamatory statements do you set forth in the
24 complaint? As counsel has pointed out, you have to set
25 forth the defamatory words. Have you done it?

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1 MR. K. LANDAU: Yes. There's nearly 50 defamatory
2 statements, beyond just that of the album, which has been
3 directed towards our clients.

4 Let me read these.

5 THE COURT: Let me go to the complaint. It's
6 Exhibit 1 in your memo?

7 MR. K. LANDAU: On December 15, 2016 --

8 THE COURT: What paragraph?

9 MR. K. LANDAU: These are -- let me -- all right,
10 so going through Appendix A, your Honor --

11 MR. GREENBERGER: Appendix A was submitted in
12 their opposition papers in response to my point that they
13 didn't comply with the heightened pleading standards for
14 defamation. So I would, of course, love to turn to the
15 substance of the alleged defamatory statements, but I will
16 just note that the Appendix A was what they pointed to as
17 being in their complaint. But, again, counsel can't point
18 to a paragraph in the complaint where Mr. Kokkinos allegedly
19 said something defamatory.

20 THE COURT: If that's correct, what I would let
21 him do is append to include Appendix A as part of the
22 complaint.

23 MR. GREENBERGER: Which is exactly why I want to
24 get to the point. I want this case dismissed.

25 THE COURT: Where am I going to find Appendix A?

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1 Is it in your book?

2 MR. GREENBERGER: Appendix A, I believe, is --

3 MR. K. LANDAU: Yes, it is.

4 MR. GREENBERGER: -- the last page of their
5 opposition memo.

6 MR. K. LANDAU: The last couple pages.

7 THE COURT: The last page of their memo.

8 Got it. Appendix A.

9 MR. K. LANDAU: Great.

10 Defamatory statements are as follows.

11 "What a subhuman piece of garbage Maddox is; Metal
12 Jess allegedly has Herpes."

13 "Maddox/Ouzounian is a cuck."

14 THE COURT: Slow down, please.

15 MR. GREENBERGER: Your Honor, that's attributed to
16 another defendant.

17 THE COURT: Sorry?

18 MR. GREENBERGER: It's attributed to another
19 defendant.

20 MR. K. LANDAU: Your Honor, the focus on the
21 statement is attributed to Kokkinos.

22 THE COURT: Try to focus in on Mr. Kokkinos,
23 please.

24 And on which page of the appendix? This is two
25 pages, okay. That's easy.

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1 MR. K. LANDAU: It's two-and-a-half pages, but
2 they are referenced within the complaint themselves as well.

3 THE COURT: Let me see the other page.

4 MR. K. LANDAU: So a matrix was created to make it
5 easy to locate within the complaint itself.

6 So with respect to Maddox --

7 THE COURT: The appendix only sets forth four
8 columns. The statement they published, the format and the
9 paragraph in the complaint.

10 MR. K. LANDAU: Yes.

11 THE COURT: How do I identify --

12 MR. K. LANDAU: Yes, so it indicates, including
13 linked to Mr. Kokkinos's Tweet, which is the third statement
14 down, "Maddox/Ouzounian" -- that is his podcasting name is
15 Maddox. And Mr. Kokkinos indicated "Maddox is a cuck; fuck
16 off cuck; released an entire album of cuck songs out of
17 spite."

18 What a cuck is, your Honor, is --

19 THE COURT: Let's say it's a fool, okay. Why
20 can't I call someone a fool?

21 MR. K. LANDAU: It's beyond a fool, your Honor.
22 It puts his entire manhood in question and says that he
23 tacitly encourages or becomes a voyeur for his girlfriend
24 engaged in sexual activity with other men. That is the
25 meaning of a cuck.

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1 THE COURT: We have public figures accused of
2 things like --

3 MR. K. LANDAU: Mr. Kokkinos made several
4 despicable podcasts, recordings, including for an album,
5 which we've indicated.

6 THE COURT: Why isn't this all protected by the
7 First Amendment?

8 MR. K. LANDAU: Because, your Honor, the
9 defamation is only protected -- we briefed this exhaustively
10 in our response. Let me cite to the specific case law.

11 Within our response, we have cited probably about
12 seven or eight cases supporting our position. An attack on
13 a person's integrity by impugning his character is
14 dishonest, immoral --

15 THE COURT: Are we talking here about public
16 figures or private individuals? That's the -- the cases
17 have to involve public figures.

18 MR. K. LANDAU: Your Honor, that does not matter.

19 THE COURT: Oh, yes, it does. Ask the Supreme
20 Court of the United States.

21 MR. K. LANDAU: Not given the statements that have
22 been asserted by the defendants.

23 THE COURT: Nonsense.

24 MR. K. LANDAU: Based upon the case law that was
25 briefed, we have distinguished between what was asserted

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1 versus what is protected.

2 THE COURT: Counselor, cite me a case in which a
3 public figure was subjected to this kind of abuse and we'll
4 see if it was actionable or not.

5 MR. K. LANDAU: Okay.

6 THE COURT: Private individuals have a right to be
7 left alone. Public figures do not. They put themselves out
8 in public.

9 I know. I'm a public figure. You should see what
10 they say about me on the internet. I don't sue anybody.

11 MR. K. LANDAU: Your Honor, in the case of
12 McNamnee versus Clemens, 762 F. Supp. 2d 584, 601-602 (EDNY
13 2011), statements --

14 THE COURT: She can't hear you, I can't hear you.
15 You've got to slow down.

16 MR. K. LANDAU: My apologies.

17 Should I repeat?

18 THE COURT: Please.

19 MR. K. LANDAU: McNamnee verse Clemens, 762 F.
20 Supp. 2d 584, 601-602 --

21 THE COURT: Do you have a copy of the case here?

22 MR. K. LANDAU: (EDNY) -- we can forward you that
23 e-mail. It's cited within our brief, your Honor. All of
24 these cases are.

25 THE COURT: I didn't memorize the --

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1 MR. K. LANDAU: I understand, I understand.

2 And we're happy to provide it after the hearing.

3 THE COURT: Read to me something from the case
4 that would indicate that a public figure is not --

5 MR. K. LANDAU: So McNamnee was a public figure
6 and the Court held that statements branding McNamnee a liar
7 were found defamatory.

8 In addition, Ms. Blum is not a public figure. She
9 is constantly attacked by the defendants, Mr. Kokkinos as
10 well as Mr. Herrera.

11 And the reason why we do group them together is
12 because they collaborate on a variety of different content.
13 They profit off such content as well.

14 Ms. Blum is in no way considered a public figure
15 nor has she held herself out to be one.

16 MR. GREENBERGER: Your Honor, she identifies
17 herself as a model --

18 MR. K. LANDAU: So --

19 MR. GREENBERGER: -- a fashion model, which means
20 you put yourself out there. And it's also my understanding
21 that she appears as someone on Mr. Ouzounian's content, some
22 of his podcasts. So it doesn't seem to me that she is a
23 totally private figure if, A, she's a model whose entire job
24 is to put herself in public and, B, if she's appearing on
25 the podcast, at least in a limited nature.

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1 THE COURT: I recall some reference to her being a
2 model. I don't know if it was in the complaint.

3 MR. GREENBERGER: It is, your Honor. And I
4 believe she submitted an affidavit -- my recollection is
5 that it is, your Honor. And I believe she submitted an
6 affidavit as well trying to create ties to New York for some
7 jurisdictional issues that relate to her being a model.

8 If I can also just address the --

9 MR. K. LANDAU: Well, hold on. Please --

10 THE COURT: Let's get --

11 MR. GREENBERGER: Okay.

12 THE COURT: I'm trying to get back to what it is
13 that Mr. Kokkinos is alleged to have said.

14 MR. K. LANDAU: Your Honor, a critical component
15 of defamation is being able to establish malice, which we
16 have done. Regardless if you're private or public, there is
17 malice and those type of defamatory statements are not
18 protected by the First Amendment.

19 THE COURT: I didn't see a specific allegation of
20 malice.

21 MR. GREENBERGER: And the malice issue, which I
22 was just about to address, is the gist of the complaint is
23 that they're competing, right, so when you're acting in
24 normal, economic self-interest, the case law says that's not
25 actual malice, that's a reason to be competing.

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1 And, you know, the allegations having to do with
2 the false advertising campaign, from what I can glean, it
3 all has to do with efforts by Mr. Kokkinos to get fans of
4 the plaintiff's show to come over to become fans of his
5 show.

6 THE COURT: I'm looking at Appendix A. I still
7 don't see --

8 MR. K. LANDAU: He usurped or claimed --

9 THE COURT: Can I finish my sentence, please?

10 MR. K. LANDAU: Sorry.

11 THE COURT: I'm still looking in Appendix A and in
12 the complaint for a recitation of the actual words used by
13 Mr. Kokkinos and I don't see it.

14 "Despicable podcast recordings," that doesn't
15 satisfy the requirements of pleading.

16 For now --

17 MR. K. LANDAU: So, from --

18 THE COURT: For now, the defamation claim against
19 Mr. Kokkinos is dismissed with leave to the plaintiff to
20 re-plead. You're going to have to plead properly the
21 defamation cause of action. So that's out.

22 Also, the Civil Rights Law violation is out with
23 regard to all of the defendants.

24 You're right. It only applies to New York
25 residents. He's a California resident.

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1 All right. What else are you alleging against
2 Mr. Kokkinos? Defamation has got to be re-pled. The Civil
3 Rights Act is out. What else is there?

4 MR. K. LANDAU: Misappropriation and unfair
5 competition.

6 THE COURT: Misappropriation of what?

7 MR. K. LANDAU: Mr. Kokkinos engages in
8 purposeful, deceptive and monopolistic business practices,
9 including --

10 THE COURT: Don't give me conclusory statements.

11 What --

12 MR. K. LANDAU: He targets harassment campaigns
13 against our client's sponsors. His book --

14 THE COURT: Conclusory statement.

15 What did Mr. Kokkinos do or say with regard to the
16 sponsors?

17 MR. K. LANDAU: He has linked our client's website
18 to his website so that he can --

19 THE COURT: Where is this alleged in the complaint
20 so I can understand what you're talking about? All you're
21 giving me is conclusions.

22 MR. K. LANDAU: Okay.

23 THE COURT: I've read the complaint --

24 MR. K. LANDAU: In paragraph 40, your Honor --

25 THE COURT: 40, hang on.

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1 MR. K. LANDAU: -- page -- I believe it's -- page
2 12 in the actual document.

3 THE COURT: Page 40?

4 MR. K. LANDAU: So 40 --

5 THE COURT: Paragraph 40?

6 MR. K. LANDAU: Paragraph 40. I'm sorry.
7 Paragraph 40, page --

8 THE COURT: "Defendants also" -- you lump
9 everybody together. You can't do that.

10 "Likewise, defendants also created fake
11 advertising campaigns against plaintiff" -- that's a
12 conclusory statement -- "and paid for advertisements to
13 circumvent from being blocked on plaintiff's sites."
14 Conclusory statement.

15 The whole thing is conclusory.

16 "Defendants made" --

17 MR. K. LANDAU: We provide examples.

18 THE COURT: Then you attach -- my eyesight is not
19 that bad, but it would take -- not a magnifying glass -- a
20 microscope to read this complaint.

21 What is stated in paragraph 40 that relates to
22 Mr. Kokkinos? I don't even see his name there.

23 MR. K. LANDAU: This comes from his Reddit page,
24 your Honor.

25 THE COURT: What is a Reddit page?

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1 MR. K. LANDAU: It's effectively a forum for
2 people to come and to --

3 THE COURT: Since I don't have my microscope here,
4 will you please tell me what this is supposed to say.

5 MR. K. LANDAU: Sure. It indicates --

6 THE COURT: No, no, not indicates. What it says.
7 Read it to me.

8 MR. K. LANDAU: "I know Dick does some Facebook
9 advertising targeting people who like the Maddox page."
10 Right there, that's an admission. "But if he isn't, he
11 should also be targeting people who like B-P-I-T-U page.
12 There's still people who listen to that show that don't know
13 about this one."

14 THE COURT: These are competitors on the internet
15 who don't like each other and this is actionable?

16 MR. K. LANDAU: Every single time our client gets
17 any type of sponsor, any type of guest, they are harassed
18 mercilessly and fraud -- pardon me -- false statements
19 continue to be asserted --

20 THE COURT: If it's a false --

21 MR. K. LANDAU: -- against our client.

22 THE COURT: If it's a false statement, if it's not
23 defamatory --

24 MR. K. LANDAU: Pardon?

25 THE COURT: If it's not defamatory what is it?

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1 MR. K. LANDAU: It's malice.

2 THE COURT: What's the tort you're alleging?

3 Apparently, this is all a tort. I don't know why
4 this case is in the Commercial --

5 MR. K. LANDAU: So, as far as misappropriation,
6 unfair competition, they routinely misappropriate his name,
7 his likeness, every element of his professional life to
8 further their show at his detriment. They target -- and
9 this goes into the tortious interference as well. They
10 target every one of his sponsors, so he's lost hundreds of
11 thousands of dollars as a result of that.

12 THE COURT: How do they target --

13 MR. K. LANDAU: Every --

14 THE COURT: Excuse me.

15 This is Mr. Kokkinos? He is targeting your
16 client's sponsors? I thought that was Mr. Herrera.

17 MR. K. LANDAU: Both of them do, your Honor.

18 THE COURT: How did Mr. Kokkinos do it? In the
19 Reddit page?

20 MR. K. LANDAU: Reddit page, through links to his
21 website, by -- by linking our client's website -- so, your
22 Honor, these are very sophisticated individuals when it
23 comes to technology, both our clients, as well as the
24 defendants. So --

25 THE COURT: I understand that. And I'm trying to

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1 play catchup.

2 MR. K. LANDAU: Yeah.

3 THE COURT: I'm from the carbon paper generation.

4 Okay. Now, I'm Harry's, I've got a store in
5 Manhattan, right, and I'm a sponsor of your client.

6 MR. K. LANDAU: Yes.

7 So an example would be --

8 THE COURT: How does the relationship work between
9 Harry's and your client?

10 MR. K. LANDAU: An actual example was when a
11 particular sponsor was sponsoring our client, there were a
12 barrage of allegations saying our client supports --

13 THE COURT: You're not answering my question.

14 Let me be very specific. How do I -- I'm
15 Harry's -- sponsor your client? Do I send him a check? Do
16 I pay him --

17 MR. K. LANDAU: I understand.

18 Yes, you provide him with advertising sponsorship
19 money.

20 THE COURT: Advertising?

21 MR. K. LANDAU: Advertising sponsorship money.

22 THE COURT: Money, okay.

23 And that is pursuant to some sort of a contract?

24 MR. K. LANDAU: Yes.

25 THE COURT: Written contract?

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1 MR. K. LANDAU: Yes.

2 THE COURT: Okay. And it provides for payment
3 under what circumstances?

4 MR. K. LANDAU: On a monthly basis or whatever the
5 actual dynamic is between those two partners.

6 THE COURT: What is the actual dynamic?

7 MR. K. LANDAU: Well, to use your example, if you
8 were a store, you would mostly likely be paying our client
9 on a monthly basis.

10 THE COURT: For what?

11 MR. K. LANDAU: For him to advertise your brand in
12 some form or fashion, whether it's through acknowledging a
13 sponsorship on his podcast or some type of banner ad or
14 whatnot.

15 THE COURT: So Harry's has basically an
16 advertising contract. Your client is the medium.

17 MR. K. LANDAU: Correct.

18 THE COURT: And on what basis does your client get
19 paid?

20 MR. K. LANDAU: Pursuant to that contract, he
21 would get paid on a monthly basis or maybe it's like you
22 said, a per user type of basis, but --

23 THE COURT: What was --

24 MR. K. LANDAU: It was a monthly basis.

25 THE COURT: Monthly basis.

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1 MR. K. LANDAU: Primarily, but there were certain
2 times when it was based on a numbers basis.

3 So if he had an audience of X a month --

4 THE COURT: What did Mr. Kokkinos do to convince
5 Harry's to pull its sponsorship?

6 MR. K. LANDAU: Your Honor, I believe that --

7 THE COURT: Did Harry's breach the contract?

8 MR. GREENBERGER: That's an excellent point, your
9 Honor, because what's alleged is that they cancelled the
10 contract, which, of course, is different from breaching a
11 contract.

12 I mean, the Court can take judicial notice of the
13 Me Too movement now and all of these famous men who are
14 having their sponsorship deals pulled because of allegations
15 against them.

16 So another issue with tortious interference --

17 THE COURT: I do not see an allegation in the
18 complaint that says Mr. Kokkinos precipitated a breach of a
19 contract with Harry's or cancellation.

20 Was there a breach?

21 MR. K. LANDAU: I'm sorry?

22 THE COURT: Was there a breach?

23 MR. K. LANDAU: Was there a breach?

24 THE COURT: Did Harry's breach its contract with
25 your client?

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1 MR. K. LANDAU: Did they breach the contract?

2 THE COURT: That's the question. Did they breach
3 it?

4 MR. K. LANDAU: In paragraph 29, it indicates an
5 example of how --

6 THE COURT: Why can't I get an answer to the
7 question? It's a yes or a no.

8 MR. K. LANDAU: Well, there are multiple sponsors,
9 so as a result of that --

10 THE COURT: Counselor --

11 MR. K. LANDAU: Yes, they did.

12 THE COURT: -- if you're not going to answer my
13 questions, then why are we bothering with oral argument?
14 I'll just do it on the papers.

15 MR. K. LANDAU: Yes, they did, your Honor.

16 THE COURT: They did. They breached the contract.
17 You don't allege that, do you?

18 MS. MATZ: Your Honor, it wasn't -- this is
19 actually an argument we made as well. It was not in their
20 opposition papers. We made the argument that they alleged
21 the contract was cancelled, not breached. And they did not
22 introduce an affidavit to the contrary in their opposition
23 in their motion to dismiss to say that it was actually
24 breached. I believe they actually changed the terminology
25 to something similar to cancelled.

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1 And I can find it for you, if you like.

2 MR. K. LANDAU: Your Honor, it's fully in line
3 with the tortious interference claim, which is on page --

4 MR. GREENBERGER: Your Honor, the conduct alleged,
5 at least with regards to Mr. Kokkinos --

6 MR. K. LANDAU: -- page 37.

7 THE COURT: Page 37?

8 MR. K. LANDAU: Yes, your Honor.

9 MR. GREENBERGER: It wasn't directed --

10 THE COURT: Hang on. Let me take a look at it
11 first so I know what I'm talking about.

12 It's not a tortious breach of contract. It's a
13 tortious breach of a business relationship. Okay.

14 MR. GREENBERGER: Well, there's two claims, your
15 Honor. There's one claim for tortious interference of a
16 contract and one claim of tortious interference with a
17 business relationship.

18 THE COURT: Tortious interference requires a
19 breach.

20 MR. GREENBERGER: That's right.

21 THE COURT: And there's no allegation of a breach,
22 so that cause of action is dismissed.

23 By the way, when I dismiss a cause of action,
24 these are not dismissals with prejudice.

25 MR. K. LANDAU: Okay.

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1 THE COURT: You can re-plead.

2 MR. K. LANDAU: Thank you.

3 THE COURT: As far as business relationship --
4 well, it is alleged that defendants acted solely out of
5 malice, using improper legal means. Unfortunately, you
6 don't break this complaint down by defendant. You can't
7 lump all the defendants together. A defendant has a right
8 to know what the specific allegation is with regard to him
9 or her and what's being asserted by which plaintiff, because
10 you have two plaintiffs here and you're taking a position
11 that one plaintiff is not a public figure.

12 MR. GREENBERGER: Your Honor --

13 THE COURT: We can spend the rest of the day
14 trying to parse out this complaint. It's hopeless.

15 I'm going to grant the motions being made now to
16 dismiss the complaint on technical grounds, because I agree
17 that your arguments are well founded. However, it's going
18 to be without prejudice to re-pleading, because this
19 complaint could plead legitimate causes of action against
20 New York defendants -- well, Mr. Kokkinos.

21 There's also a corporate defendant, Mr. Kokkinos's
22 boss or employer?

23 MR. MUNOZ: That's right, your Honor.

24 MR. GREENBERGER: I'm sorry. Just before we turn
25 to that, because I don't -- I anticipate us being back here

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1 again --

2 THE COURT: Absolutely.

3 MR. GREENBERGER: -- and so there are a couple of
4 specific items that, if we could address and get out of the
5 way now so that I'm not faced with an amended complaint that
6 raises all of this -- these issues that we could just
7 address now, I would appreciate it.

8 THE COURT: What are you talking about?

9 MR. GREENBERGER: For example, on the tortious
10 interference claims, the conduct from what we can glean from
11 the complaint that Mr. Kokkinos is alleged to have done is
12 actually not directed at these business relations, his
13 conduct is not directed at the other contracting parties,
14 it's directed at the fans, it's directed at the universe in
15 general.

16 There's a Court of Appeals case called Carvel
17 against Noonan. There's other Court of Appeals cases and
18 appellate cases that say, for a tortious interference claim,
19 the defendant's conduct has to be targeted at the party with
20 whom the contract is with.

21 There are no such allegations. All of his --
22 Mr. Kokkinos's alleged conduct is being put out into the
23 internet.

24 THE COURT: Would his allegations that "these are
25 my customers" -- he's got a point, because -- I don't go on

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1 any of these websites because I'm not interested -- people
2 who go on these websites or podcasts are people who are
3 interested, they are potential customers of the plaintiff.

4 MR. GREENBERGER: Your Honor, there's a --
5 respectfully, there's no proprietary right in the public's
6 interest in how they spend their entertainment time, right.
7 You can turn on Saturday Night Live and not like it and
8 switch to another channel, right, because somebody tells you
9 that Saturday Night Live is bad, because you form your own
10 opinion, right. The plaintiffs do not have a proprietary
11 right in this third-party -- in the fans and the public and
12 how they spend their time.

13 So if Mr. Kokkinos wants to Tweet something or put
14 something online and say "the plaintiff is a cuck" or "he is
15 a bad person" or anything like that, those members of the
16 public can choose how they spend their time, how they spend
17 their dollars, what they do with their entertainment, okay.

18 If it results in --

19 THE COURT: I don't think I'm willing to buy that
20 argument at this point.

21 MS. MATZ: Your Honor, if I may also just add one
22 thing?

23 Kind of -- it's a little bit of a different point.
24 I won't waste your time with things that have already been
25 said. But I do think that this idea of their competition

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1 between competitors goes to the other element of both
2 tortious interference with business relations and tortious
3 interference with contracts, which is without justification.

4 THE COURT: I understand the point both of you are
5 trying to make and I'm not denying the motion at all.

6 What I'm saying is this complaint is such a mess
7 that I can't address these issues because I can't
8 specifically point to what's being alleged as against your
9 client or your client.

10 MS. MATZ: Okay.

11 MR. GREENBERGER: Your Honor, I don't disagree
12 with you. I'm respectfully trying to narrow the issues for
13 when we come back.

14 THE COURT: I understand, but I'd rather do it in
15 context with an amended complaint that I can understand.
16 This complaint is beyond my ability to understand.

17 Now, what I can understand, however, is a
18 corporate defendant, who is the employer --

19 MR. MUNOZ: Correct.

20 THE COURT: -- of Mr. Kokkinos --

21 MR. MUNOZ: Correct.

22 THE COURT: -- saying "Why am I in this lawsuit?"

23 MR. MUNOZ: That's exactly what we're saying.

24 And I think, if your Honor is going to grant
25 Mr. Kokkinos's motion in whole, foreseeably, then there

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1 really is no claim stated against my client. My client is
2 accused of being negligent in supervising Mr. Kokkinos's
3 alleged wrongdoing. If the complaint hasn't stated a claim
4 against Mr. Kokkinos, then I submit --

5 THE COURT: What are the specific allegations
6 against your client?

7 MR. MUNOZ: So --

8 THE COURT: My understanding is that it's alleged
9 Mr. Kokkinos used your client's equipment to produce some
10 videos or whatever.

11 MR. MUNOZ: Well, your Honor, you earlier pointed
12 out how the complaint generally has a conclusory nature.
13 That allegation is speculative and conclusory.

14 And I think what's important is to understand that
15 what Mr. Kokkinos is alleged to have done here involves a
16 use of technology that is sitting on your Honor's desk.
17 He's not alleged to have done anything that you couldn't do
18 with any personal computer or even your smart phone.

19 So there is this sort of speculative, conclusory
20 allegation that Mr. Kokkinos used my client's equipment to
21 put things on his personal social media and personal Twitter
22 and so on. It's just kind of thrown out there. It's not
23 substantiated in any way.

24 THE COURT: Let me ask the plaintiff.

25 Plaintiff, what fact can you allege that would tie

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1 Mr. Kokkinos's employer, which is --

2 MR. MUNOZ: Weber Shandwick.

3 THE COURT: -- Weber Shandwick as a culpable party
4 in this?

5 MR. K. LANDAU: Understood.

6 Your Honor, if I can direct you to Exhibit 16.
7 Madcucks is a pseudonym for one of the defendants, Trevor
8 Birt, who is yet to be served. But we have made attempts
9 and we'll continue to do so, your Honor. This is an
10 admission that was written by Madcucks, where it
11 specifically details --

12 THE COURT: Exhibit 16 has a number of pages.
13 Which page should I be looking at?

14 MR. K. LANDAU: Exhibit 8.

15 THE COURT: 8?

16 MR. K. LANDAU: My apologies. Exhibit 8. It was
17 Exhibit 16 first in the motion.

18 THE COURT: Let me turn to Exhibit 8.

19 MR. K. LANDAU: And that paragraph really lays
20 out --

21 THE COURT: Is this the first page?

22 MR. K. LANDAU: Yes, your Honor.

23 THE COURT: What paragraph am I looking at?

24 MR. K. LANDAU: The one where it indicates "Here's
25 a little-known story" and --

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1 THE COURT: Point to it. Point to it. I'll see
2 if we can find it.

3 MR. K. LANDAU: "Here's a little known story.
4 Right after the rape list video, Asterios" -- which is
5 Mr. Kokkinos's first name -- "and Dick" -- which is Mr.
6 Herrera --

7 THE COURT: Is this the one with Santa Cuck on the
8 picture?

9 MS. MATZ: Yes. Yes, your Honor.

10 THE COURT: Is this the one I'm looking at?

11 MS. MATZ: No, I don't believe that's it.

12 MR. K. LANDAU: No.

13 THE COURT: This is Exhibit 8. It has a number of
14 pages.

15 MS. MATZ: It's Exhibit 16 in the opposition to my
16 motion.

17 MR. K. LANDAU: Yes.

18 MS. MATZ: If your Honor would like my copy --

19 THE COURT: Please.

20 Okay. This, I haven't seen.

21 Now, this is from -- first of all, whose document
22 is this?

23 This is Reddit.com, The Dick Show comments.

24 MR. K. LANDAU: Yes.

25 And Madcucks is Trevor Birt, who is the

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1 defendant's pseudonym or alias or --

2 THE COURT: How does that tie to this corporate
3 defendant?

4 MR. K. LANDAU: Because it indicates that "There's
5 a little-known story right after" --

6 THE COURT: I see that.

7 MR. K. LANDAU: It says "They said using an
8 advanced algorithm provided by Dick's company" --

9 THE COURT: "They said using an advanced algorithm
10 provided by Dick's company" --

11 MR. K. LANDAU: Which is Mr. Herrera --

12 THE COURT: -- "and utilizing the data from the
13 place Asterios worked" --

14 MR. K. LANDAU: And Asterios is Mr. Kokkinos.

15 THE COURT: This is the basis upon which you're
16 going to join these folks as defendants?

17 MR. K. LANDAU: No, your Honor, but that is an
18 admission from a defendant.

19 MS. MATZ: Your Honor --

20 MR. MUNOZ: Whoa, whoa, whoa.

21 MR. K. LANDAU: Several admissions --

22 MR. MUNOZ: It's not an admission from my client
23 or anyone who works for my client.

24 MR. K. LANDAU: Let me finish.

25 MR. MUNOZ: Excuse me.

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1 I would address this --

2 THE COURT: Yes.

3 MR. MUNOZ: -- "utilizing data from the place
4 Asterios worked at, they had calculated what fan had the
5 right body type and wit to create a parody of Maddox.

6 This is a joke. What data could a public
7 relations firm have regarding the right body type and wit?
8 I don't even understand what that means.

9 MR. K. LANDAU: Your Honor --

10 MR. MUNOZ: This person is posting under the name
11 Madcucks. Madcucks is alleged in his complaint to be a
12 parody and a joke. And he's going to take this post by
13 someone that he alleges is a parody and a joke that's
14 averred to something nonsensical, some type of data that
15 will tell you about people's body type and wit, and that's
16 his basis --

17 MR. K. LANDAU: Your Honor --

18 MR. MUNOZ: You asked the question --

19 MR. K. LANDAU: You interrupted me first.

20 MR. MUNOZ: You asked the question --

21 THE COURT: You want to be thrown out of here?

22 MR. K. LANDAU: No.

23 THE COURT: One more time. In fact, I won't throw
24 you out, I'll hold you in contempt. I'm serious. Cuffs on,
25 in prison.

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1 You behave yourself in this courtroom. You're
2 suing a lot of people with some very questionable claims
3 here.

4 And this gentleman is trying to defend his client.
5 Please proceed.

6 MR. MUNOZ: When you asked the question for the
7 basis of this conclusory allegation that our equipment was
8 used, Mr. Landau gets up and says "Exhibit 8." It's
9 ridiculous.

10 And now that you indicated that, apparently he's
11 got some other basis, so I'll cede the floor to him.

12 THE COURT: Show me a basis upon which you can
13 bring this corporate defendant in.

14 MR. K. LANDAU: Your Honor, there is five claims
15 that have been alleged against Weber Shandwick and their
16 employee.

17 THE COURT: What actions did they take?

18 Just because somebody used their equipment --

19 MR. K. LANDAU: It's outlined in our brief. I'm
20 speaking for the record, just in the event we need to refer
21 to it. But it's as outlined in our opposition papers.

22 Mr. Kaufman, who is the general counsel of Weber
23 Shandwick, assumed the duty. He was notified previously by
24 a completely separate individual as to Mr. Kokkinos's
25 actions. We have an affidavit --

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1 THE COURT: Was that after Heather --

2 MR. K. LANDAU: No, that was before Heather.

3 Heather then was our client.

4 During such time as the original notification with
5 the affidavit of Jessie Powell-Stroud, he took a similar
6 approach where he accepted the notice as to Mr. Kokkinos's
7 actions of harassment against this other individual, said
8 that he was going to go through the process -- and there's
9 e-mail correspondence -- had conversation with this other
10 individual and then proceeded to do nothing. At that point
11 in time --

12 THE COURT: What duty did Mr. Kaufman have to your
13 client? He represents his client, not your client.

14 MR. K. LANDAU: Understood.

15 And that just goes to the notice of the negligent
16 supervision, because then once Mr. Kokkinos continued to do
17 it, a similar type of scenario ensued whereby --

18 THE COURT: Your motion to dismiss the complaint
19 with prejudice is granted.

20 The corporation and Mr. Kaufman, gone, out of this
21 case.

22 MR. MUNOZ: Thank you, your Honor.

23 THE COURT: All right. As far as the rest is
24 concerned, we're going to have a re-pleading and, yes, we're
25 going to be back here again.

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1 Thank you, everybody.

2 MR. GREENBERGER: Your Honor, there's another
3 motion.

4 MS. MATZ: I'm sorry. I also had claims on
5 personal jurisdiction grounds.

6 THE COURT: Oh.

7 MS. MATZ: I would appreciate those to be heard.

8 THE COURT: You represent the nonresidents?

9 MS. MATZ: I represent the nonresidents, yes, your
10 Honor.

11 THE COURT: All right. The nonresidents are
12 Herrera and the Foundation?

13 MS. MATZ: Foundation and Mr. Boser.

14 Would you like me to go up to the podium?

15 THE COURT: Who's the other one, Boser?

16 MS. MATZ: Yes. Mr. Boser, Foundation Digital and
17 Mr. Herrera.

18 THE COURT: Okay. We'll make it simple. I know
19 what your motion is. Your motion is that you folks don't do
20 business here, you don't have an office here --

21 MS. MATZ: Absolutely.

22 THE COURT: -- "Why am I being sued in New York?"

23 MS. MATZ: Yes.

24 THE COURT: "And not only am I in California, but
25 the plaintiff's in California."

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1 MS. MATZ: Yes, everybody is in California and --

2 THE COURT: Plaintiff, why do we have Herrera,
3 Foundation and Boser here?

4 MR. K. LANDAU: Your Honor, relative to CPLR
5 302(a)(1-2), "The Court may exercise personal jurisdiction
6 over any non-domiciliary who in person or through an agent
7 transacts any business within the state or contracts
8 anywhere to supply goods or services in the state or
9 commences tortious acts within the state, except as to
10 claims for defamation of character arising from the act."

11 Mr. Herrera, is a published author under contract
12 with Simon and Schuster, a New York-based publisher. A book
13 was sold under Dick Masterson, which is his monogram of his
14 show. That name is out of New York through Simon and
15 Schuster. And we provided a copyright page as to that.

16 With respect to Mr. Herrera's own website,
17 merchandise is also sold through this website to New York
18 residents.

19 In addition to that, Foundation Digital is, from
20 what I understand, a computer technology company with
21 servers and whatnot. Mr. Herrera is a vice president.

22 THE COURT: They're also in California, right?

23 MS. MATZ: Yes.

24 MR. K. LANDAU: They're also in California, your
25 Honor.

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1 MS. MATZ: That's correct.

2 MR. K. LANDAU: But they operate -- Mr. Herrera is
3 vice president of that company, part owner of that company
4 and they transact business with New York residents and
5 obviously they promote --

6 THE COURT: They transact business with everybody
7 in the world. They're on the internet.

8 MS. MATZ: Your Honor, the only company he named
9 there -- my client -- Foundation Digital, does not actually
10 currently have any clients in New York. The companies he
11 named in his complaint in opposition were companies like
12 Disney and ESPN. I don't believe either are headquartered
13 here. They probably do have offices here, I'm not
14 contesting that. But, first of all, I'm not sure those are
15 current clients. But the contacts Foundation has with its
16 clients, none of them are in New York. They simply don't
17 transact business here.

18 And, you know, as to this contract he's referring
19 to with Simon and Schuster and Mr. Herrera, it's completely
20 irrelevant to this case. It's a contract that was -- first
21 of all --

22 THE COURT: I understand. It's selling a book
23 from Simon and Schuster.

24 MS. MATZ: It was a 2008 book. They're not
25 alleging that any defamatory statements were published in

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1 that book.

2 THE COURT: Let me end it right now.

3 The motion to dismiss Mr. Herrera, Foundation
4 Digital and Greg Boser is granted with prejudice. No
5 jurisdiction.

6 MS. MATZ: Thank you.

7 THE COURT: Thank you very much.

8 You can re-plead with regard to the New York
9 defendants, that's it.

10 MR. K. LANDAU: Your Honor, we can re-plead in
11 California?

12 THE COURT: I'm sorry?

13 MR. K. LANDAU: We'll re-plead in California.

14 THE COURT: Outside of my jurisdiction, you can do
15 anything you want. It's a free country.

16 MR. K. LANDAU: Thank you.

17 MR. GREENBERGER: Before we wrap up, there is
18 another motion, which is plaintiffs' sanctions motions
19 against me and my cross-motion for sanctions.

20 THE COURT: We're going to hold that off until we
21 have a re-pleading.

22 MR. MUNOZ: Your Honor, there's also a motion
23 against me and my cross-motion for sanctions arising from
24 the same facts.

25 MR. GREENBERGER: Now that he's been dismissed

1 from the case --

2 MR. MUNOZ: I'm just getting my book.

3 THE COURT: I'll schedule a sanctions hearing, all
4 right? So you'll let me know. Not with regard to you. But
5 with regard to Mr. Kaufman and the entity, we'll have to
6 have a hearing.

7 MR. MUNOZ: Okay. We'll get a date from your part
8 clerk.

9 THE COURT: Absolutely.

10 MR. GREENBERGER: As to me and plaintiff, it's in
11 the abeyance?

12 THE COURT: We're going to hold off on that until
13 after we have a re-pleading.

14 Thank you very much.

15 MS. MATZ: Thank you, your Honor.

16 (Proceedings adjourned)

17 Certified to be a true and
18 accurate transcript of the
19 foregoing proceedings

20 _____
Anne Marie Scribano

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