SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN BRANSTEN PART 3
Justice

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EROS INTERNATIONAL PLC,

Plaintiff,

- V -

MANGROVE PARTNERS, NATHANIEL AUGUST, MANUEL ASENSIO, ASENSIO & COMPANY, INC., MILL ROCK ADVISORS, INC., GEOINVESTING, LLC, CHRISTOPHER IRONS, DANIEL DAVID, FG ALPHA MANAGEMENT, LLC, FG ALPHA ADVISORS, FG ALPHA, L.P., CLARITYSPRING INC., CLARITYSPRING SECURITIES LLC, NATHAN ANDERSON, JOHN DOES

Defendant.

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INDEX NO. 653096/2017

MOTION DATE 02/22/2018

MOTION SEQ. NO. 008

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153

were read on this application to/for Extend Time to Serve

Upon the foregoing documents, it is

ORDERED Plaintiff's Motion seeking an extension of time to serve the Complaint is GRANTED as stated on the February 14, 2018 record and transcript (Rachel C. Simone, CSR) at 13:24-15:18. Plaintiff has until Jun 1, 2018 to effectuate service on the John Doe Defendants.

2/25/2018
DATE

EILEEN BRANSTEN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		DO NOT POST				FIDUCIARY APPOINTMENT		REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 3

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EROS INTERNATIONAL PLLC,

Plaintiff(s),

- against -

MANGROVE PARTNERS, NATHANIEL H. AUGUST, MANUEL P. ASENSIO, ASENSIO & COMPANY, INC., MILL ROCK ADVISORS, INC., GEOINVESTING LLC, CHRISTOPHER IRONS, DANIEL E. DAVID, FG ALPHA, L.P., CLARITYSPRING INC., CLARITYSPRING SECURITIES LLC, NATHAN Z. ANDERSON and JOHN DOES NOS. 1-30,

Defendant(s).

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Index No. 653097/2017
653096/17

February 14, 2018
60 Centre Street
New York, New York

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STEPHEN RYAN, JR., ESQ.

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THE COURT: For Eros International PLC, from the Kasowitz, Benson, Torres & Friedman LLP firm, I have Michael Bowe.

How are you?

MR. BOWE: Good morning, your Honor.

THE COURT: And Steven Tountas.

MR. TOUNTAS: Yes, your Honor.

MR. BOWE: Although, your Honor, we lost our dear partner Mr. Friedman to Israel. He is the ambassador to Israel. It is only Kasowitz Benson Torres now.

THE COURT: Oh, yes.

MR. BOWE: I do the same mistake every time I get up.

THE COURT: But I see that Mr. Tountas has the proper card with the proper name. You have to get yours updated.

MR. BOWE: Waste not want not.

THE COURT: Okay.

For Mangrove Partners and Nathaniel August, I have from the Akin Gump LLP firm Joseph Sorkin --

MR. SORKIN: Good morning, your Honor.

THE COURT: -- and Michael Asaro.

MR. ASARO: Good morning, your Honor.

THE COURT: For the GeoInvesting LLC defendants, I have from the Cozen O'Connor LLP firm Michael Birney de

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Leeuw.

MR. DE LEEUW: Good morning, your Honor.

THE COURT: It says "defendants," does that include Christopher Irons?

MR. DE LEEUW: Yes.

THE COURT: What about Daniel David?

MR. DE LEEUW: Yes.

THE COURT: What about FG Alpha Management?

MR. DE LEEUW: Yes.

THE COURT: And FG Alpha Advisors?

MR. DE LEEUW: Yes.

THE COURT: FG Alpha LP?

MR. DE LEEUW: Yes.

THE COURT: All that you represent, you just said "defendants."

MR. DE LEEUW: Sorry about that.

THE COURT: Then for the Clarityspring Incorporated, Clarityspring Securities LLC and Nathan Z. Anderson but not the John Does we have from the Stone Bonner & Rocco LLP firm Susan Davies.

MS. DAVIES: Good morning, your Honor.

THE COURT: And I have Steven Ryan.

MR. RYAN: Good morning.

THE COURT: Well, your card says you're from Berman Tabacco.

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MR. RYAN: Yes.

THE COURT: Is that a different firm?

MS. DAVIES: Your Honor, we are local counsel, and Mr. Ryan is admitted pro hac vice for purposes of this case.

THE COURT: Thank you.

At this time I am going to organize this. I am going to do a section on background. I am going to do the publication tweets which goes, basically, to the top of the Page 4. Then I am going to deal with Motion Sequence Numbers 7 and 8. Then after I finish that because I am going to give a decision on those two motions, then I will go back to 4, 5 and 6, okay? That's how I am going to organize it. So you might as well be seated and I am ready to start.

Background: I am going to start with the parties. Plaintiff Eros is a global entertainment company that is a preeminent coproducer and distributor of Bollywood films. Complaint at Paragraph 2. In 2013 Eros became the first Indian Media Company listed on the New York Stock Exchange. Same complaint at Paragraph 2. One of Eros's largest sources of revenue is Eros Now, an online streaming platform.

Defendant GeoInvesting LLC is a Pennsylvania corporation that was founded in 2008 by defendant Daniel E. David and Maj Soueidan. Complaint at Paragraphs 25 and 81.

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GeoInvesting affiliates, defendants -- EG Alpha Management LLC, FG Alpha Advisors LLC, and FG Alpha LP -- are companies affiliated with defendant Daniel E. David. That comes in the complaint at Paragraphs 28 through 30 and Paragraph 87.

GeoInvesting is an independent research firm that gathers, analyzes, and disseminates information on public companies trading in the US financial markets. Again, complaint at Paragraph 81.

GeoInvesting's objective is to "provide investors with tools to make informed decisions." Same complaint at Paragraph 81.

GeoInvesting publishes articles about public companies it tracks. Again, complaint at Paragraph 88.

Many of these articles are published on the Seeking Alpha blog, a website catering to financial information for investors. And that comes from the complaint at Paragraphs 47 and 224.

Founded in 2012, defendant ClaritySpring is a research and consulting firm focused on providing detailed due diligence on hedge funds to lend transparency to the hedge fund market. Again, the complaint now at Paragraph 89. ClaritySpring wholly owns a brokerage firm called ClaritySpring Securities, same citation.

Defendant Nathan Anderson is a due diligence entrepreneur who created ClaritySpring and ClaritySpring

Securities. Complaint at Paragraph 90. Anderson also runs ClaritySprings' Twitter account, formerly known as "@ClaritySpring" and now "@ClarityToast. "Again, that's the same citation at Paragraph 90.

Defendant Mangrove is an investment advisor incorporated in the Cayman Islands. Mangrove's, defendant August, currently serves as its president and portfolio manager.

At times relevant to the allegations in the complaint, defendant August posted content online using the alias "Alpha Exposure." There are other named defendants that have not yet appeared.

This is all basically a defamation case, and the publication/tweets that form the basis of the defamation counts are as follows:

In 2017 GeoInvesting began reporting on plaintiff Eros. It published five articles between March and July 2017 on topics such as: 1, claims that Eros was engaging in self-dealing as reflected in confidential testimony by an Indian film producer who has co-produced films with Eros in a publicly-filed complaint; 2, analyses of Eros's earning reports and troubling financial health including looming debt and liquidity concerns from its public filings; 3, investigation into Eros' refinancing concerns based on its press release and public findings; 4,

lack of timely disclosure to shareholders regarding the company's efforts to refinance one of its credit facilities and raise capital; 5, Eros' described connections to accuse money launderers as exposed in a CNN India report; and 6, Eros' sale of primary subsidiary stock in order to raise capital as revealed through public filings and press releases. And this all comes from the affirmation of Michael de Leeuw dated November 30, 2017, the de Leeuw affirmation, Exhibits 1 through 5.

At all relevant times, GeoInvesting held a short position in Eros stocks and disclosed this facts in bold letters in each of the articles. Again, the same de Leeuw affirmation. See also the complaint at Paragraph 88.

GeoInvesting uses several Twitter accounts to publish information from its articles and other realtime tracking of its investments. GeoInvesting uses the "GeoInvesting" Twitter account. That is the complaint at Paragraph 289.

Defendant David maintains a Twitter account under the pen name "FG Alpha-Management." That's complaint at Paragraph 88.

Defendant Christopher Irons, a senior business writer and equity analyst at GeoInvesting, maintains a Twitter account under the name "Quoth the Raven." Again, complaint at Paragraph 85.

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These three Twitter accounts posted tweets about Eros that largely relied on the content of the GeoInvesting articles. Again, complaint at Paragraph 289.

Defendant ClaritySpring made certain statements on Twitter concerning Eros in March of 2017 and again in July of 2017. Again, complaint at Paragraph 91.

Eros claims that certain tweets of ClaritySpring are defamatory and that certain tweets were "timed" to align with those of other defendants in this case. Again, the complaint at Paragraph 294.

ClaritySpring's Twitter page contains, and at all relative time has contained, the following disclaimer displayed prominently: "Opinions too inane to be anything other than my own." See affirmation of Stephen Ryan, Jr., the Ryan affirmation, at Exhibit 1.

Mangrove defendants published several reports under the alias Alpha Exposure on Seeking Alpha in 2015 and 2017 as well as several tweets posted using the "Alpha Exposure" Twitter handle in 2017.

Eros' stock has been declining since 2015. Complaint at Paragraph 5. Eros experienced its largest drop in share price from July 24, 2015 to January 12, 2016 where the stock fell from $36.32 to $7.00. Defendant's memo of law at Page 5.

Eros filed the suit on September 29, 2017 alleging

that the articles and tweets by the defendants caused harm to Eros and its shareholders. Eros sues for defamation per se, Count 1; defamation, Count 2; commercial disparagement, Count 3; false light under Pennsylvania law; Count 4, tortious interference with prospective business relations, Count 5; tortious interference with contract, Count 6; and civil conspiracy, Count 7. Defendants in turn file respective motions to dismiss.

I am now turning to plaintiff's motion for default, which is Motion Sequence 7.

Plaintiff moves to hold defendant Manual P Asensio, Asensio & Company Incorporated, and Mill Rock Advisors Incorporated in default for their failure to respond to the complaint pursuant to CPLR 3215, and CPLR 3215 states: "When a defendant has failed to appear, plead, or proceed to trial of an action reached or called for trial or when the Court orders a dismissal for any other neglect neglect to proceed, the plaintiff may seek a default judgment against him."

All right. Default as against defendant Manual P.Asensio:

Plaintiff alleges that defendant Manual P. Asensio was served both through "nail and mail" pursuant to CPLR 308(4) and by serving a person of suitable age and discretion, the building's concierge, at the plaintiff's

place of residence pursuant to CPLR 308(2). See Bowe affirmation, Exhibits 1-2.

Defendant Asensio later sent a series of e-mail exchanges with plaintiff's attorney in which the defendant states that service was defective, but, nonetheless, admits "constructive knowledge" of the complaint. See Bowe affirmation, Exhibits F through M.

The affidavit of service affixing process to the door states that the process server made five attempts to serve the defendant on three different days: September 29, 2017, September 30, 2017, and October 2, 2017.

The supplemental service made upon the concierge of defendant Asensio's address gives this Court pause to question the validity of the plaintiff's purported "nail and mail" service.

The service of process upon a building concierge is only proper where the process server is denied access to the defendant's apartment. See Bank of America N.A. versus Grufferman, 117 AD3d 508 at Page 508, First Department 2013 (determining that the Court's decision to hold a hearing and receive testimony from the process server as to its inability to access the apartment was proper). That was a traverse hearing.

Absent testimony, the service upon the concierge also does not explain the process server's seeming ability

to enter the building five times to attempt service without objection by the concierge. See Wells Fargo Bank National Association versus Ferrato, 150 AD3d 546, 547, First Department, 2017 (holding the affidavit did not establish either that its process server was not permitted to proceed into the building or that service was made upon a person of suitable age and discretion and remanding the issue for a traverse hearing). This Court cannot determine service was properly made upon the individual defendant Asensio at this time.

Default against both defendants Asensio and Mill Rock Advisors Incorporated:

Service was made on October 2, 2017 upon both of those defendants, defendant Asensio & Company and Mill Rock Advisors Incorporated, by delivering two copies of the notice of commencement of the action, summons with notice, and supplemental summons and complaint upon Asensio & company's registered agent, the New York Department of State, pursuant to BCL Section 306. Bowe affirmation Exhibit C and D. BCL Section 306(b)(1) states: "Service of process on the Secretary of State as agent of a domestic or authorized foreign corporation may be made by personally delivering to and leaving with the Secretary of State or a deputy, or with any person authorized by the Secretary of State to receive such service at the office of the

Department of State in the city of Albany duplicate copies of such process together with the statutory fee which fee shall be a taxable disbursement. Service of process of such corporation shall be complete when the Secretary of State is so served." Thus, the service against the corporate defendants is proper. Therefore, the motion for default against the individual defendants is denied in part. The motion as to defendant Asensio is to be held in abeyance pending a traverse hearing. And the motion against the defendants Asensio & Company and Mill Rock Advisors is denied. Service is proper against defendant Asensio & Company and Mill Rock advisors.

As to that, to hold them in default, once the issues have been resolved in the entirety of the case, plaintiff shall conduct an inquest before a Referee on damages as to defendants Asensio & Company and Mill Rock advisors, but not until after the conclusion of this case. So, in a sense, the motion for a default judgment is granted because service is proper and they have not yet appeared. Of course that could be cured too, but as of now we will hold the entire issue of damages in abeyance pending the conclusion as to the other matters in this case.

Motion Sequence 8 is a motion to extend time to serve.

On June 6, 2017 plaintiff served a summons with

notice upon individual defendants pursuant to CPLR 306. Plaintiff, however, remains unable to identify various John Doe defendants. On October 6, 2017, this Court granted an initial 120-day extension of time to serve the John Doe defendants. The extension expired on February 1, 2018. Plaintiff is requesting an additional 120-day extension of time to serve the parties.

Legal standards: A plaintiff seeking leave to extend time to serve must do so either upon a showing of "good cause" or that the extension is in the "interest of justice." See Leader versus Maroney, Ponzini & Spencer, 97 NY2d 95 at Pages 103-104, 2001 (differentiating between good cause and interest of justice standards).

Reasonable diligence in attempting to locate the defendants meets the good cause standard. Again, same citation at Page 104 (stating an exercise in diligence would surely count as good cause).

The interest of justice standard, however, is a "more flexible" standard requiring a "careful judicial analysis of the factual setting of the case and a balancing of the competing interest presented by the parties." Again, the same citation at Page 105.

Here, plaintiff has endeavored to identify John Doe defendants which are either affiliates of known defendants or are unknown parties. To date, plaintiff has

been able to identify John Doe defendant 6 as being an affiliate of defendant ClaritySpring. See Bowe affirmation at Paragraph 8. Plaintiff supposes that the Mangrove defendants may also have John Doe affiliates who have not yet been disclosed. See Bowe affirmation at Paragraph 9.

Insofar as the unknown parties are concerned, the plaintiff subpoenaed five nonparty website operators (Vetr Incorporated, StockTwits Incorporated, Scribd Incorporated, Twitter incorporated, and LinkedIn Corp.) See Bowe affirmation, Exhibits D through H. All of the nonparties but LinkedIn have responded. LinkedIn has a deadline to respond by February 2018. I suppose it is coming up. See Bowe affirmation at Paragraphs 10 through 12.

Thus, the Court finds good cause exists to extend the deadline to serve the John Doe defendants a further 120 days to June 1, 2018. Therefore, Motion Sequence Number 8, the motion to extend time to serve, is granted.

Now we get to Motion Sequences 4, 5 and 6. This is defendant's motions to dismiss.

The GeoInvesting, ClaritySpring and Mangrove defendants seek dismissal of plaintiff's complaint largely on the grounds the subject writings (the articles and tweets) are protected speech and express mere opinions both by their nature and by their express content pursuant to CPLR 3211(a)(1). They also allege that plaintiff has failed

to state a cause of action under CPLR 3211(a)(7).

Dismissal standard of law: A motion to dismiss a complaint pursuant to CPLR 3211(a)(7) is properly granted if the plaintiff fails to state a cause of action within the four corners of the complaint. Scott v Bell Atlantic Corp., 282 AD2d 180 at Page 183, First Department, 2001. "Bare legal conclusions as well as factual claims either inherently incredible or flatly contradicted by documentary evidence" are not "presumed to be true and accorded every favorable inference." Ullman against Norma Kamali Incorporated, 207 AD2d 691, 692, First Department, 1994. "Where the motion to dismiss is based on documentary evidence under CPLR 3211(a)(1), the claim will be dismissed "if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." International Publishing Concepts LLC versus Locatelli, 9 NYS 3d 593 at *2 through 7, New York Supreme Court, 2015.

I am going to ask the defendants -- look, all three defendants raised the same issues, so you can choose among yourselves who you wish to have actually talk about the case or talk about a point, but I don't want three repetitions, all right? That's not going to be acceptable.

We have the issue of defamation and defamation per se. I am going to do that first. That's the first and

second causes of action. Of course when you finish that, plaintiff will go, then a very short rebuttal. That's how it is going to work. After that we will do the protected opinion versus -- this is part of the defamation, protected opinion versus false statement. So those are what I expect to hear.

I can give you, in a sense, a brief outline of the defamation law. Maybe that would be good to put in, and then you can work from that. Maybe that's the way to do it.

This is the first and second causes of action. Under New York law, a plaintiff states a claim for defamation only if it can plead a "false statement published without privilege or authorization to a third-party constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se." See O'Neill versus New York University, 97 AD3d 199, 212, a First Department 2012 case. "It is now beyond dispute that expressions of opinion are cloaked with the absolute privilege of speech protected by the First Amendment, and that 'false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions.'" Jaszai versus Christie's, 279 AD2d 186, 188, First Department 2001. See also Sandals Resort International Ltd versus Google Incorporated, 86 AD3d, 32, 38, first Department 2011 (a

defamation claim can only succeed if "'it is premised on published assertions of fact' rather than assertions of opinion").

New York Courts will take into consideration the following factors in determining whether a statement constitutes a protected opinion: 1, whether it the statement at issue has a precise meaning so as to give rise to clear factual implications; 2, the degree to which the statements are verifiable, i.e., objectively capable of proof or disproof; 3, whether the full context of the communication in which the statements appear signals to the readers its nature as an opinion; and, 4, whether the broader context of the communication so signals the reader. And that cites Frechtman versus Gutterman, 115 AD3d, 102, 105, First Department 2014, and also Sandals Resorts, 86 AD3d at Pages 39 and 40. I cited that earlier.

Whether a particular word constitutes non-actionable opinion is a question of law for the Court's determination. Steinhilber versus Alphonse, 68 NY2d 283, 290, a 1986 case.

As to discussion, I will put these two paragraphs in and then open it up.

All moving defendants argue plaintiff cannot make out the requisite elements of defamation or defamation per se because the statements constrained in the subject

articles contained opinions. Defendants also argue that plaintiff has failed to plead actual malice.

In opposition, plaintiff argues that there is ample case law which shows even in the face of purported "opinions" contained in writing, such publications and statements can be actionable.

So now we open it up, okay? I think the question to be posed to defendants is why each defendants' speech is considered to be protected opinion, and, of course, for the plaintiff the same type of question, why it shouldn't be considered protected opinion.

So let's go ahead.

MR. SORKIN: Justice Bransten, the defendants have spoken. I was going to speak first, I believe followed by Mr. de Leeuw and Mr. Ryan.

I have prepared a brief deck that is even briefer ever given what at Court has already read that will prevent us from having to flip back and forth between the complaint and the reports and tweets. So if it is okay with your Honor, I would like to hand this up.

MR. BOWE: Your Honor --

THE COURT: Have you seen it?

MR. BOWE: I have not. I am concerned it may contain an argument that's not contained in the papers.

THE COURT: Show it to counsel first.

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MR. SORKIN: (Handing)

THE COURT: Take a few minutes to look at it and then we will proceed. You know, I will give you two or three minutes if you want to go outside and look at it.

(Brief pause)

MR. BOWE: I have no objection, your Honor.

THE COURT: All right. Then I will look at it. Objection.

MR. SORKIN: (Handing) Your Honor, given that you have already gone over the legal standard, I won't spend time on that; so, actually, the first thing I would like to start with is Slide 4 in the deck.

Briefly, your Honor, to step back a minute and level set; my clients I will refer to jointly as "Mangrove" for purposes of the argument. Mr. August is the president, Mangrove Partners is an investment manager that's been around since 2010 and currently has close to a billion dollars in assets under management.

One of the many investment strategies that Mangrove Partners employees is to identify companies that they believe are overvalued. The expectation is that in the long run the value of that stock of those companies will decline. This is a common and accepted investment strategy. It is sometimes referred to as taking a short position. So that is one of the strategies they use. That is what is at

issue here, that investment strategy.

Now, in order to make a determination about whether or not to take a short position in a company, Mangrove, through hard work and in-depth analysis, identifies issues that give rise to legitimate concerns about publicly traded companies like Eros here. Sometimes Mangrove issues reports publicly that identifies these concerns and then engages in market discussion in order to get feedback from the market. Again, that's what happened here.

Mangrove issued detailed reports about Eros, which is a publicly traded company that produces and distributes films for different platforms. Oftentimes, though, companies -- again, like Eros here -- don't like to answer the difficult questions that are raised in that public debate. And sometimes those companies, and that's what happened here, is instead of addressing the opinions and responding in the public, they want to silence those questions and silence that debate through a lawsuit. And as the Court has laid out, New York Courts don't allow that. If there is an expression of opinion, that is not and cannot form the basis of a defamation claim and must be stopped at the outset.

Now, the context is critical. And as this Court has recognized in International Publishing as the Court

previously cited, it's that context that is critical. That's what I want to go to now.

Mangrove posted five reports on Seeking Alpha -- I will talk about that website in just a minute -- between October 30 2015 and August 14, 2017. The four reports in the fall of 2015 indicated here, those are Exhibits 1 through 4 attached to Ms. Spitz' affirmation. Those are outside of the one-year limitation period. That was acknowledged by Eros in their responsive papers. The report that's at issue is the summer of 2017 report, the August 14, 2017 report.

All of these reports talking about them generally, what they look like and what they contain and structurally are all the same.

First, each was published on the Seeking Alpha internet website. And if you flip to Slide 5, I will walk through the things that are the same about each of these reports.

The Seeking Alpha website is an online forum designed for third-parties to express opinions about the US financial market. That's the platform. Justice Kern in Nanoviricides discussed the Seeking Alpha platform, exactly what it was. There is a quote here that's in our papers. Readers know what they are getting. The tagline, I believe Justice Kern noted was, "Read, decide, invest." Readers

know what they are getting when they go to this website. They are getting opinion.

Additionally, each of the reports, each of the Mangrove reports uses the same format. At the beginning there is a bullet point summary of the opinions and what is in the report followed by a slightly more detailed summary paragraph or two expressing the opinions and the information relied on, and then the bulk of each and every report is an in-depth analysis disclosing all of the facts on which the opinions and conclusions are based. So, that factual record, what those opinions are based on is fully disclosed.

Third, your Honor, each and every report uses language that makes clear that Mangrove is expressing an opinion whether it is "we believe" or "in our opinion" littered throughout the reports. It is absolutely clear to the reader because of the use of that language alone.

Your Honor, in addition, each and every report discloses the short position that Mangrove had, and, therefore, the financial interest.

Finally, your Honor, I want to briefly touch on a point that has been raised in the papers. Each of the Mangrove reports, whether the reports or the tweets, were published under the pseudonym "Alpha Exposure." Eros in the papers makes a big deal about this, that this is somehow improper. But there is no case law that they cite that

suggests anything is improper or there's any negative inference to be drawn from this. In fact, the opposite is true. Courts view anonymity as a factor weighed in favor of finding a statement of opinion, because anonymous statements are viewed differently and with greater skepticism by the public.

In addition, posting criticism of companies under a pseudonym on the internet is common practice. And that makes sense where companies which may already be engaged in improper conduct could retaliate against the critic or refuse to engage on basic questions about the company.

Now, your Honor, if you look specifically at the report -- and, again, we are talking about the August 2017 report. This is the only report issued by Mangrove that is within the limitations period for defamation or defamation per se, either of the first two counts.

The report itself, again, is attached at Exhibit 9 to Ms. Spitz' affirmation. I also have a loose copy if that's easier for the court.

THE COURT: Yes. It probably is. Please show it to counsel.

MR. SORKIN: (Handing)

(Brief pause)

MR. BOWE: No objection, your Honor.

MR. SORKIN: Your Honor, if we briefly just scan

offer the report in general, I will point out what I discussed previously noting that the report on the top left corner is on Seeking Alpha, the indication is from Seeking Alpha website. There are four bullet points beginning with the summary of the report, this is on Page 1, following with a paragraph that describes generally in slightly more detail. And then Pages 2 through 9 of this report lay out in detail all of the factual information that is relied on in support of the report. And then on page -- it is, actually, Page 8 there is a disclosure that the author is short on Eros. So this is the overall context of how this report is published, and what any reasonable reader would see when looking at the report.

Now, your Honor, there are two main points that Eros complains of in their complaint it's Paragraphs 311 through 317. The first is in connection with rumors of a sale of the company. The second is with respect to liquidity. Let me start with the rumors first.

Your Honor, if you look at Slide 6 in the deck, Paragraph 315 of the complaint, this is where they talk about the sale numbers. The first sentence states: Mangrove also pounces on national newswire rumors that Eros was in early talks to sell Eros Now's film library to Apple, Netflix or Amazon for approximately $1 billion.

Your Honor, the second sentence is where they

quote language from the August report. The complaint states: Recognizing the markets's favorable reaction to the rumors, Mangrove claims that they are "not credible" and "just a distraction made necessary by a liquidity crisis at Eros."

If you look below -- well, even before we look at what is actually in the report, your Honor, can we step back for a minute and think about what the complaint is?

Eros is complaining that Mangrove commented on market rumors that may or may not be true. How could possibly expressing a subjective belief about a rumor be an actionable statement of fact? The premise itself is absurd. But if we look at the language, what they have plucked out and put in quotes is not actually what is said. What is said, the second bullet, the report at 1 on the deck, your Honor: In our opinion, recent sale rumors are not credible.

On its face, your Honor, it is a statement of opinion. That's not what is it in the complaint.

Additionally, just below: We believe these stories are just a distraction made necessary by a liquidity crisis at Eros caused by years of negative free cash flow and impending debt maturity.

Again, on its face a statement of opinion with support for what the opinion is. That's not what's in the complaint. And you will see this throughout the complaint.

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We don't even have to stop there, your Honor. If you look at Page 7 of the report, Mangrove actually spends an entire page explaining why the rumors aren't credible. First, there were two previous rumors of sale, neither one went through. Second, Apple already has access to the Eros Now library. Why would they need to send money to get access to something they already have access to? And finally, the final paragraph on Page 7 starts with "even if the deal is consummated" -- so Mangrove acknowledged the deal might be consummated, even if it happens, it goes on to explain why financially it is not a good deal for Eros or for Eros shareholders.

So, again, clear opinion, clearly laid out with supporting facts and supporting detail that any reasonable reader could judge for themselves whether or not to believe the opinion.

Your Honor, I want to note that nowhere in the complaint is there any allegation that any of the information cited by Mangrove in the reports or their tweets is false. They challenge the opinions and try to allege the opinions and conclusions are false, but as to the underlying facts, there is no allegation that they are false, just like there is no allegation that anything on Page 7 here is false.

Your Honor, let me address the second point, the

liquidity crisis, slide 7.

You will see a pattern, your Honor. The first sentence on Paragraph 312 from the complaint: In its latest hit piece, Mangrove repackages the same false themes in GeoInvesting's and Unemon's, John Doe 5, short reports, including that Eros is submerged in an alleged "liquidity crisis."

Again, not what is actually in the report. If you look just below, the full statement is in a bullet it says: We believe Eros is facing a liquidity crisis.

Again, your Honor, on its face it's a statement of opinion.

Now, Eros tries to suggest in Paragraph 312 that that can't be true. That opinion, we believe a liquidity crisis can't be true, because we have over $100 million in cash as of March 2017.

Mangrove doesn't challenge that. In fact, Mangrove's report on Page 3 says: Despite the company reporting in this case $136 million of cash on its balance sheet as of December 31, so it's acknowledged. No one is saying that the company is lying about the cash on the balance sheet, but that doesn't resolve the point, your Honor. You can't just look at cash in a vacuum. You have to look at what are your debts, what are your expenses, what is your future cost of producing content. This is a company

that produces film. They need to produce or buy films. How fast are you collecting the money you have owed. Those are all the things that you need to take into account in determining with whether or not there might be or whether or not you have an opinion that there is a liquidity crisis. The fact that there is cash on the balance sheet doesn't answer the question. Mangrove never says it does. Instead, what Mangrove does is undertake this very analysis. That's what Page 2 is. Page 2 of the report, your Honor, starts with: Negative free cash flow.

If you look at the chart in the middle of the page, you will see that 2012, 2013, 2014, 2015 and 2017, all negative free cash flow. 2016 was an anomaly, and there is an explanation why that was an anomaly. The point is this company has historically not had negative free cash flow. So it is a good thing you have cash on the balance sheet because you are going to need it.

Your Honor, then below the chart there is an explanation about how the DSOs -- that's Days Sales Outstanding. This is on average how long it takes to collect a receivable.

If you look at this last sentence: DSOs now stand at an eye-watering 327 or 367 including other receivables.

Think about that for a minute, your Honor. 367 days, on average it takes over a year to collect on the

receivables. Again, there is no question, there's no challenge to the truth of these facts.

The report goes on. The next page, Page 3: Receivables older than six months have grown from 30 million to 102 million over the last year.

Then, your Honor, the bottom of Page 3 top of Page 4: The company is selling stock in a subsidiary to generate cash.

Bottom of Page 4: The cost of debt, which is now well over 10 percent, is making the possibility of refinancing upcoming debt maturity very difficult, if not impossible.

All the reasons, all the support for why there is a liquidity crisis is laid out right here in the report.

Your Honor, if you look at Slide 8 -- I will not spend any more time going through the specifics in the complaint on the liquidity crisis, but it is more of the same, Slide 8, Slide 9. Selective quotes are taken out of context where if you look at even the sentence they come from, it is clear on the face of the sentences that they are opinion. Then certainly once you look at the context of the overall report and where it is published on Seeking Alpha, there is no question that these are opinions.

Your Honor, I would like to speak briefly about the tweets. Your Honor, if you flip to Slides 10 and 11 in

the deck, we have attempted to excerpt the tweets. And don't be alarmed, I am not going to go through in detail on Slide 11. I realize it is hard to read.

I want to start with the context because the context is critical. We are moving away from the online Seeking Alpha platform and now we are headed into what I have heard referred to as the Twitter verse.

Your Honor, Twitter is understood to be a form of immediate responses to and impressions of what is happening in the world. I think we understand what Twitter is and how it is used. The entire Twitter feed for Alpha Exposure is included as Exhibit 8 to Ms. Spitz affidavit, but there are two dates in particular that are complained of in the complaint: May 26, 2017, July 28, 2017.

Now, it is important to understand the overall history of Alpha Exposure's Twitter feed. Again, Alpha Exposure is the pseudonym. It is the same name that was used with respect to Seeking Alpha. There is no confusion about the identity. The reports are linked on Twitter. There is no confusion about the identity. A reader understands who is putting out this information.

The two dates are important, your Honor. Again, context matters. These were not random days where someone decided to just post on Twitter. These were days where the company announced earnings. So on May 26 this was in

response to earnings made public by the company that morning. If you look at Slide 10, the first tweet: Eros, oldie but goody, Indian subsidiary reported results this morning.

Again, the context is clear. And, your Honor, as you may be familiar, you read tweets from the bottom up.

THE COURT: Right.

MR. SORKIN: They come in time.

So, again, the facts on which these tweets are responding are the reported results that the company reported that morning. As you go up and read each one, that is clear when you read the context and they are opinions. The second one: Looks look liquidity crisis. Again, the context and the words are clear. Next up: I doubt it. Next one up: Looks dire to me. Next up: We think this is a huge red flag.

So, again, there are specific statements made in each of these. It's clear opinion, the context, the words. There is no question. But, your Honor, the context does matter, and that's why I want to spend a little more time on the July 28 tweets.

In addition to reporting the 2017 fiscal year earnings on July 28, the company held an earnings call. And as the Court may be familiar, that involves representatives of the company -- oftentimes the CEO, the CFO -- actually

holding a publicly available call that people can dial into and ask questions. There is a statement made by the company, and then questions are taken by analysts, other members of the public. And that's what was going on here.

Earnings reported, and then this is in some ways live tweeting of the earnings call. That would be clear with some of the tweets. So, for example -- and your Honor I realize this is hard to read. I don't think we need to go to the actual exhibit. I can just read one of the tweets. It is the 22nd tweet in the chain, again, you start on the far right and go up, go up the middle, up the left: Eros, analyst from Jeffries asks softball first question on Eros Now EBITDA next year and company replies with gibberish that doesn't answer Q.

Reading that tweet, it makes clear the context. Here is what is going on. There are questions and answers. This tweet -- now I do want to actually look at the complaint. If we go to Paragraph 306 in the complaint -- And, your Honor, I have a clean copy here if it is easier for the Court.

THE COURT: I think I have it here. Just a moment.

(Brief pause)

THE COURT: Okay. It is repeated throughout so I have it in a number of places.

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Go ahead. What paragraph?

MR. SORKIN: Your Honor, it is Paragraph 306.

Paragraph 306, your Honor, points to the July 28 tweets and lists in bullet point format on Pages 85 and 86 what appear to be all of the tweets from July 28 but they are not. The tweet I just read to you along with seven others from July 28 are not listed. There is a reason they are not listed. It's because they make clear the context of the statements. Not only are there eight tweets from this chain omitted, but if you look at these bullets and you go to the first one, one might assume that that's the first tweet in the chain. It is not. The first tweet in the chain appears on the last bullet on Page 85. The first tweet makes clear: Today's Eros results should prove that the company is a fraud. There is no doubt any longer.

Again, context matters. The reports are coming out. If you read the tweets, as this Court will do in making a decision, in order the way they come out, the context is clear. These are clearly opinions responding to the results and the statements that the company is making. That's not what is in the complaint, your Honor.

Your Honor, we have cited case law. I don't want to get into the cases because I think the Court is familiar with them and is more interested in the specifics of each of the individual defendants given what I have gone through,

but there is a brief chart on Slide 12 that we think outlines why the Silvercorp. case and the Nanoviricides case are on all fours. These are two New York trial court cases in which defamation claims were resolved at a motion to dismiss stage before discovery.

And, your Honor, I will briefly talk about the public figure point. I think this is clear. There is a slide, Slide 13. Eros cannot reasonably argue that it is not a public figure. They cite two cases; one is an individual plaintiff, one is a single shareholder furniture store in Long Island. Eros touts itself as a global entertainment company with global footprint.

We have cited case law, the Fotochrome case, that acknowledges a publicly traded company that issues reports and engages in public discussion is clearly a public figure. When that is the case, actual malice is required. They have not pled it here. Economic motivation is not enough.

This also ties into the conspiracy argument, your Honor. There is no indication there was any agreement or anyone working together in connection with this. And specifically on that point, your Honor, I would just go back to note that the Mangrove reports, we disclosed exactly what it was that we were relying on. There is clearly no malice. And the idea that we were somehow tied in with the others when there is a two-year period where we weren't reporting

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on Eros simply is incredible.

THE COURT: All right. Do you have anything that is new?

MR. DE LEEUW: Just a couple.

THE COURT: I am really running out of time. I have another case.

MR. DE LEEUW: I will go very quickly.

Actually, just to piggyback off the end of that with regard to the actual malice, we put it in as an additional reason. I don't think that this case turns on whether or not Eros is a public figure. I think regardless, they haven't pled what they need to do, and they haven't gotten past the opinion issue even if they are not a public figure.

Briefly, I think that you have probably looked at the reports in my affirmation. Very similar. There are clear bold statements. Each report makes very clear that we are representing views of opinion. Each report was published on Seeking Alpha. Each report fully disclosed the factual bases for these opinions. And each report has hyperlinks. Everything is hyperlinked or pasted right into the article, so there is no mystery about what the bases are. There's no undisclosed opinions there.

Instead of going through this in a long feature, in our opening brief on Pages 12 through 23, we put in 12

pages of each report and each one of the topics that they claim to be defamatory. I say "topics" because they don't pull out exact language. They sort of, you know, pull out a word from Paragraph 3 and a phrase from Paragraph 5 and they say that's what it is. So on each of the topics we go through that in great detail in our opening brief, Pages 12 through 23 so I won't repeat that.

I will just get to a couple of the points that they put in their opposition.

They talk about the CNN expose. They say this is false because it is old, stale. In their opposition Eros claims that the March 29 article stated that CNN India expose catches four Eros International associated director, producer, writers on hidden camera discussing methods for laundering money through their films is based on grossly distorted facts because the expose has nothing to do with Eros and they were never charged with the subject of any publicly known investigations.

As we explained in our opening brief, the article properly dates the CNN reports. We say when it occurred, specifically states that the CNN expose was not about Eros itself, and makes the point that the film executives in the expose discussing money laundering through the production of films were still associated with Eros, which was the point of that.

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With regard to the auditors, another issue they raise --

THE COURT: You don't have to read from what they are going to say.

MR. DE LEEUW: No, no. I'm just saying with regard to auditors they absolutely mischaracterize what we're saying. They say that what we said is false because Eros' parent company only has one auditor, but that's not at all what we said in the GeoInvesting reports. In the March 29 report, we go through that we are talking about the auditors for all of these myriad affiliated companies, and we, in fact, produce a list at the end of the article that goes through who the auditor is for each one of those entities and various resignations from each one of the auditors. So it is all backed up.

THE COURT: So your point is that because he cited to the auditors report, etcetera, etcetera, there can be no defamation because it is all the truth. That's the point.

MR. DE LEEUW: That's the point. Again, in our opening brief we make that point.

THE COURT: Good. Let's continue.

Anything new?

MR. RYAN: Very briefly, your Honor, I stress that I think it is important here to look at my client's statements in their -- look at the words themselves as

written without the excess verbiage in the complaint.

Also, one thing that I wanted to point out is that the mere fact that a lot of this here is one-sided criticism and that fact that some of it is harsh doesn't make it defamatory.

THE COURT: I get that. Good.

Your response?

MR. BOWE: Your Honor, thank you. I will be much briefer. I promise.

Your Honor, my father was a fireman up in Harlem for 17 years, and he used to have a statement for me. He would say, "Don't pour water on smoke." It was a way of saying don't focus on the wrong things. With respect to Mangrove's extended presentation, they basically pointed you to smoke and said that that's not fire.

So what were the three issues that they actually discussed in all of that? They discussed, well, our allegations about the Apple rumor is not actionable; allegations about liquidity is not actionable; a tweet where they said there was an analyst saying something, that's not actionable. And then he sat down. What he didn't talk about was the fire.

Let's start on July 28. This is the best example, your Honor. When they were live streaming from our investor call -- it would be as if somebody was in here, your Honor,

tweeting while you were reading. And, of course, opinion that is protected has to be opinion that discloses all the facts that it is based on.

In that live feed, not addressed by counsel, they say: Eros spent only $5 million on film production in the quarter. Company clearly in liquidity crisis. He didn't tweet out what the basis for that was. In fact, he misrepresented the call. It's just like if somebody was in here tweeting out and misrepresented that you said "granted" when you said "denied." That's not protected opinion.

When he said, you know, that we have these things in the wrong order, we have them in the order of the ones we think are actionable and we left out the ones we don't. He said, Oh, it is not in their complaint, your Honor. Well, that's because that one particular tweet wasn't actionable. But you know what is actually missing? It's not what is missing from our complaint, it is what is missing from their opposition.

What is missing from their opposition is an explanation on the ones that are in our complaint here of the parts of that tweet that are actionable showing that what actually was said on the call that they are basing their statements on and what are they basing their opinion on. That's nowhere in their papers. In fact, your Honor, the reason I jumped up when he wanted to hand up a deck was

I was afraid he was going to hand up a deck and sort of try to do that in a deck, which he didn't.

Number 2: Eros is admitting it will decrease the number of films being produced. Why? Liquidity crisis. What it actually said on that call, your Honor, was that they were decreasing the production because there was a demonetization in India and they were bringing stuff in-house. So this is not protected opinion because he doesn't disclose what it was that was said on the call that he is referring to, and worse, he misrepresents it.

Number 3: Eros under SEC investigation. No way registration statement gets approved. This is a fraud going to zero.

No one said on the call there was an SEC investigation, Judge. If you are reading this tweet, you think that's what happened. Once again, they don't describe in the tweet why they thought there was an SEC investigation. That wasn't announced. Once again, the basis for that claim is not explained and it misrepresents what was said on the call.

Number 4: Eros still does not disclose revenue from Eros Now. They pump it and refuse to disclose it. Huge red flag.

Once again, I suppose when you say something didn't happen, you don't have to explain your basis. The

problem here was it did. They did disclose on that call that fact. They misrepresented the call.

Number 5: Eros revenues down 19 percent in Q4, EBITDA down 35 percent in Q4 despite booking fake content, rest of world sales.

That's an explicit allegation that we are making up sales. There is nothing they cite from the call that explains where they got that opinion. That is the same as me saying, I think this Court is corrupt. That implies that I have a fact of corruption. If I said, I think this Court is corrupt because the shades aren't nice, then they will say well, that's crazy.

This is a simple declarative statement without any context or reference that says we are a fraud, we are making up sales.

Number 6: Eros 58.5 million receivables more than one year old but the reserve for doubtful accounts is just $163,000. Fraudulent revenues.

Well, fraud is different. Fraud means intentional. Maybe they are inadequate, but fraudulent reserves? What is their basis for that? They don't explain it.

Another: Eros massive increase in days payable shows they are having trouble paying their suppliers in a timely way. Company in distress, cash crunch.

They don't explain what it was they got that opinion for. And worse, they omitted that Eros explained on the call that the reason payables had gone up was there had been -- they had made an enormous acquisition, so they made an acquisition and the payables were there. Also, they introduced a new line that instead of monthly payments, they extended payments out for a year. It was a premium line. So payables went up. That's simply a misrepresentation your Honor, not an opinion.

2 on this side: Eros reveals that the company is filing a shelf, a shelf filing. Only reason to do that is to dilute current shareholders by issuing equity.

That's just not a true statement. There are many reasons to do that. It is just not a true statement.

Finally --

THE COURT: What they are going to argue is that it is an opinion, it is not a fact. In other words, they are going to say that, you know, it was just their opinion that they got from someplace else.

MR. BOWE: The reason this is toward the end of my list, your Honor, it is one of the least strong of the ones I have given you. But when you are misrepresenting what is said on the call or you are not explaining what was said on the call that is the basis of your opinion, by definition it is no longer protected opinion.

What is protected opinion? I disclose what it is, what my facts are, and I draw a conclusion. People can figure it out themselves. Everything until now that I raised doesn't fit that. This one maybe you can make an argument, but the other's don't. And on this one it is not a question for you to resolve on a motion to dismiss, especially in light of the others. It is a case that we get passed motion, we get to discovery, take it, and we go to a jury.

Finally, Judge: Eros increase in trade and other receivables use 72 million in cash despite sales decline. Fraudulent sales being booked and not collected.

Now, that's a complete non sequitur. There is nothing about that statement that suggests that we are fraudulently making up sales, okay? So it is a reckless statement.

So on all of these, your Honor -- once again, it is a live feed, a report of what we are saying. It misrepresents what we are saying in places. In other places it just makes a conclusion as if something was said and here is the conclusion without explaining what was said. That's not protected opinion. And in many of the cases it does both. All of these are things that no one talked about in that extended presentation. And in each one of the reports, I won't go through them all, you get the same, your Honor.

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So just briefly, on the August 14 report that he spent a fair bit of time about Apple and about illiquidity, they talked about us pulling back investment in our production companies because we didn't have money, but that misstated what we said. What we said was we are pulling it back because India was demonetizing its currency and we were taking things in-house. That's a misrepresentation.

Now, if they had done that and said: Here is what they say but I think this, maybe that's protected. But leaving out our explanation and just making up one? Not protected.

With respect to GeoInvesting and ClaritySpring, none of these are addressed in their papers, explained in their papers nor in their presentation. They cherrypick. They pour water on smoke. They say, Well, that's not actionable, Judge, but don't look over this way.

In March they accuse us of fraudulently funneling money to our family. There is no --

THE COURT: I saw that.

MR. BOWE: There is no explanation about where that comes from.

Also we are making false statements to investors regarding revenue growth and users. We were inflating our user account, manipulating our money. We let our revolver lapse, our revolving credit line lapse. The problem is we

didn't.

We lied about the stated reason for deferring a bond offer. They don't provide a basis for a conclusion that our statement was false. They just say we lied. That's like me saying, This Court is corrupt without an explanation. That's actionable because it implies facts that they haven't discussed.

We had close ties with money launderers and others alleging outright that Eros has engaged in money laundering. He says, Well, you know, there was a report and you guys knew it was an old report. Okay, I get that. We will give them that maybe, your Honor. But then they actually go out and allege that we are in money laundering with others. There's no basis for that.

We were doing dummy production deals to channel assets to our family. They don't explain in that report, they don't explain in the papers, and they didn't explain when they stood up any basis for that, that it was true or that they disclosed the facts that somebody could review. Again, it's like me standing here saying, This Court is corrupt. Period. Full stop. I will let everyone figure out what I mean.

In May: There was widespread fraud at Eros. Period. Full stop. We are running out of money but extended our credit and final stages of a deal. We had

extended the deal.

With respect to ClaritySpring: We were raising cash to buy assets from insiders. What is the basis for that claim? None in their papers, none in their presentation.

Now GeoInvesting, we were secretly unwinding a subsidiary to get money for liquidity. They completely misrepresented the actual transaction. So as they always say, you are entitled to your opinion but you are not entitled to your own facts. The fact was we sold a very small portion of the acquisition, of the company, and they had us divesting. They misrepresented the facts to lend credibility to the opinion. They say: They did that because they were undisclosed related-party transactions draining the company.

Undisclosed? They were disclosed. That's what we alleged in the complaint. They don't say otherwise with documentary or other evidence. They were disclosed, and they were de minimis. We allege that in the complaint. They don't dispute that in any of their papers.

As to ClaritySpring, in July --

THE COURT: I have to say we are going to have to close it. I have other --

MR. BOWE: This is my last piece, your Honor.

THE COURT: Okay.

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MR. BOWE: Thank you, your Honor.

July 2017 from ClaritySpring, they basically said: Eros' subsidiary was off balance sheet and outside the corporate structure in that we were using it do shady deals.

The problem is it is not even our company. That's a complete misrepresentation. They don't explain where they got a basis for that representation and what it is based on because there isn't any. It is completely false.

So, your Honor, it is important that we actually focus on the fire and not the smoke here. Their papers were impressive, the presentation was impressive; but all you need to know from your perspective at 80,000 feet, the challenge you always have is to try and cut to the chase of all this paper; so the bulk of our allegations about defamation, the fire, have never been addressed in this case. It's not in the papers. It's not there. It is a default on those issues, and that's because these arguments apply maybe to some of our weaker arguments, maybe to some arguments they made up, but not to our core allegations.

Thank you for the time, your Honor.

THE COURT: Thank you.

Very brief rebuttal, but I really mean brief. I am already 15 minutes late on my next case. I gave you two time periods for this, so please be very brief. There will be one rebuttal, that's it.

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MR. SORKIN: First, the case law is clear. Context matters. Imagine what plaintiffs are asking you to do here, that each tweet is actionable.

THE COURT: Look, I got that, all right? Anything else?

MR. SORKIN: The only other thing I would say, your Honor, is that everything you heard from Mr. Bowe about why even the tweets were false, they are not. All the explanation you heard, it is not pled in the complaint. There is no allegation --

THE COURT: One of the things that was not raised is that -- and I think it is a point that did bother me -- you say "it is an opinion," but when you say "the evidence shows" -- and I am not saying you personally said that, but the defense, all right, "the evidence shows" or "the facts show," that's not opinion. That gets to someone trying to persuade somebody that what you are saying is truth. That's where the problem is.

Now, I understand what plaintiff is saying and I understand what you are saying. And like everything else, probably there is a little bit of both. But that doesn't mean that you completely undo some of the issues that were raised in the plaintiff's complaint. There is a muddle there.

MR. SORKIN: I understand, your Honor. I would,

actually, like to address that if I can very briefly.

THE COURT: Very briefly.

MR. SORKIN: When the quotes that are included in the complaint say "the evidence shows" or "there is irrefutable evidence that," I urge your Honor to actually look at the reports. Exhibit 3 in Ms. Spitz' declaration where they plucked out irrefutable evidence. It is in the context of a bullet point list of all the opinions in an entire report, and the full quote is: "We now believe there is irrefutable evidence that the company's theatrical revenues are substantially below what it had reported." The bullets leading up to that are the basis. Everything that followings that is the basis. The words matter. You can't pluck "irrefutable evidence" out of the context of the report.

The other thing, your Honor, is that that quote is from a report that is not actionable. It is from 2015. It is outside the limitation period. So if you look closely at what is actually said in the reports --

THE COURT: You know, that's interesting. If there is a report that is false, all right, that is beyond the one-year statute of limitations but then is repeated during the one year that is within the year, the fact that it was false to start with doesn't make it not false in the beginning.

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MR. SORKIN: Your Honor, I believe --

THE COURT: Or even that it is repeated that way.

MR. SORKIN: Your Honor, so --

THE COURT: I really have to close it off.

MR. DE LEEUW: Can I have 20 seconds?

MR. SORKIN: There is case law that addresses that point, your Honor, and I would ask for additional time to address that. The case law is clear. There is only a re-publication if there is information added to a new report.

MR. DE LEEUW: Your Honor, my 20 seconds is simply that if you look at those pages in our opening brief between Pages 12 to 23 you will see basis for these things. And I also agree and urge you to look at the reports themselves. I know you already have, Exhibits 1 through 5 of my affirmation.

MR. RYAN: In my five seconds, the same, your Honor. Please look at the documents themselves. Particularly Exhibit 6 which was mischaracterized. It does not say anything about Eros TV being a subsidiary of Eros. That's a misreading, an unfortunate one, and an important piece of their argument. So I direct the Court to Exhibit 6 of the Ryan affidavit.

THE COURT: Thank you. That does conclude the argument on Motions 4, 5 and 6. And I am sorry I don't have

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more time, but I really am relying on your papers. The papers are comprehensive throughout. It was a good argument in both places, so I will do my best, but don't expect a decision tomorrow morning.

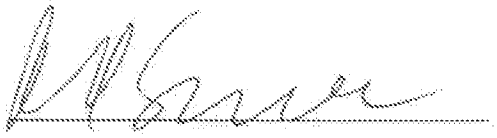
You have to get me a copy of the argument, okay? You have to order the argument. It is not going to be done instantly because it is a long argument. But as soon as I get that, then I will mark it submitted, and at that point we will begin working on it.

MR. BOWE: Thank you, your Honor.

MR. SORKIN: Thank you, your Honor.

* * *

The foregoing is hereby certified to be a true and accurate transcript of the proceedings.



Rachel C. Simone

Senior Court Reporter

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