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Via ECF

Hon. Vernon S. Broderick
United States District Judge
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

RE: *Roy Den Hollander v. Katherine M. Bolger, Matthew L. Schafer, Jane Doe(s)*
C.A. No.: 1:16-cv-09800

Dear Judge Broderick:

We represent Defendants Katherine M. Bolger and Matthew L. Schafer ("Defendants") in the above-referenced action. Per Rule 4.A. of Your Honor's Individual Rules and Practices, Defendants submit this pre-motion letter addressing the amended complaint filed by Plaintiff Roy Den Hollander ("Plaintiff") on March 24, 2017.

On January 31, 2017, Defendants filed a pre-motion letter requesting a conference and leave to move to dismiss Plaintiff's complaint. *See* Dkt. 14. In the letter, which Defendants incorporate by reference herein, *see* Dkts. 14, 15, Defendants explained, among other things, that (1) Plaintiff was collaterally estopped from asserting his baseless and harassing claims because they already have been rejected by Justice Jennifer Schecter of New York State Supreme Court; (2) Plaintiff's central allegation that Defendants "hacked" his account was disproven by the very documents attached to Plaintiff's complaint, and (3) at any rate, each of his claims failed on their elements (*e.g.*, Plaintiff's "Injurious Falsehood" claim was based on privileged statements made during litigation and his "Violation of Attorney Work Product Privilege" claim is not recognized by the New York Court of Appeals). After receiving Plaintiff's letter response, *see* Dkt. 16, this Court set a pre-motion conference for April 7, 2017.

A month and a half later, and two weeks before the pre-motion conference, Plaintiff filed an amended complaint, Dkt. 18 ("Amended Complaint" or "FAC"), and submitted a letter addressed to Your Honor purporting to summarize it, Dkt. 19. The Amended Complaint adds

two new claims, one for copyright infringement and one for replevin, and further requests that Defendants be referred to the First Department's Disciplinary Committee for allegedly violating the Rules of Professional Conduct or to the New York County District Attorney for prosecution. These claims are meritless and irresponsible and Defendants respectfully request permission to move to dismiss them.

First, Plaintiff claims that Defendants infringed the copyright in his documents by filing them in the state court litigation. This is baseless. Indeed, the Second Circuit rejected a nearly identical claim brought by Plaintiff against two other attorneys after they too attached Plaintiff's writings to motion papers. In doing so the Second Circuit expressly held that such filings constitute fair use of the copyrighted material. *Hollander v. Steinberg*, 419 F. App'x. 44, 46-48 (2nd Cir. 2011) ("independent review of the record . . . makes clear . . . *that no rational trier of fact could have found for Den Hollander*" (emphasis added)); *see also Hollander v. Swindells-Donovan*, No. 08-CV-4045 (FB)(LB), 2010 WL 844588, at *5 (E.D.N.Y. Mar. 11, 2010) ("*Hollander filed suit based on facts which clearly could not support copyright infringement*" (emphasis added)).[1] Plaintiff's claims here are plainly frivolous and should be dismissed. Moreover, because the Copyright Act shifts fees to the prevailing party in cases where the claim is "objectively unreasonable," Plaintiff should be required to pay Defendants fees for being forced to move to dismiss a knowingly frivolous claim. *Mahan v. Roc Nation, LLC*, 634 F. App'x 329, 330-31 (2d Cir. 2016).

Second, Plaintiff's replevin claim should be dismissed because it is duplicative of, and preempted by, the Copyright Act. The only basis for the claim is Plaintiff's allegation that Defendants "stole . . . data" from his computer and then reproduced it. FAC ¶¶ 123-27. This is exactly the kind of rights protected by the Copyright Act. 17 U.S.C. § 301(a); *Miller v. Holtzbrinck Publishers, L.L.C.*, 377 F. App'x 72, 73 (2d Cir. 2010) (preemption occurs where "'the claim seeks to vindicate legal or equitable rights that are equivalent to one of the bundle of exclusive rights already protected by copyright law'" (citation omitted)); *Christen v. Iparadigms, LLC*, No. 1:10CV620, 2010 WL 3063137, at *3 (E.D. Va. Aug. 4, 2010) ("the replevin claim complains of Defendant's use and retention of a copy of her manuscripts and thus seeks to vindicate a right that is the exclusive province of the Copyright Act"). As such, the replevin claim should be dismissed.

Third, Plaintiff's baseless request that Defendants be referred to the authorities for prosecution (or to the Disciplinary Committee for sanctions) – a request Plaintiff already made and lost in the State Court – underscores the degree to which Plaintiff's harassing and improper allegations are collaterally estopped. *Hollander v. Shepherd*, No. 152656/2014 (Sup. Ct. N.Y. Cnty. Jan. 23, 2015), Dkt. 100 at 1 (requesting that Bolger "be referred to the proper authorities" for allegedly hacking Plaintiff's "cloud"). Plaintiff made the same request to Justice Schecter and she concluded that "[t]here is no basis for granting" it. *See Hollander*, No. 152656/2014 (Sup. Ct. N.Y. Cnty Jan. 11, 2016), Dkt. 120. Plaintiff, therefore, cannot raise it again before this Court.

Far from remedying the deficiencies of the initial complaint, the Amended Complaint merely serves to highlight the abusive nature of Plaintiff's claims here. Because each and every

[1] The claim is also frivolous because Plaintiff fails to plead that he registered his "attorney work product" with the Copyright Office, a prerequisite for filing a copyright action. 17 U.S.C. § 411(a).

claim is meritless, Defendants respectfully request leave to file a motion to dismiss them. We thank the Court for its time and attention to this matter.

Respectfully submitted,

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cc: *via ECF*

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