

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK**

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ROY DEN HOLLANDER,

Plaintiff,

Index No: 000854 cv 2016

-against-

DOMINICK OLIVO, and
JAIRO FRANCO,

Defendants.

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**AFFIDAVIT IN SUPPORT OF CROSS MOTION UNDER CPLR 3025(b) FOR LEAVE
TO AMEND THE FIRST AMENDED COMPLAINT**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ROY DEN HOLLANDER, being duly sworn, deposes and says:

1. I am the plaintiff in the above captioned action and an attorney admitted to practice in the State of New York.
2. Plaintiff filed the Summons and Original Complaint on January 20, 2016.
3. On February 18, 2016, via U.S. post, Defendants served an Answer to the Original Complaint. On March 3, 2016, via U.S. post, the First Amended Complaint was served on Defendants' Attorneys and on March 4, 2016, the First Amended Complaint was filed in this Court,—all within the twenty day time limit under CPLR 3025(a).
4. On April 26, 2016, Defendants served a Motion for Summary Judgment on the Original Complaint and for Dismissal under CPLR 3211(a)(1) of the First Amended Complaint.

5. In their motion, Defendants submitted a number of affidavits, including one by Ceasar Bagui that admits his material involvement in Defendants' effort to use mail and wire fraud to have Plaintiff fired. (Defendants Motion for Summary Judgment and Dismissal, Ex. G).

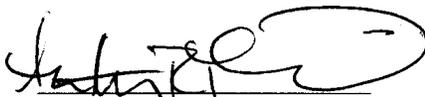
6. Bagui was the employee at Select Office Suites who sent the false and misleading Incident Report to an unknown person at Epiq, the employer of Plaintiff's firm, and engaged in at least one telephone conversation with an unknown person at Epiq in which he related the false and misleading accusations in the Incident Report that was created by Defendants Olivo and Franco.

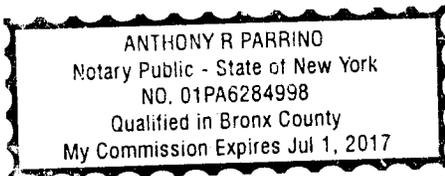
7. Bagui's affidavit also modifies the chain of events and the roles played by various individuals as alleged in the First Amended Complaint along with raising a host of discovery questions that remain unanswered.

8. In light of these recent developments, Plaintiff requests leave to file the Second Amended Complaint. (Ex. A).

Sworn to before me on the
8th day of May 2016


Roy Den Hollander


Notary Public



**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK**

-----X

ROY DEN HOLLANDER,

Plaintiff,

-against-

CEASAR BAGUI,
DOMINICK OLIVO, and
JAIRO FRANCO,

Defendants.

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Index No: 000854 cv 2016

**SECOND AMENDED
COMPLAINT**

Jury Demanded

Plaintiff, by and through his attorney, Roy Den Hollander, complaining of the defendants herein alleges as follows:

INTRODUCTION

1. Plaintiff does business as a sole-practitioner attorney and business consultant firm under the name of Roy Den Hollander. (Ex. A, Doing Business as Certificate). Plaintiff previously worked as an investigative news producer for two local TV news stations, which is public knowledge, and maintains contacts with various news reporters.

2. Defendants Dominick Olivo (“Olivo”) and Jairo Franco (“Franco”) created a false and misleading report (“Incident Report”) disparaging the activities of Plaintiff’s firm with the intent of having it communicated via email, U.S. post, or by way of telephone conversations with the company, Epiq Systems, Inc. (“Epiq”), that employed Plaintiff’s firm so as to trick that company into discharging Plaintiff’s firm.

3. Olivo, with full knowledge and consent of Franco, enlisted Defendant Ceasar Bagui (“Bagui”) in the scheme to have Plaintiff’s firm discharged whereby Bagui telephoned Epiq to

relate the false and misleading contents of the Incident Report he had discussed with Olivo.

Bagui also received a copy of the Incident Report from Olivo and emailed it to Epiq.

4. Bagui, Olivo and Franco, carried out their actions with the intent and result of Plaintiff's firm being discharged so as to protect from exposure the racketeering activities of an association of various individuals and entities in which all three are members and participate in the affairs of a Racketeer Influenced Corrupt Organization or RICO.

5. Epiq had engaged the services of Plaintiff's firm for a legal document review project. (Ex. B, Employment Contract). Plaintiff's firm had worked on two other document review projects for Epiq in 2015 and had a continuing business relationship with Epiq.

6. Plaintiff's firm and Epiq have settled and a stipulation of settlement has been filed with the Court.

FACTS

7. On January 5, 2016, Plaintiff started work with about 40 other attorneys on a litigation project reviewing documents for relevance and privilege. The project was scheduled to last four weeks with Plaintiff working 40 hours a week at \$31 per hour, but the project abruptly ended for Plaintiff when he was fired as a result of the predicate criminal acts of Defendants in which they created, arranged to be communicated, or communicated the false and misleading Incident Report to Epiq in order to trick it into firing Plaintiff's firm.

8. Plaintiff and the other attorneys worked in a make-shift, large office located next to the water tower on the roof of 1115 Broadway in Manhattan. The space was rented by Epiq from Select Office Suites.

9. According to Defendants, Suites Over Soho, LLC does business as Select Office Suites, LLC, which is located at 1115 Broadway, 12th Floor, New York, NY 10010 and 116 West 23rd

St., 5th Floor, New York, NY 10011. (Defendants Motion for Summary Judgment and Dismissal Affidavits; www.selectofficesuites.com).

10. Suites Over Soho, LLC d/b/a Select Office Suites is a realty firm that, among other activities, rents out offices to companies and individuals at 1115 Broadway on floors 10, 11, 12 and the one on the roof where Plaintiff was working. Despite Defendants swearing that Select Office Suites is an LLC, the N.Y. Secretary of State's Division of Corporations has no listing for it, and it is not licensed by the Secretary as a Real Estate Broker and Salesperson. Suites Over Soho is listed as an LLC but not licensed as a Real Estate Broker and Salesperson in New York.

11. To access the roof-top office, the attorneys took an elevator to the 12th floor, walked through the reception area to a door that required a keypad code. Floors 10 to 12 all require a keypad code to enter the rented office-space area. The attorneys would proceed down a hallway passed numerous offices to the end of the floor where they entered the fire escape stairwell. Up a flight of narrow (two abreast), steep stairs to a door that opened onto a large wooden deck on the roof, then 10 yards down a hallway made of wood and opened to the elements to a door that entered into the roof-top office space where the attorneys, eventually numbering 60, worked with computers reviewing documents.

12. The roof-top office had no other access or exit unless one considered the windows in the office that looked out on the roof and water tower. On information and belief, the New York City Fire Department cited this area as violating Fire Regulations.

13. As is typical in sanctuary cities, such as the City of New York, there is a large market for illegal alien labor because illegal aliens are paid less than Americans. Since labor is the greatest single expense for most brick and mortar companies, reducing its cost, even at the violation of the law, significantly increases a company's profits.

14. This illegal alien market contributes to the stagnation and reduction in wages among the working and middle class U.S. citizens and permanent residents in the metropolitan area of New York.

15. On information and belief, a group of individuals and other entities associate together for the common purpose of serving this market for illegal alien labor in the New York metropolitan area by acting as an illegal alien recruiter and employment placement agency that provides illegal alien labor, for a fee, to various companies and persons, falsely attesting to work authorization of large numbers of illegal immigrants, hiring illegal aliens themselves to reduce costs and undercut competitors, or concealing from detection the illegal aliens they place or hire.

16. This group is referred to as the Illegal Alien Enterprise or just Enterprise and is an ongoing criminal organization.

17. Among the activities engaged in by the Enterprise are those that (1) violate 8 USC § 1324(a)(1)(A)(iii), which makes it a federal crime to “conceal[], harbor[] or shield from detection, or attempt[] to conceal, harbor or shield from detection” aliens that have illegally entered the United States; (2) violate § 1324(a)(1)(A)(v)(II), which makes it a federal crime to aid or abet the commission of the preceding acts; and (3) violate 8 USC § 1324(a)(3)(A), which makes it a federal crime to “knowingly hire[] for employment at least 10 individuals with actual knowledge that the individuals are [undocumented] aliens” during a twelve-month period.

18. These violations are racketeering activities under 18 USC 1961(1)(F).

19. On information and belief, the three Defendants are members of the Enterprise as are Suites Over Soho LLC; Select Office Suites; Noble Associates of Newark, N.J.; A.L.A. Realty Co. of Newark, N.J.; various immigrant groups that assist illegal aliens in obtaining work; and the overall controlling boss of the Enterprise is Angela Olivo. She is not a defendant in this

action but is an admitted “member” of Suites Over Soho, LLC d/b/a Select Office Suites, and, according to Linked In, the Chief Operating Officer of Select Office Suites.

20. On information and belief, the members of the Enterprise intentionally engage in a wide range of continuing racketeering activity under 18 USC 1961(1)(F) by (1) assisting illegal aliens in gaining employment, (2) aiding them to hide their illegal identity, (3) shielding them from observation to prevent discovery, and (4) hiring them.

21. On information and belief, the Enterprise members, including the three defendants, violate RICO 18 USC 1962(c) by using racketeering activities and some of the proceeds and savings from racketeering activities to aide in conducting and participating in the Enterprise. Defendants Ceasar Bagui and Dominick Olivo participate in the management of the Enterprise by directing some of its affairs while Defendant Franco participates in the Enterprise under the directions of Olivo by knowingly implementing Olivo’s Enterprise decisions.

22. Defendant Dominick Olivo is a New York licensed “Associate Real Estate Broker,” number 10301207058. He’s the person who, among other activities, markets and rents out office space for Select Office Suites—also a member of the Enterprise but not a defendant in this action.

23. As a result of the incident described below, two members of the Enterprise, Defendants Olivo and Franco, created a false and misleading report with the intent of using it to have Plaintiff fired.

24. Defendant Olivo went to Defendant Bagui to arrange for the communication of the report to Epiq, which Bagui did via telephone and email. Bagui was motivated by the same objective of Olivo and Franco: to so damage the business relations between Plaintiff and Epiq that Epiq

would discharge Plaintiff's firm thereby removing him from the premises where some of the Enterprise's racketeering activities were taking place.

The Incident

25. The occurrence which led to the false and misleading Incident Report, subsequent firing of Plaintiff, and interference with his firm's ongoing business relations with Epiq happened on January 7th at around 9:30 AM.

26. The roof-top where Plaintiff was doing document review with around 40 other attorneys had one tiny restroom for each sex. The men's restroom had a capacity of one.

27. Select Office Suites, however, maintains larger restrooms on floors 10 through 12 for all those who work in its rented office spaces. Its maintenance staff keeps the restrooms and other parts of the infra structure on the floors operating. Select Office Suites also maintains snack bars on floors 11 and 12.

28. Plaintiff went looking for an available restroom. The roof-top restroom and the one on floor 12 were full, so Plaintiff exited the keypad door on floor 12 and went down to floor 11.

29. Plaintiff, however, was unsure whether the keypad code given him for the 12th floor would work on the 11th floor, so he decided to test the code on the keypad door for future reference. The door was held open by one of Select Office Suites maintenance persons—a 41 year-old muscular man clearly from south of the border with a Spanish accent. This man is Defendant Jairo Franco.

30. Plaintiff asked Defendant Franco to release the door so that Plaintiff could test his keypad code to see whether it would open the door. Defendant Franco just stood there grinning maliciously and refusing to let the door close. Plaintiff made the request a couple of times but Defendant Franco just kept grinning like Calvera from the Magnificent Seven.

31. Defendant Franco then, in a Spanish accent, asserted that Plaintiff's code, which Franco did not know, would open the door, so it was not necessary for Plaintiff to test it.

32. Once again Plaintiff asked Defendant Franco to let the door close to which he barked "out of my way" and barreled his way through the door opening grazing Plaintiff's left arm, a minor battery but still a battery, to which Plaintiff replied, "Watch it illegal!" (Defendants Motion for Summary Judgment and Dismissal Ex. J, silent CD recording of the incident).

33. When Plaintiff called Franco an "illegal" it became evident to this member of the Enterprise and subsequently to Defendant Olivo, whom Franco informed of the statement, that Plaintiff was eminently aware of some of the Enterprise's racketeering activities taking place at Select Office Suites, such as concealing and harboring illegal aliens in violation of 8 USC § 1324(a)(1)(A)(iii).

34. Franco stopped and turned to face Plaintiff in an intimidating stance and effort to bully the 68 year-old Plaintiff not only physically but by resorting to that refuge of PCers, criminals, illegals, and the nefarious by accusing Plaintiff of "discrimination."

35. Defendant Franco proceeded to walk into the reception area and Plaintiff also proceeded into the reception, since that was where the stairs were that led back to the 12th floor.

36. Defendant Franco in his affidavit claimed he was upset because Plaintiff "threatened to report me to immigration." (Defendants Motion for Summary Judgment and Dismissal Ex. E, ¶ 8). If Franco is a U.S. citizen as he swears, then there is no basis for him becoming upset. Further, the CD footage does not show the stocky 41 year-old Franco upset or fearful of the 68 year-old Plaintiff.

37. In their Motion for Summary Judgment and Dismissal, Defendants try to use the falsity of Defendant Franco being upset or fearful as their reason for providing Epiq with the false and

misleading Incident Report rather than the real reason they created and provided the report which was to have Plaintiff removed from the premises by tricking Epiq into firing him.

38. The following day, January 8, 2016, around 4:30 PM, Plaintiff was told to contact an individual at Epiq, which he did. The individual, Patrick Gallagher, informed Plaintiff that an Incident Report had been lodged against him. The report made accusations against Plaintiff and Epiq wanted to hear Plaintiff's side of the story, which Plaintiff provided over the telephone.

39. After the discussion with Mr. Gallagher about the occurrence, Plaintiff immediately interviewed Select Office Suites Office Manager Maloly Mendez who informed Plaintiff that Defendant Olivo had talked with Defendant Franco who wrote up the Incident Report, which was sent to Epiq on January 7 or January 8, 2016.

40. Defendant Bagui received the report from Olivo, the two discussed it and Bagui telephoned Epiq about the report and emailed it to Epiq in furtherance of the Enterprise's objective to have Plaintiff fired, and, therefore, removed from the premises so as to prevent exposure of the Enterprise's racketeering activities.

41. Neither Defendant Olivo nor Bagui ever bothered to talk to Plaintiff about the incident before communicating the fraudulent report to Plaintiff's employer, which seemed strange at the time, but now is obvious. Plaintiff's calling Defendant Franco an "illegal" alerted Defendants Olivo and Bagui that Plaintiff at least knew about their involvement with illegal aliens, and that it would be prudent to get Plaintiff off the premises so as to protect any further exposure of Enterprise activities. The obvious way to do that was to make a false complaint against Plaintiff that was calculated to have him fired.

42. Plaintiff was fired on Monday, January 11, 2016—after Defendant Bagui communicated the Incident Report to Epiq. But for that communication of false and misleading information, Plaintiff would not have been discharged.

CAUSES OF ACTION AGAINST DEFENDANTS

A. Civil RICO

43. RICO “protects the public from those who would unlawfully use an enterprise (whether legitimate or illegitimate) as a vehicle through which ‘unlawful ... activity is committed.’” *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001). “[T]hose who have been wronged by organized crime should at least be given access to a legal remedy....” *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 487 (1985).

Defendants violated Civil RICO 18 USC 1962(b) & (c), which harmed Plaintiff’s business.

44. In order to maintain their interest in the Enterprise (RICO 18 USC 1962(b)) and as part of conducting and participating in the affairs of the Enterprise (RICO 18 USC 1962(c)), Defendants engaged in the racketeering activities listed in RICO 18 USC 1961(1)(B) of mail fraud under 18 USC § 1341 and wire fraud under 18 USC § 1343 so as to protect the Enterprise from Plaintiff exposing its racketeering activities of operating as an illegal alien employment agency involved in concealing, harboring and hiring illegal aliens.

45. Defendants Olivo and Franco created the intentionally false and intentionally disparaging Incident Report and Defendant Olivo arranged for Defendant Bagui to knowingly further their scheme by communicating it to Plaintiff’s employer.

46. Defendant Bagui communicated the Incident Report via the Internet and its contents by way of at least one telephone conversation with management at Plaintiff’s employer as well as other unknown persons and entities.

47. Plaintiff's employer relied on the Incident Report and the telephone conversation to fire Plaintiff. Defendants falsely claim that Plaintiff was fired because he refused to meet with Epiq to give his side of the story. Plaintiff was never asked to meet with Epiq but requested to provide his side of the story over the telephone, which he did to Patrick Gallagher. Further, it was clearly foreseeable that providing an employer in this day and age with such an Incident Report would result in dismissal.

48. Communication of the Incident Report and its contents to Plaintiff's employer also destroyed Plaintiff's business relations with his employer for whom he previously successfully worked on two other document review products, tarnished his firm's reputation, and continues to economically harm his business.

Defendants violated RICO 18 USC 1962(d), which harmed Plaintiff's business.

49. Defendants Olivo and Franco violated RICO 18 USC 1962(d) by conspiring to create the false Incident Report and all three Defendants conspired to have it communicated to Plaintiff's employer, which it was via the Internet and by way of at least one telephone conversation between Defendant Bagui and management at Plaintiff's employer and other unknown persons and entities.

50. Defendants conspired to do such with the intent of maintaining their interest in the Enterprise under RICO 18 USC 1962(b), and as part of conducting and participating in the affairs of the Enterprise under RICO 18 USC 1962(c).

51. As a result of Defendants carrying out an agreement to engage in the predicate acts of mail fraud and wire fraud, Plaintiff was fired from his job, his firm's business relation with that employer for whom he previously successfully worked on two other document review products was destroyed, and his firm lost and continues to lose economic opportunities

Damages from RICO violations

52. Defendants' predicate acts in communicating the false Incident Report to Plaintiff's employer resulted in the loss to his business of \$2,728 that would have been earned on the document review project for four weeks instead of one. If the project lasted longer, than the damages are more; if it was shorter than the damages are less.

53. Defendants' predicate acts in communicating the false Incident Report to Plaintiff's employer resulted in destroying the ongoing business relationship between Plaintiff's firm and its employer.

54. In 2015, Plaintiff's firm earned around \$2,600 from Epiq but as a result of the false Incident Report, Epiq will no longer engage Plaintiff's firm.

55. Damages have resulted from lost business opportunities because other employers that hire attorneys for document review projects will not engage Plaintiff's firm on learning about this proceeding or in the situation where Defendants provide the false Incident Report or any other information concerning it to other employers.

56. Plaintiff also requests expenses incurred in bringing this action, including attorney fees, and profits lost while investigating Defendants' racketeering activities and preparing this action in an effort to rectify the fraud perpetrated by Defendants.

57. Plaintiff also requests triple damages under Civil RICO and that Defendants be held jointly and severally liable.

B. Tortious Interference with Contractual Relations under New York Law

58. A defendant tortiously interferes with a plaintiff's contract with a third party when the defendant, knowing of plaintiff's contract, intentionally induces a breach of the contract between

the plaintiff and the third-party without reasonable justification or excuse. *WFB Telecommunications, Inc. v. NYNEX Corp.*, 188 A.D.2d 257 (1st Dept. 1992).

59. Defendants admit that they knew Plaintiff was employed by Epiq. (Defendants Motion for Summary Judgment and Dismissal Affidavits).

60. Defendant Franco had firsthand knowledge that Plaintiff was under contract because as a member of Select Office Suites' maintenance team, he had free access to Select Office Suites' floors, and, on one known occasion following the incident, he passed Plaintiff entering the roof-top office where the employees of Plaintiff's employer were working.

61. Defendants acted with the intention to have Plaintiff fired by using the fraudulent means of a false Incident Report and telephonic communications to trick Plaintiff's employer into firing him so as to remove Plaintiff from the premises where some of the Enterprise's racketeering activities were being conducted.

62. Assuming the document review project lasted for the estimated four weeks, then Plaintiff's business suffered a loss of \$2,728. If the project lasted longer, than the damages are more; if it was shorter than the damages are less for tortious interference with Plaintiff's contract.

63. Punitive damages against Defendants Olivo and Bagui are requested because they acted with reckless disregard in either creating or communicating the false Incident Report to Plaintiff's employer without first talking to Plaintiff about the incident—they failed to obtain both sides of the story.

C. Tortious interference with prospective contractual relations under New York Law

64. Tortious interference with prospective contractual relations developed to deal with improper efforts to drive away prospective customers from a plaintiff's business. *New York Law*

of Torts § 3:19. It protects a businessman's efforts to enter into contracts with potential clients and the damages alleged are to the business.

65. A general duty exists for persons not to interfere in the business affairs of others. N.Y. Jur.2d, *Interference* § 1. Tortious interference is a violation of that duty by intentionally interfering with another's business affairs causing injury without just cause or excuse. "[T]he principal underlying the rule is that he who has a reasonable expectancy of contract has a property right which may not be invaded maliciously or unjustifiably." *Hardy v. Erickson*, 36 N.Y.S.2d 823, 826 (N.Y. Sup.Ct. 1942).

66. Interferences with the prospect of obtaining employment are reachable by this cause of action. Restatement (Second) Torts § 766B, comment c.

67. Plaintiff's business is the providing of legal services, such as reviewing documents in litigation cases for relevance and privilege.

68. Defendants' creation and communication of the false Incident Report not only interfered with the contract between Plaintiff's firm and Epiq, but resulted in that employer no longer considering Plaintiff's firm for further document review assignments.

WHEREFORE, Plaintiff requests against Defendants (1) triple damages in the amount of \$15,000 from their RICO violations, (2) damages from tortious interference with his employment contract depending on how long the project actually lasted, and (3) damages from tortious interference with prospective contractual relations in the amount of \$5,000, and such other relief that the Court deems just.

Dated: New York, New York
May 8, 2016

By: /S/ Roy Den Hollander
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