

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2017L003169

JOHNSON & BELL, LTD., an Illinois
professional corporation,
Plaintiff,

v.

EDELSON P.C., an Illinois professional
corporation, and JAY EDELSON, an
individual,
Defendants.

7767536

Case No. 2017 L 003169

The Honorable Jerry A. Esrig

Calendar S

DEFENDANTS' RESPONSE TO RULE 191(b) AFFIDAVIT OF BRIAN LANGS

J&B's defamation case now hinges on a *single* allegation of supposed fact, that *Wall Street Journal* reporter Sara Randazzo "told Mr. Marconi [of J&B] that [defendant] Jay Edelson had personally sent her a copy [of the *Shore* Complaint]." See First Amended Complaint ("FAC"), ¶59(c). In March of 2018, however, Defendants produced the emails between Mr. Edelson and Ms. Randazzo, proving Mr. Marconi's allegation false – Mr. Edelson, as alleged in J&B's dismissed original complaint, simply made reference to the federal docket. The "Randazzo emails" thus disproved J&B's threshold element of publication, *i.e.*, "facts showing that ... the defendant made an *unprivileged publication of that [allegedly defamatory] statement to a third party.*" *Moore v. PETA*, 402 Ill. App. 3d 62, 68 (1st Dist. 2010) (emph. added); *Green v. Rogers*, 234 Ill. 2d 478, 491, 495 (2009) (same).

Receiving no response to their requests that J&B voluntarily dismiss its claim, Defendants filed their Motion for Summary Judgment (the "Motion") on October 7, 2019. Copies of the Motion and supporting Memorandum of Law ("Memo") are attached hereto as **Ex. A**. Rather than withdraw J&B's false allegation, Mr. Langs – not Mr. Marconi – submitted an affidavit under IL Supreme Court Rule ("ISCR") 191(b) on J&B's behalf. Counsel's affidavit is procedurally and

substantively noncompliant in every respect for the reasons discussed below. The bottom line, however, is that the affidavit altogether fails to dispute the text of the Randazzo emails. Accordingly, the Court should strike the Rule 191(b) Affidavit of Brian Langs (the “Langs Affidavit”) as yet another ploy to delay and re-litigate this case over transparently false allegations.¹

J&B’S CLAIM DEPENDS ENTIRELY ON MR. MARCONI’S HEARSAY

J&B resorted to hearsay after Judge Mitchell dismissed its original allegations that, “[u]pon *information and belief*, Edelson provided a copy of the [*Shore* Complaint] to several reporters and news outlets which then further disseminated the false allegations.” Compl., ¶35 (emph. supplied). See Order dated 1/2/18 at 2-3 (dismissing Count I for failure to plead defamation *per se* with “precision and particularity” or allege basis for “information and belief,” citing *Green*, 234 Ill. 2d at 492, 495). See also *Grundhoefer v. Sorin*, 2014 IL App (1st) 131276, ¶23 (plaintiff failed to plead “what was said to the *Chicago Sun-Times*, when the statement was made, specifically to whom at the *Chicago Sun-Times* the statement was made, or how it was made”). The FAC therefore added the false allegation about a purported 12/28/16 telephone conversation wherein Ms. Randazzo allegedly told Mr. Marconi that “Jay Edelson had personally sent her a copy [of the *Shore* Complaint].” FAC, ¶59(c). The ploy worked to survive dismissal but was ultimately doomed to fail.

On August 29, 2018, after months of extensive motion practice, this Court limited the scope of Count I of the FAC with two key findings: (1) the *only* potentially defamatory statement in the

¹ For example, on July 19, 2019, Mr. Langs admitted in open court that J&B “can’t in good faith prove the loss of existing clients,” a fact detrimental to J&B’s claim for common law commercial disparagement. Memo, Ex. C (Transcript of Proceedings) at 47. Not only has J&B failed to request leave to amend the FAC to correct its admittedly false allegations, but it sought leave—albeit unsuccessfully—to file a proposed *Second* Amended Complaint on 6/18/19 that repeated them. See J&B’s Motion to Reconsider this Court’s August 3, 2018 Order, Or Alternatively, For Leave to File a Second Amended Complaint, Ex. F at ¶117.

Shore Complaint was that J&B “has deficient security and fails to protect Confidential Client Information” (the “Statement”), and (2) the *only* unprivileged publication of that Statement was J&B’s hearsay that “Ms. Randazzo also told Mr. Marconi that Jay Edelson had personally sent her a copy [of the *Shore* Complaint].” Order dated 8/29/11 at 8-9, 11 (*citing* FAC, ¶59(c)).

Accordingly, J&B has no case for defamation *as a matter of law* if Mr. Edelson did not attach a copy of the *Shore* Complaint to his communications with Ms. Randazzo. *Compare Kane v. Motorola*, 335 Ill. App. 3d 214, 224 (1st Dist. 2002) (“Summary judgment is proper when the party opposing the motion cannot establish an essential element of his or her cause of action.”). Defendants’ Motion makes precisely this argument and, almost two years after filing its FAC, J&B still has no response based in fact.

ISCR 191(b) MANDATES SPECIFIC COMPLIANCE

“When a party cannot sufficiently respond to a motion for summary judgment because it believes additional discovery is necessary, it may file a Rule 191(b) affidavit.” *Abramson v. Marderosian*, 2018 IL App (1st) 180081, ¶34. ISCR 191(b), however, defends against “fishing expeditions” by strictly mandating specific averments of fact. *E.g., Giannoble v. P&M Heating and Air Conditioning*, 233 Ill. App. 3d 1051, 1064 (1st Dist. 1992) (“failure to comply with Rule 191(b) defeats an objection on appeal that insufficient time for discovery was allowed.”). The affidavit, therefore, must satisfy the specific requirements spelled out in the rule, including:

If the affidavit of either party contains a statement that any of the material facts which ought to appear in the affidavit are *known only to persons whose affidavits affiant is unable to procure by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured and what affiant believes they would testify to if sworn, with his reasons for his belief*, the court may make any order that may be just, either granting or refusing the motion, or granting a continuance to permit affidavits to be obtained, or for submitting interrogatories to or taking the depositions of any of the persons so named, or for producing documents in the possession of those persons or furnishing sworn copies thereof. *See* ISCR 191(b) (emph. supplied).

Satisfaction of each requirement is mandatory. See, e.g., *Giannoble*, Ill. App. 3d at 1064-65 (“Plaintiff’s Rule 191(b) affidavit was fatally defective” where it “does not contain the necessary disclosures required under the rule”); *Olive Portfolio Alpha v. 116 West Hubbard Street*, 2017 IL App (1st) 160357, ¶29 (affiant’s “general belief of what testimony would be disclosed during discovery” is insufficient); *Rush v. Simon & Mazian*, 159 Ill. App. 3d 1081, 1085 (1st Dist. 1987) (affirmed summary judgment where plaintiff’s affidavit did not “state what the affiant believed the deponents would testify to if sworn, with reasons for his belief”); *Abramson*, 2018 IL App (1st) 180081 at ¶37 (affidavit “deficient because it did not specify the information that plaintiff expected to discover from the requested depositions”). See also *Bright v. Dicke*, 166 Ill. 2d 204, 209 (1995) (“The rules of court we have promulgated are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written.”).

COUNSEL’S AFFIDAVIT IS EGREGIOUSLY DEFICIENT

Mr. Langs does not pretend to satisfy the Supreme Court’s requirements in compliance with the foregoing authorities. His affidavit 1) is not signed by a party; 2) does not identify any efforts to obtain a statement from Ms. Randazzo (or any other “witness”) over that past two years; 3) does not describe how J&B undertook to obtain counter affidavits or why efforts proved unavailing; 4) does not articulate the specific testimony J&B expects to obtain; 5) obviously omits the relevance of said nonexistent testimony; 6) and omits any facts demonstrating that J&B’s unknown testimonial expectations are justifiable, let alone plausible, given the actual content of the Randazzo emails.

To start, an ISCR 191(b) affidavit *must* come from the party, as opposed to counsel. *Olive Portfolio Alpha*, 2017 IL App (1st) at ¶28 (“an affidavit from an attorney does not comply with

Rule 191(b), which requires affidavits from the party.”); *Crichton v. Golden Rule Ins. Co.*, 358 Ill. App. 3d 1137, 1151 (5th Dist. 2005) (“Rule 191(b) affidavit was deficient” where “exclusively signed by the plaintiff’s attorney”). The Langs Affidavit was submitted solely by litigation counsel. It was signed by “[o]ne of [J&B’s] attorneys” (Langs Aff. at p. 5) whereas all previous sworn testimony by J&B, as well as the FAC, is signed by J&B’s Vice-President, Mr. Marconi. *See* Signature pages to J&B’s Discovery Responses, **Group Ex. B** hereto. That J&B knows this dodge violates the Rule is evidenced by its Proposed Agreed Modified Briefing Schedule to file its ISCR 191(b) affidavit, which specifically represented that an extension was needed to accommodate Mr. Marconi’s schedule. *See Ex. C.*²

Even if litigation counsel could transmute into a client party, the Langs Affidavit omits virtually all of the substantive content required by ISCR 191(b). For example, it belatedly argues that Defendants “refused to adequately respond” to a handful of immaterial Interrogatories propounded *more than two years ago*, on Oct. 27, 2017. Langs Aff., ¶¶ 2-4. Yet Mr. Langs does not attach the “inadequate” responses (including Defendants’ objections) or certify his client’s compliance with ISCR 201(k). Moreover, neither of J&B’s two motions to compel written discovery in this case, filed on 5/15/19 and 10/7/19, respectively, complained of the Interrogatories referenced in Counsel’s affidavit.³ *Compare Rush*, 159 Ill. App. 3d at 1084-85 (motion to compel filed 3 years after plaintiff’s injury “came too late”).

² Mr. Marconi would have known that Mr. Lang’s affidavit is fatally deficient because he personally made these same objections to defeat an ISCR 191(b) motion for discovery as counsel of record in *Abramson, supra* at ¶37, including that the affidavit “did not specify the information that plaintiff expected to discover from the requested depositions.”

³ Instead, J&B’s 10/7/19 Motion to Compel questioned whether EPC sufficiently logged privileged information responsive to Interrogatories 12-16. After an ISCR 201(k) conference, EPC supplemented to clarify that it did not assert privilege for Interrogatories 12-16, and that all responsive information was previously provided. *See Group Ex. D* (Defendants’ supplemental written discovery responses).

Regardless, “[m]erely alleging that certain discovery matter may shed light on the scope of [an] issue is a general assertion, not a fact. Rule 191(b) requires facts, not conclusions.” *Giannoble*, 233 Ill. App. 3d at 1065. Nowhere does Mr. Langs explain how additional discovery on the underlying *Shore* allegations can possibly contradict the text of the Randazzo email providing the *Shore* case caption, let alone prove that it attached a copy of the *Shore* Complaint.

Mr. Langs similarly contends that J&B requires responses to *unidentified* third-party subpoenas “it has issued *or will be issuing in this matter*” before it can respond to the Motion. Langs Aff., ¶¶5-6 (emph. supplied). Even though J&B received the Randazzo email back in March 2018, Defendants are unaware of any subpoena J&B served, *e.g.*, upon the *Wall Street Journal* or the Zumado public relations firm. Obviously, J&B spent the past year studiously avoiding showing the email to Randazzo to keep its hearsay on “life support.” This belatedly conjured need is untimely, overly vague and transparently false. Yet even had J&B belatedly issued subpoenas, its counsel failed to comply with ISCR 191(b) by identifying the relevant facts they will elicit. *Wynne v. Loyola Univ. of Chicago*, 318 Ill. App. 3d 443, 456 (1st Dist. 2000) (third-party discovery denied where plaintiff alleged “general sense that [witnesses] had information relevant to her claim”). Instead, the Langs Affidavit is entirely speculative.

Counsel does allege four potential witnesses (in addition to “unknown persons”) whose affidavits J&B supposedly cannot procure and whose depositions he believes “[J&B] must take ... in order to adequately respond” to the Motion: Mr. Edelson and Ms. Randazzo, plus the two persons copied on the email, Lauren Gard (a PR person), and Chris Dore (a law partner). Langs Aff., ¶¶8, 10-13. Again, however, Mr. Langs utterly fails to justify these depositions with information required by ISCR 191(b). *Compare* Langs Aff., ¶12 (“Mr. Dore, Ms. Gard, and the unknowns *likely have* information about Defendants’ communications with Ms. Randazzo and the

WSJ which is *likely to lead* to the discovery of admissible *evidence*”), with *Abramson, supra* at ¶37 (affidavit deficient where it “did not indicate *what testimony would be given* in the requested depositions, but it vaguely suggested that defendant and his law partner could offer ‘additional *information relating to the scope* of his representation of’ plaintiff”); *Rush*, 159 Ill. App. 3d at 1085 (“A statement that the witness knew of the condition is a *conclusion, not a fact.*”); *Wynne*, 318 Ill. App. 3d at 456 (affiant’s “general sense” that requested deponents “had *information relevant* to her claim” and that she would be “prejudiced in her ability to respond to defendant’s motions for summary judgment without their depositions” insufficient for purposes of ISCR 191(b)) (emphasis added). Fatally, Mr. Langs *does not aver* that Ms. Randazzo will contradict the email’s contents (nor could she), even though she is the only non-hearsay witness to the alleged publication of the Statement.

The Langs Affidavit also fails to establish that J&B cannot procure the testimony due to witness “hostility or otherwise.” ISCR 191(b). Nearly two years after J&B filed the FAC, Mr. Langs cannot identify correspondence, let alone a single deposition notice or subpoena. Instead, he assumes that the irrelevant “Mr. Dore and Ms. Gard are Defendants’ agents. Ms. Randazzo [sic] a business relationship with Defendants and Ms. Gard. Therefore all four are adverse to J&B in this matter.” Langs Aff., ¶10. Especially after J&B predicated its FAC on Ms. Randazzo’s telephone call with Mr. Marconi, counsel’s implausible speculation that a reporter now is adverse is inadmissible. *Olive Portfolio Alpha, supra* at ¶29 (affidavit insufficient when “based on speculation and supported by pages printed from the internet to support [affiant’s] conclusion”).

Finally, it follows that, without reciting the specific testimony he expects to elicit, Mr. Langs inherently fails to satisfy ISCR 191(b)’s remaining mandatory disclosures. For example, “[t]he affidavit must state specifically what the affiant believes the prospective witness would

testify to if sworn *and the reasons for the affiant's belief.*" *Giannoble*, 233 Ill. App. 3d at 1065 (emphasis added). Because his hypothesis is implausible, Mr. Langs cannot explain *why* he believes these witnesses possess "necessary" testimony, let alone provide facts supporting such a belief. He likewise "failed to state in [his] affidavit that the material facts were known only to persons whose affidavits the affiant was unable to procure." *Olive Portfolio Alpha, supra* at ¶29; *Crichton*, 358 Ill. App. 3d at 1151.

CONCLUSION

The conclusory ISRC 191(b) Affidavit of Brian Langs reveals that J&B has no excuse for refusing to withdraw the Randazzo hearsay (along with J&B's false special damages allegations). This hearsay provided the crucial pretext for J&B's two-year "fishing trip" while Counsel's defective affidavit impermissibly disguises J&B's umpteenth motion to relitigate this Court's dismissal and discovery orders.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiff's request for discovery pursuant to ISCR 191(b), strike the Affidavit of Brian Langs, schedule proceedings with respect to Defendants' Motion for Summary Judgment to commence without further delay and grant such other relief as the Court deems just and appropriate.

Dated: December 17, 2019

Respectfully submitted,

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DEFENDANTS EDELSON P.C. and JAY EDELSON

By: /s/ Neil M. Rosenbaum
 One of their attorneys

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

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6863472

Case No. 2017 L 003169

The Honorable Jerry A. Esrig

Calendar S

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
ON COUNTS I AND VI OF PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants Edelson P.C. ("EPC") and Jay Edelson, pursuant to 735 ILCS 5/2-1005(b), move for summary judgment on Plaintiff Johnson & Bell, Ltd. ("J&B's") surviving counts for defamation *per se* (Count I) and commercial disparagement (Count VI) in the First Amended Complaint ("FAC"), and in support thereof, submit the accompanying memorandum of law and Declaration of Jay Edelson dated March 30, 2018, attached thereto.

1. This Court has dismissed all of J&B's defamation/disparagement claims except for alleged publication of the statement that J&B "has deficient security and fails to protect Confidential Client Information"—as contained in the class action complaint filed in *Shore v. Johnson & Bell, Ltd.*, N.D. Ill. Case No. 16-CV-4363 (the "*Shore* Complaint")—based solely on J&B's hearsay that *Wall Street Journal* reporter Sara Randazzo "told Mr. Marconi that Jay Edelson had personally sent her a copy" of the *Shore* Complaint. (See Orders dated Aug. 3, 2018, and Aug. 29, 2018 at 8-9, 11) (*citing* FAC, ¶59(c)).

2. The Court should grant summary judgment where there is no genuine issue as to any material fact that remains. 735 ILCS 5/2-1005(c); *Wynne v. Loyola Univ. of Chicago*, 318 Ill. App. 3d 443 (1st Dist. 2009). Based on J&B's defective allegations and admissions in the FAC

and the public records pertaining to *Shore*, summary judgment is warranted on the independent grounds advanced below, and as more thoroughly discussed in Defendants' supporting Memorandum of Law. Defendants do not waive, however, any alternative grounds or defenses, including, without limitation, that the statement can be innocently construed, conveys a non-verifiable opinion protected by the First Amendment, was made without fault, and does not give rise to any cognizable cause of action.

3. There was no publication for Count I because Defendants did not send a "copy" of the *Shore* Complaint to the *Wall Street Journal*. Instead, Defendants responded to an unsolicited request from Ms. Randazzo by emailing only the *case name* and *number*. See Email, dated 12/28/16 (Exhibit 2 to Declaration of Jay Edelson):

Nice speaking to you, Sara. Here is the case info, per your request:

Case Name: Shore et al v. Johnson & Bell, Ltd

Case Number: 1:16-cv-04363

Northern District of Illinois

The email objectively refutes J&B's inadmissible hearsay allegation that Defendants "sent" a "copy" of the *Shore* Complaint to the reporter. *Moulouki v. Epee*, 2016 WL 910496, *3 (N.D. Ill. Mar. 10, 2016) (caption does not "republish" underlying pleading); *Suhadolnik v. City of Springfield*, 184 Ill. App. 3d 155, 193 (4th Dist. 1989) (sanctioned "attorneys filed on plaintiff's behalf without first ascertaining the precise statements which formed the defamation.").

4. Further, even assuming that Ms. Randazzo did access the *Shore* docket and read the *Shore* Complaint, the *Wall Street Journal* did not republish the allegation that "[J&B] has deficient security and fails to protect Confidential Client Information," breaking the chain of causation and damages. Compare FAC, Ex. G, with *Moon v. Liu*, 2015 IL App (1st) 143606, ¶16, and with J&B's Discovery Responses compelled by the Court's May 29 [sic], 2019 Order at (b)

(designated under Protective Order) (answering “None” when directed to identify potential, current and/or former clients that expressed concern regarding *Shore* or data security in general).

5. Defendants are absolutely privileged to publish “case info” pertaining to putative class “claims” and “information contained in a public record.” IL Rule of Professional Conduct, R. 3.6(b)(1) & (2). *See also Scarpelli v. McDermott Will & Emery LLP*, 2018 IL App (1st) 170874 (applying absolute litigation privilege to putative torts committed by counsel pertaining to litigation on behalf of clients).

6. Defendants alternatively were privileged to publish a fair report based, *inter alia*, on Judge Darrah’s finding in *Shore* that J&B admitted to the “JBoss Vulnerability.” *See* 2016 WL 7197421, at *1 (N.D. Ill. Dec. 8, 2016) (“counsel for [J&B] represented that the ‘JBoss Vulnerability’ had been fixed”); 2017 WL 714123, at *1 (N.D. Ill. Feb. 22, 2017) (same). *See also* Order dated 8/29/18 at 10-11 (“The court has examined the application of the qualified privilege and believes that the proceedings that occurred before Judge Shadur and later before Judge Darrah suggest that statements made by defendants after those proceedings may fall within the fair report privilege.”).

7. In other words, the complained of email was literally true. Even had Defendants “sent” a “copy” of the *Shore* Complaint to Ms. Randazzo, the “gist” of the complained of allegation was substantially true in the context of the *Shore* litigation.

8. J&B is estopped from alleging a defamatory republication after Defendants and the U.S. District Court in *Shore* relied on J&B’s own ratification of the “gist” of the *Shore* Complaint in finding: “*counsel for [J&B] represented that the ‘JBoss Vulnerability’ had been fixed.*”

9. Defendants’ email was also expressive, not commercial speech, fully protected by the First Amendment. *Compare* FAC, ¶28 (there are “members of the public who were interested

in following these [data security] lawsuits and news about them”). To the extent that J&B would revive dismissed theories, taking FAC ¶59 as true, J&B admitted the alleged publication was not “about a competitor’s goods or services” and not “made to influence or tend to influence the public not to buy those goods or services.” *Pekin Ins. v. Phelan*, 343 Ill. App. 3d 1216, 1220 (3d Dist. 2003). Compare FAC, ¶¶1, 4-5 (unlike J&B, Defendants specialize in representing class and mass action plaintiffs and government regulators), and FAC, ¶¶24-26, 37, 40 (publication allegedly was for purpose of “extorting” *Shore* settlement).

CONCLUSION

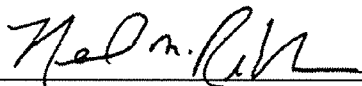
WHEREFORE, Defendants respectfully request that this Court grant summary judgment on the surviving Counts I and VI of the FAC, award Defendants’ attorneys’ fees incurred in connection with this motion on the basis of the false pleadings in the FAC, and grant such other relief as the Court deems just and appropriate.

Dated: October 7, 2019

Respectfully submitted,

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By: 
One of their attorneys

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**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON
COUNTS I AND VI OF PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants Edelson P.C. ("EPC") and Jay Edelson, pursuant to 735 ILCS 5/2-1005(b), move for summary judgment on Plaintiff Johnson & Bell, Ltd. ("J&B's") surviving counts for defamation *per se* (Count I) and commercial disparagement (Count VI) in the First Amended Complaint ("FAC") because, *inter alia*, J&B's allegations of publication to the *Wall Street Journal*, causation and damages are false and the alleged publication would be privileged and substantially true regardless.

SUMMARY JUDGMENT STANDARD IN FIRST AMENDMENT CASES

Defendants are entitled to summary judgment because there is "no genuine issue as to any material fact" for the Court to decide. 735 ILCS 5/2-1005(c); *Wynne v. Loyola Univ. of Chicago*, 318 Ill. App. 3d 443 (1st Dist. 2009). In Illinois, "motions for summary judgment and like motions are exceedingly important tools for disposing of non-meritorious defamation suits." *Gist v. Macon Cty. Sheriff's Dept*, 284 Ill. App. 3d 367, 380 (4th Dist. 1996) (defamation claims "inhibit debate and criticism"). "When the party moving for summary judgment supplies facts in support of that motion that, if uncontradicted, would entitle that party to summary judgment as a matter of law,

the opposing party cannot rely on the pleadings alone to raise issues of material fact.” *Larson v. Decatur Mem’l Hosp.*, 236 Ill. App. 3d 796, 801 (4th Dist. 1992); *see also U.S. Bank, Nat’l Ass’n v. Avdic*, 2014 IL App (1st) 121759, ¶39 (Rule 191(b)) affidavit requesting deposition “can only be viewed at best as a fishing expedition and at worst as a delaying tactic”).

The First Amendment requires pleading defamation with “a heightened level of precision and particularity” (*Green v. Rogers*, 234 Ill. 2d 478, 495 (2009)), which likewise applies to all derivative causes of action. *Imperial Apparel v. Cosmo’s Designer Direct*, 227 Ill. 2d 381, 402 (2008) (determination that particular language is nonactionable “not only is fatal to plaintiffs’ defamation claims, it precludes them from obtaining recovery under any of the other common law and statutory claims they asserted in their complaint”). Judgment on Count I is therefore determinative for Count VI. *Kapotas v. BGA*, 2015 IL App (1st) 140534, ¶75.

PROCEEDINGS AND UNDISPUTED MATERIAL FACTS

1. This Court ruled that the *only* potentially defamatory statement contained in the Class Action Complaint filed in *Shore v. Johnson & Bell, Ltd.*, N.D. Ill. Case No. 16-CV-4363 (the “*Shore* Complaint”) is that J&B “has deficient security and fails to protect Confidential Client Information.” Order dated 8/29/18 at 8-9, 11 (*citing* FAC, ¶59(c)).

2. The Court also ruled that the only unprivileged publication of that statement alleged in the FAC, albeit grounded on hearsay, is that “Ms. Randazzo also told Mr. Marconi that Jay Edelson had personally sent her a copy” of the *Shore* Complaint at *The Wall Street Journal* after the *Shore* case was unsealed. *Id.* (*citing* FAC, ¶59(c)).

3. Defendants’ email to Ms. Randazzo, sent in response to Ms. Randazzo’s unsolicited request in connection with a news report, instead included only the *Shore case name* and *number*.

See **Exhibit A**, Declaration of Jay Edelson, at ¶¶7-8, Ex. 2. It did not include any attachments whatsoever, let alone a copy of the *Shore* Complaint. *Id.*

4. Moreover, *the Wall Street Journal* did not even republish the allegation from the *Shore* Complaint that “[J&B] has deficient security and fails to protect Confidential Client Information” to its readership. See FAC, Ex. G. (*Cyber Hack Exposes Law Firms’ Weak Spots* 12/29/16). Instead, Ms. Randazzo was covering law firm privacy issues more generally after a recent indictment had charged Chinese traders with “hacking” into the systems of major New York law firms to steal M&A information. *Id.*

5. Despite seeking over \$1 million of damages due to lost business, the FAC does not name a single client that J&B allegedly lost due to Defendants’ alleged publication.

6. J&B answered “None” when compelled to identify in written discovery any potential, current and/or former clients that expressed concern regarding *Shore* or even data security in general. See **Exhibit B**, J&B’s Discovery Responses pursuant to the Court’s May 29 [sic], 2019 Order at (b). See also Order dated May 22, 2019 (compelling J&B to answer).

7. On July 19, 2019, J&B admitted in open court that it “can’t in good faith prove the loss of existing clients.” **Exhibit C**, Transcript of Proceedings, at 47.

8. J&B has failed to request leave to amend the FAC to correct its admittedly false allegations. See, e.g., FAC, ¶75 (alleging “J&B lost new and existing clients, as well as additional business from new and existing clients.”).

9. In proceedings before Judge Shadur in *Shore* on April 21, 2016, the plaintiff agreed to withdraw his motion for a TRO for the following reasons recorded in open court (**Exhibit D**, Transcript of Proceedings, at 6):

Mr. Edelson: Just to give you actually more relief, we are prepared to take the TRO off calendar, to withdraw without prejudice. We have been talking to the

defendant. They have already made two of the three changes to their security system. The third one we are confident we are going to be able to work out together, thus obviating the need for the TRO.

10. J&B was represented by counsel in the 4/21/16 proceedings but did not object to or disagree with Mr. Edelson's representations to Judge Shadur regarding J&B's remedial actions.

11. Judge Darrah twice found in official federal proceedings that J&B admitted to the "JBoss Vulnerability." See 2016 WL 7197421, at *1 (N.D. Ill. Dec. 8, 2016) ("counsel for [J&B] represented that the 'JBoss Vulnerability' had been fixed"); 2017 WL 714123, at *1 (N.D. Ill. Feb. 22, 2017) (same).

12. While in federal court, J&B never sought to clarify or modify the judicial record in *Shore* or even contend that Judge Darrah's findings were factually incorrect, let alone defamatory.

13. J&B's own tech advisor even verified the judicial record, acknowledging the "JBoss vulnerability." **Exhibit E**, Memo ISO Defendants' ICPA Motion, Ex. B (Mar. 2016 emails from J&B's IT consultants "recommend[ing]" server replacement to address the "JBoss vulnerability.").

14. On Jan. 2, 2018, Judge Mitchell dismissed J&B's original "defamation" count in this action that alleged Defendants published the *Shore* Complaint (1) by posting the caption on Twitter, and (2) "[u]pon information and belief," by providing copies to unidentified "reporters and news outlets." Order dated 1/2/18 at 2-3, citing *Green*, 234 Ill. 2d at 494-95.

15. Given leave to re-plead "Count I," J&B's FAC multiplied into 6 duplicative counts for defamation *per se* and *per quod*, common law commercial disparagement, tortious interference with unidentified business expectancies, and violations of the Illinois Deceptive Trade Practices Act ("DTPA") and Consumer Fraud and Deceptive Business Practices Act ("CFA").

16. This Court dismissed the FAC's defamation *per quod*, DTPA, tortious interference and CFA counts and all alleged publications necessary for pleading defamation and/or commercial

disparagement but one. *See* Orders dated Aug. 3 and Aug. 29, 2018, respectively. The Court denied J&B’s three motions for reconsideration on May 22 and July 19, 2019, respectively, and, on September 20, 2019, determined that Counts I and VI of the FAC are functionally duplicative.

17. Federal courts contradict J&B’s conclusory accusation that Defendants’ law firm is a criminal “extortion” racket (FAC, ¶¶1-3, 16, 19, 24, 37-38, 43, 47-48, 82-85, 88). *E.g.*, *Barnes v. Aryzta*, No. 17-cv-7358 (N.D. Ill. Jan. 22, 2019) (endorsing expert opinion that Defendants “should ‘be counted among the elite of the profession generally and [privacy litigation] specifically’ because of their expertise in the area.”); *Wakefield v. Visalus*, No. 3:15-cv-01857 (D. Ore. Apr. 12, 2019) (Defendants secured largest-ever privacy jury verdict, equating to just over \$925 million in damages to the Class); *In re Netflix Privacy Litig.*, No. 11-cv-379 (N.D. Cal. Aug. 12, 2011) (appointing Edelson sole lead counsel due in part to the firm’s “significant and particularly specialized expertise in electronic privacy litigation and class actions.”); *In re Facebook Privacy Litig.*, No. C 10-2389 (N.D. Cal. Dec. 10, 2010) (recognizing Defendants as “pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue”).¹ Defendants have also been named by Law360 as the “Privacy Practice Group of the Year,” a “Titan of the Plaintiffs Bar,” a “Plaintiffs Class Action powerhouse” and a “Privacy Litigation Heavyweight. They have been named one of only six “Illinois Powerhouse” firms each year since 2017, and the only plaintiff’s firm to receive the honor.

¹ As a result of their unique expertise, Defendants have been selected to represent government regulators in numerous privacy related matters. *See, e.g.*, *City of Chicago, et al. v. Uber Technologies, Inc.*, No. 17 CH 15594 (representing the City of Chicago and the People of the State of Illinois, ex rel. Kimberly M. Foxx, State’s Attorney of Cook County, Illinois, asserting claims against ride-share giant Uber related to multiple alleged data breaches); *People of the State of Illinois, ex rel. Kim Foxx v. Facebook, Inc., et al.*, No. 18 CH 3868 (first-filed case in the country by a regulator arising out of revelations that Facebook and Cambridge Analytica unlawfully exposed the personal data of millions of Americans); *City of Chicago v. Marriott Int’l, Inc., et al.*, No. 8:19-cv-0654 (D. Md.) (claims against Marriott and its related entities regarding 2018 data breach).

ARGUMENT

To allege defamation *per se*, J&B must “present facts showing that the defendant made a defamatory statement about the plaintiff, the defendant made an *unprivileged* publication of that statement to a third party, and the publication caused damages.” *Moore v. PETA*, 402 Ill. App. 3d 62, 68 (1st Dist. 2010) (affirming dismissal without leave to amend). Although there are multiple independent grounds for summary judgment, the Court may dispose of this case solely on J&B’s hearsay allegation of publication by reviewing the actual email J&B references in FAC ¶59(c).

That email, on its face, proves Defendants did not “send” a copy of the *Shore* Complaint to *The Wall Street Journal* but instead sent only the unsealed case’s name and number. *See* Ex. A at Ex. 2. Judge Mitchell dismissed J&B’s original defamation claim because “posting” (or e-mailing) the case caption is not republication of the *Shore* Complaint itself. Order dated 1/2/18 at 3. *See Doctor’s Data, Inc. v. Barrett*, 170 F. Supp. 3d 1087, 1135 (N.D. Ill. 2016) (citation to a separate allegedly defamatory publication non-actionable in itself). Nearly two years later, this Court should grant summary judgment for the same reason.

FAC Exhibit G also reveals that *The Wall Street Journal* did not republish the potentially defamatory allegation from the *Shore* Complaint identified by this Court, thus obviating proximate cause and damages. Yet even if J&B could revive its previously dismissed allegations (despite many failed attempts to date), Defendants still would be entitled to summary judgment on grounds of substantial truth based, *inter alia*, on Judge Darrah’s written opinions and J&B’s admissions in *Shore*. *Harrison v. Chicago Sun-Times*, 341 Ill. App. 3d 555 (1st Dist. 2003) (privileged and substantially true characterization of federal litigation). As this Court foresaw, J&B’s trip down the proverbial “rabbit hole” is futile, regardless of how it packages its claims.²

² Although this Court declined to dismiss the allegation concerning Ms. Randazzo before problems with the FAC became obvious, Defendants do not waive their contentions, *e.g.*, that the innocent construction rule applies under

I. J&B Cannot Establish An “Unprivileged Publication” Because Defendants Did Not Publish The *Shore* Complaint To The *Wall Street Journal*.

Defamation plaintiffs must allege and prove an “unprivileged publication.” *Green*, 234 Ill. 2d at 491, 494. Alleging “statements that plaintiff may or may not have a reason to believe defendant made” is insufficient. *Id.* at 493. Citing *Green*, Judge Mitchell dismissed J&B’s original Count I for this very defect. Nevertheless, J&B’s FAC responded by alleging that, sometime prior to Dec. 29, 2016, *Wall Street Journal* reporter Sara Randazzo told Mr. Marconi that Mr. Edelson “had personally sent her a copy of the *Shore* Complaint.” FAC, ¶59(c) (emphasis added). Compare *Grundhoefer v. Sorin*, 2014 Ill App (1st) 131276, ¶ 22 (rule exists “to protect against baseless complaints and to protect defendants from harm to their reputations based on charges of serious wrongdoing.”); *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶14 (“Even if they had been contained in an affidavit, [respondent’s] speculative allegations could not survive the motion for summary judgment.”).

On March 30, 2018, Defendants produced the *actual emails* referenced in ¶59(c) of the FAC, and the email at issue incontrovertibly refutes J&B’s hearsay (**Ex. A** at Ex. 2):

Nice speaking to you, Sara. Here is the case info, per your request:
Case Name: Shore et al v. Johnson & Bell, Ltd
Case Number: 1:16-cv-04363
Northern District of Illinois

Thus, J&B has known for *at least* 18 months that Mr. Marconi’s hearsay basis for alleging publication to *The Wall Street Journal* in FAC ¶59(c) is false.

The email, just like the previously dismissed Twitter posts, suffices to defeat J&B’s conclusory hearsay. *Mucci v. Stobbs*, 281 Ill. App. 3d 22, 29 (5th Dist. 1996) (unambiguous

Kapotas, 2015 IL App (1st) 140534, because the FAC admits Defendants volunteered that the vulnerability harmed no client and was “fixed,” and that “commercial disparagement is not a viable cause of action.” *Becker v. Zellner*, 292 Ill. App. 3d 116, 129 (2d Dist. 1997).

documents required summary judgment). The “case info” left it to the newspaper to decide whether to obtain the *Shore* Complaint from public records. *Grundhoefer, supra*, ¶ 22 (“the wrongful death suit filed in the circuit court of Cook county was available to the public and a reporter for the Chicago Sun–Times could have found the case simply by searching court records.”).

As Judge Mitchell explained, Defendants were entitled to publish the “case info” any way because it is “true” and “unsealed” and “[t]hat is the case name.”³ A caption does not “republish” the complained of paragraph in the underlying pleading. *Moulouki v. Epee*, 2016 WL 910496 (N.D. Ill. Mar. 10, 2016) (plaintiff “argue[s] that the falsity lies in the allegations of the Complaint; however, none of the factual allegations in the Complaint are included in this publication.”).

The email also disproves any implicit assumption that it “hyperlinked” to the PACER docket. Regardless, hyperlinks do not “duplicate the content of a prior publication” either. *E.g.*, *Doctor’s Data*, 170 F. Supp. 3d at 1137; *Small Business Bodyguard v. House of Moxie*, 230 F. Supp. 3d 290, 308 (S.D.N.Y. 2017) (no defamation in Facebook post because “counterclaims themselves are absolutely privileged” and “[t]here is no conceivable way that a comment directing people to publicly filed claims that are themselves privileged would be likely to make a reader (other than [Plaintiff]) angry or upset, let alone strongly or passionately so.”).

Quite simply, J&B ignored *Grundhoefer’s* warning, citing *Green*, that “[t]he supreme court did not favor the use of ‘upon information and belief’ language in the pleadings.” 2014 Ill App (1st) 131276 at ¶22 (internal quotation marks omitted). Making matters worse, “the plaintiff’s

³ Judge Mitchell recognized “case info” is not defamatory. *See, e.g.*, **Exhibit F**, hereto, at 7 (12/20/17 Transcript of Proceedings from hearing granting Defendants’ motion to reconsider):

MR. ROSENBAUM: How does the statement, Class action is unsealed, Shore versus Johnson & Bell, Case No. 16 CV 4363 –

THE COURT: How is that defamatory?

MR. ROSENBAUM: -- inform the reader anything?

THE COURT: Right. But it’s true. It was unsealed. That is the case name.

attorneys filed on plaintiff's behalf without first ascertaining the precise statements which formed the defamation." *Suhadolnik v. City of Springfield*, 184 Ill. App. 3d 155, 193 (4th Dist. 1989). Now, with the email in hand, there is no reason to follow J&B's hearsay down the "rabbit hole" any longer. *Geinko v. Padda*, 2002 WL 276236, at *6 (N.D. Ill. Feb. 27, 2002) ("the hearsay allegations that Plaintiffs offer in their Amended Complaint are improper, and therefore superfluous, and they will not be considered.").

Summary judgment follows because Defendants' "case info" did not "publish" the *Shore* Complaint's contents to *The Wall Street Journal*. Accordingly, the FAC alleged only "statements that plaintiff may or may not have a reason to believe defendant made." *Green*, 234 Ill. 2d at 493; *Coghlan v. Beck*, 2013 IL App (1st) 120891 (inadequate specificity of publication); *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 169 (1st Dist. 2003) (plaintiff did not establish who made publication, to whom and under what circumstances). The email confirms that those statements were never, in fact, made and that J&B's claim should never have been asserted in the first place. *Suhadolnik*, 184 Ill. App. 3d at 193 (affirmed sanctions for inadequate pre-filing investigation of alleged publication).

II. *The Wall Street Journal* Did Not Publish the *Shore* Complaint and J&B Has Already Admitted That It Suffered No Damages.

Even if Defendants had "sent" the *Shore* Complaint to Ms. Randazzo—which they indisputably did not—the *Wall Street Journal* never quoted the only *Shore* allegation that this Court reserved. The missing quotation broke J&B's alleged causal chain and obviated any resulting harm. *Moon v. Liu*, 2015 IL App (1st) 143606, ¶16 ("no causal connection between the statement and plaintiff's purported special damages."); *Kapotas*, 2015 IL App (1st) 140534, ¶73 (plaintiff resigned before alleged defamatory statement was published); *Weis v. State Farm Mut.*

Auto. Ins., 333 Ill. App. 3d 402, 409 (2d Dist. 2002) (CFA “plaintiff failed to allege specific facts linking the misrepresentations to her injury”).

On this record, J&B’s “extraordinarily high” allegation of over \$1 million in damages signifies a retaliatory SLAPP rather than a legitimate claim. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2d Dist. 2010). J&B’s rote allegations did not identify any injury from the newspaper report. *See, e.g.*, FAC, ¶¶75-76, 78 (alleging “lost new and existing clients, as well as additional business from new existing clients” and “other potential clients also declined to retain J&B”). This defect prompted the Court to dismiss, and J&B to abandon, the defamation *per quod* count (FAC Count II) more than one year ago. Order dated 8/29/18 at 11.

The issue finally became moot when, over J&B’s objections, this Court compelled J&B to identify the clients it allegedly lost – or even who had merely read the *Wall Street Journal* report. Cornered, J&B was forced to admit: “None.” **Ex. B** (under Protective Order). That answer should have ended this charade but J&B persisted in its misrepresentation. Not until July 19, 2019, could the Court extract J&B’s admission on the record that it “can’t in good faith prove the loss of existing clients.” **Ex. C**. The FAC’s Exhibit G proves the truth of J&B’s admission because J&B could not have been injured by a nonexistent publication.

III. Defendants Are Not J&B’s Competitor And Did Not Publish Commercial Speech.

“Commercial disparagement” does not offer a short cut through defamation law. *Kapotas*, 2015 IL App (1st) 140534, ¶75 (claims “based on the allegedly inherently defamatory statements must fall as well.”). If the tort exists, it would be more difficult to prove than defamation because the alleged disparagement “must be about a competitor’s goods or services” and “must have been made to influence or tend to influence the public not to buy those goods or services.” *Pekin Ins. v. Phelan*, 343 Ill. App. 3d 1216, 1220 (3d Dist. 2003).

J&B admits, however, that it does not compete with Defendants for clients. *See* FAC, ¶¶1, 4-5 (unlike J&B, Defendants specialize in representing class and mass action plaintiffs, and government regulators). The admission pleads J&B out of court. *Del Monte Fresh Produce v. Transp.*, 2006 WL 2331144, *5 (N.D. Ill. Aug. 8, 2006) (disparagement must relate to a competitor). Moreover, J&B alleges (however incorrectly) that Defendants' email was intended as part of a broader scheme to influence ("extort") J&B into settling *Shore*, not to deter J&B's clients from using its services. FAC, ¶¶24-26, 37, 40. *Cf. Kapotas*, 2015 IL App (1st) 140534, ¶81 (affirmed dismissal for failure to show alleged statement was made with intent to interfere with surgeon's profession).

Elsewhere, the FAC inadvertently admits Defendants were not engaged in commercial speech at all. J&B admits that *The Wall Street Journal* reporting involved expressive speech protected by the First Amendment because there are "members of the public who were interested in following these [data security] lawsuits and news about them" (FAC, ¶28). FAC Exhibit G confirms *The Wall Street Journal* report is not an advertisement but exemplifies expressive speech. *Coghlan v. Beck*, 2013 IL App (1st) 120891 (exhibits control over conclusory and conflicting pleadings and plaintiff's judicial admissions are binding); *cf. Genelco v. Bowers*, 181 Ill. App. 3d 1, 8 (1st Dist. 1989) (qualified privilege protects speech "in furtherance of a public or legal interest"). *See also Fedders Corp. v. Elite Classics*, 268 F. Supp. 2d 1051, 1064 (S.D. Ill. 2003) ("press release merely provides notice that this suit has been filed and summarizes the allegations contained in the complaint. The mere notification of a pending lawsuit does not violate the UDTPA."); *Cond. Ocular Enhancement v. Bonaventura*, 458 F. Supp. 2d 704, 710 (N.D. Ill. 2006) (letters to defendant's customers informing them "that a patent infringement suit is pending against [defendant]" is not actionable under DTPA).

Finally, and again, J&B admits that it suffered no “commercial” injury. *Suhadolnik*, 184 Ill. App. 3d at 184 (commercial disparagement count dismissed because plaintiff “must allege some identified or identifiable third party with whom plaintiff had an expectancy of doing business.”); *Unique Concepts v. Manuel*, 669 F. Supp. 185 (N.D. Ill.1987) (statements disparaging commercial goods require proof of special damages); *Navistar Int’l Transp. v. Freightliner Corp.*, 1999 WL 569577, at *4 (N.D. Ill. July 30, 1999).

IV. Defendants’ Communications Were Absolutely Or, At The Very Least, Qualifiedly Privileged.

The alleged *Wall Street Journal* email was an absolutely privileged communication relating to ongoing litigation in the interest of the public and the putative plaintiff class. *Scarpelli v. McDermott Will & Emery LLP*, 2018 IL App (1st) 170874 (attorney’s allegedly tortious conduct on plaintiff’s behalf pertaining to litigation was absolutely privileged). In applying the privilege, Illinois courts “resolve all doubts in favor of pertinency.” *O’Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶25 (absolute litigation privilege upheld for attorney communications based on admissions in complaint).⁴ Pertinence is established by the IL Supreme Court’s Rules of Prof. Conduct (“IRPC”), which explicitly authorize extrajudicial statements concerning “claims” and “information contained in a public record.” Rule 3.6(b)(1) & (2).

Here, the FAC is again self-defeating in alleging Defendants acted to force a settlement in *Shore* (FAC, ¶24), thereby *admitting* that Defendants’ email to Ms. Randazzo was on behalf of the *Shore* class and therefore “clearly pertained to the role of the attorney and firm as attorneys in the underlying action.” *Scarpelli, supra* at ¶26 (counsel’s activity was absolutely privileged). Both

⁴ The privilege is more expansive for putative class actions. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101 (1981) (recognizing interests of potential class members and class representatives in obtaining information about putative class actions); *Byer Clinic and Chiropractic v. Kapraun*, 2016 IL App (1st) 143733, ¶22 (“The class representative, along with class counsel, has a fiduciary duty to the putative class members”).

Scarpelli and *O'Callaghan* explain that J&B had to obtain redress, if any, before Judge Darrah in *Shore* because “otherwise, litigation would never end.” *O'Callaghan*, at ¶¶ 28, 31.

Alternatively, the analytically distinct fair report privilege authorized publication of the “gist” of Judge Darrah’s findings, *i.e.*: “counsel for [J&B] represented that the ‘JBoss Vulnerability’ had been fixed.” *Shore, supra* *1. Compare *Harrison*, 341 Ill. App. 3d at 569 (characterization of judicial finding); *Wilkow v. Forbes*, 241 F.3d 552, 555 (7th Cir. 2001) (Illinois does not require “all facts [about ruling] that put the subject in the best light.”). The privilege is a question of law, irrespective of motive. *Kapotas*, 2015 IL App (1st) 140534 at ¶¶60-67. To the extent that any scintilla of J&B’s theories survive, this Court previously recognized that Defendants fairly summarized the “gist” of the federal court proceedings. Order dated 8/29/18 at 10-11 (“The court has examined the application of the qualified privilege and believes that the proceedings that occurred before Judge Shadur and later before Judge Darrah suggest that statements made by defendants after those proceedings may fall within the fair report privilege.”).

Accordingly, either the absolute litigation privilege of fair report privilege applies to defeat the remaining allegations of Counts I and VI *as a matter of law*.

V. The Statements Were Substantially True.

Based on the foregoing, this Court also may take judicial notice that the *Shore* docket is more than sufficient to show “substantial truth.” *Harrison*, 341 Ill. App. 3d at 569 (court erred by not dismissing substantially true report of federal litigation). The emailed “case info” was, as noted above, literally true, and Judge Darrah’s rulings and J&B’s judicial admissions in *Shore* simply provide additional confirmation. See *Harrison* and *Kapotas, supra*; *Coghlan*, 2013 IL App (1st) 120891, at ¶44 (accusation plaintiff engaged in “classic conflict of interest” substantiated by

plaintiff's own allegations); *Moore*, 402 Ill. App. 3d at 70 (admission trainer attached a "shock" collar to dog's "hindquarters" conceded that she applied "electro-shocks" to dogs' genitals).

VI. J&B Is Estopped From Relitigating *Shore* In State Court.

The late Judge Darrah explicitly relied on J&B's *own* representations in *Shore*. That court obviously understood the import of J&B's admissions because it made the *same* finding to justify unsealing the case: "On May 4, 2016, counsel for Defendant [J&B] represented that the 'JBoss Vulnerability' had been fixed; and Plaintiffs' counsel [Edelson] confirmed that on the same day." J&B never asserted in *Shore* that both Judge Shadur and Judge Darrah misunderstood this ultimate fact. After it acquiesced to these findings, J&B cannot turn around and seek relief on a theory that, once unsealed, they were republished out of court. See IRPC 3.6(b)(1) & (2).

Tellingly, J&B never challenged Judge Darrah in *his* forum. "When a statement is made in the presence of a party containing assertions of facts which, if untrue, the party would under all the circumstances be expected to deny, failure to speak has traditionally been received as an admission." *Wells Fargo Funding v. Draper & Kramer*, 608 F. Supp. 2d 981, 989 (N.D. Ill. 2009); *Liberty Mut'l Ins. v. Westfield Ins.*, 301 Ill. App. 3d 49, 53 (1st Dist. 1998) (inaction impliedly waives right to contest). J&B's conduct (inaction, really) in *Shore* estops its complaint here. *Imperial Apparel*, 227 Ill. 2d at 402 (statement that plaintiff copied competitor's sales promotion not actionable where plaintiff admitted as much in pleading); *Perry v. Columbia Broad. Sys.*, 499 F.2d 797, 799 (7th Cir. 1974) (plaintiff "estopped now to point out [] falsity" of statement after he "allowed it to circulate publicly"). The relevant federal record resulted from J&B's litigation choices and this Court should not provide a "do over" to purge that history.

CONCLUSION

In sum, J&B has persisted in its *false* allegation of publication to *The Wall Street Journal* even though the record is clear that Defendants did not provide the *Shore* Complaint to the newspaper, the newspaper did *not* republish the *Shore* Complaint or any potentially defamatory excerpt therefrom, and J&B admits it was *not* damaged anyway. J&B used the litigation privilege to shield smears, e.g., accusing Defendants’ law practice of being “extortion[ate],” “unethical,” “perversion”, etc. Compare, e.g., FAC, ¶¶1-3, 16, 19, 24, 37-38, 43, 47-48, 82-85, 88, with 735 ILCS 5/2-603(a) (requiring a “plain and concise statement”). Defendants, however, stayed within the confines of Rule 3.6(b)(1) & (2) with succinct, privileged and true statements. Now, J&B has exhausted every avenue for keeping its irresponsible “feud” on life support. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 516 (1st Dist. 2002) (reversing denial of sanctions because “[I]itigants may not deploy the use of legal process frivolously or falsely as a weapon in a feud between [parties].”). J&B has no basis upon which to proceed any further, and the Court may appropriately prohibit it from doing so by granting summary judgment in Defendants’ favor.

WHEREFORE, Defendants respectfully request that this Court grant their motion for summary judgment on the remaining Counts I and VI, award their attorneys’ fees incurred in connection with this motion on the basis of the false pleadings in the FAC, and grant such other relief as the Court deems just and appropriate.

Dated: October 7, 2019

Respectfully submitted,

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DEFENDANTS EDELSON P.C. and JAY EDELSON

By: 
One of their attorneys

FILED DATE: 12/17/2019 3:19 PM 2017L003169
FILED DATE: 10/7/2019 4:08 PM 2017L003169

EXHIBIT A

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3. I have attached a true and accurate copy of my law firm's resume to this Declaration as **Exhibit 1**. As more specifically set forth in the attached Exhibit 1, I, and the other members of the firm more generally, have been appointed class counsel in dozens of class actions involving privacy and data security issues by state and federal courts across the country. I served as class counsel in what is believed to be the largest adversarial class to be certified in a privacy case. See *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.) I was also appointed class counsel in a case with the largest settlement ever reached under the federal Telephone Consumer Protection Act. See *Birchmeier v. Caribbean Cruise Line, Inc.*, No. 12-cv-4069 (N.D. Ill.) And, indicative of my firm's broader class and mass action work, I currently serve as co-lead class counsel in *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation – Single Sport/Single School (Football)*, No. MDL 16-cv-8727 (N.D. Ill.), which is one of the largest multi-district actions pending in the country.

4. Legal publications, like Law360, have recognized us as a "Privacy Practice Group of the Year," a "Titan of the Plaintiffs Bar," a "Plaintiffs Class Action powerhouse" and a "Privacy Litigation Heavyweight." Most recently, Law360 recognized the firm as one of only six "Illinois Powerhouse" firms in 2017, along with international defense firms Dentons, Sidley Austin, Jenner & Block, Kirkland & Ellis, and Mayer Brown—we were the only plaintiff's firm to receive the recognition.

5. Similarly, I and others at my firm were recently appointed Special Assistant Corporation Counsel for the City of Chicago and Special Assistant State's Attorney for Cook County, Illinois in their consolidated data breach/failure to notify lawsuit against Uber Technologies, *City of Chicago, et al. v. Uber Technologies, Inc.*, No. 17 CH 15594 (Cir. Ct. Cook County). Similarly, we have been selected (appointment pending) as Special Assistant

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State's Attorneys for Cook County in the first-filed case in the country by a regulator arising out of recent revelations that Facebook and Cambridge Analytica unlawfully exposed the personal data of more than 50 millions Americans, *People of the State of Illinois, ex rel. Kim Foxx v. Facebook, Inc., et al.*, No. 18 CH 3868 (Cir. Ct. Cook County).

6. Additionally, I have served as an adjunct professor at both the Chicago-Kent College of Law and the University of California Berkeley School of Law in courses related to class actions and negotiations and privacy litigation, respectively.

7. I have been named as a defendant in this matter. I am thus familiar with the First Amended Complaint ("FAC") filed in the case by Johnson and Bell, Ltd. ("J&B") on or about January 31, 2018, and particularly, Paragraph 59(c) therein, alleging that "[s]ometime prior to December 29, 2016, Jay Edelson communicated with Sara Randazzo of the *Wall Street Journal* and sent her a copy of the *Shore* Complaint."

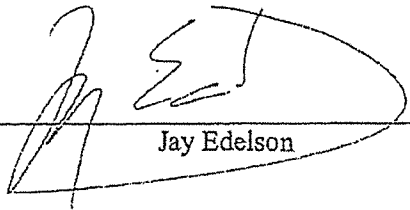
8. I have attached a true and accurate copy of an e-mail exchange with Ms. Randazzo regarding "the *Shore* Complaint" to this Declaration as **Exhibit 2**. As evidenced by the attached exchange, Ms. Randazzo sent me an unsolicited email on December 28, 2016, asking to speak with me about litigation that certain of my firm's clients initiated against law firms over "lax [data] security."

9. I agreed to speak with Ms. Randazzo concerning only matters of public record, and she then asked me to send her the case name and number for the *Shore* Litigation. In response, I emailed only the case name, number and forum, as demonstrated by Exhibit 2. I never sent Ms. Randazzo, or anyone else at the *Wall Street Journal*, any copies of the *Shore* Complaint.

10. I have attached a true and accurate copy of the executed engagement letter between my firm, on the one hand, and Jason Shore and Coinabul, LLC, on the other hand, to this Declaration as **Exhibit 3**. My firm uses engagement letters as a usual and customary part of its business and keeps and maintains accurate records of them in the ordinary course of business.

11. Further affiant sayeth naught.

DATED: March 30, 2018


Jay Edelson

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EXHIBIT 1

EDELSON PC FIRM RESUME

EDELSON PC is a plaintiffs' class and mass action firm with attorneys in Illinois and California.

Our attorneys have been recognized as leaders in these fields by state and federal courts, legislatures, national and international media groups, and our peers. Our reputation has led state and federal courts across the country to appoint us lead counsel in many high-profile cases, including in cutting-edge privacy class actions against comScore, Netflix, Time, Microsoft, and Facebook; Telephone Consumer Protection Act class actions against technology, media, and retail companies such as Google, Twentieth Century Fox, Simon & Schuster, and Steve Madden; data security class actions against LinkedIn, Advocate Hospitals, and AvMed; banking cases related to reductions in home equity lines of credit against Citibank, Wells Fargo, and JP Morgan Chase; fraudulent marketing cases against software companies such as Symantec, AVG and Ascentive; mobile content class actions against all major cellular telephone carriers; and product liability and personal injury cases, including the NCAA Single School/Single Sport Concussion MDL, personal injury cases against Merck alleging injuries caused by taking Vioxx, the Thomas the Tank Engine lead paint class actions and the tainted pet food litigation.

We are lead counsel in *Robins v. Spokeo*, 136 S.Ct. 1540 (2016) where the United States Supreme Court held that "intangible" harms can satisfy Article III standing requirements.

We have testified before the United States Senate and state legislative bodies on class action issues and have repeatedly been asked to work on federal and state legislation involving cellular telephony, privacy, and other consumer issues. Our attorneys have appeared on dozens of national and international television and radio programs, and in numerous national and international publications, discussing our cases and class action and consumer protection issues more generally. Our attorneys speak regularly at seminars on consumer protection and class action issues, and also lecture on class actions at law schools.

Overall, our settlements are valued at over \$1 billion, collectively.

PLAINTIFFS' CLASS AND MASS ACTION PRACTICE

EDELSON PC is a leader in plaintiffs' class and mass action litigation. Law360 has called us a "Titan of the Plaintiffs Bar," a "Plaintiffs Class Action powerhouse" and a "Privacy Litigation Heavyweight." We have been specifically recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." See *In re Facebook Privacy Litig.*, No. C 10-02389 (N.D. Cal. Dec. 10, 2010) (order appointing us interim co-lead of privacy class action); see also *In re Netflix Privacy Litig.*, No. 11-cv-00379 (N.D. Cal. Aug. 12, 2011) (appointing us sole lead counsel due, in part, to our "significant and particularly specialized expertise in electronic privacy litigation and class actions. We have also been recognized by courts for our uniquely zealous and efficient approach to litigation, which led the then-Chief Judge of the United States Court for the Northern District of Illinois to praise our work as "consistent with the highest standards of the profession" and "a model of what the profession should be. . . ." *In re Kentucky Fried Chicken Coupon Marketing & Sales Practices Litig.*, No. 09-cv-7670, MDL 2103 (N.D. Ill. Nov. 30, 2011). Likewise, in

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appointing our firm interim co-lead in one of the most high profile banking cases in the country, a federal court pointed to our ability to be “vigorous advocates, constructive problem-solvers, and civil with their adversaries.” *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill. July 16, 2010). After hard fought litigation, that case settled, resulting in the reinstatement of between \$3.2 billion and \$4.7 billion in home credit lines.

We have several sub-specialties within our plaintiffs’ class action practice:

MASS/CLASS TORT CASES

Our attorneys are representing labor unions and governmental entities seeking to recover losses arising out of the Opioid Crisis, classes of student athletes suffering from the long-term effects of concussive and sub-concussive injuries, homeowners who have lost their homes in Hurricane Harvey and were a part of a team of lawyers representing a group of public housing residents in a suit based upon contamination related injuries, a group of employees exposed to second-hand smoke on a riverboat casino, and a class of individuals suing a hospital and national association of blood banks for failure to warn of risks related to blood transfusions. Representative cases and settlements include:

- Filed first cases on behalf of labor unions seeking to recover losses arising out of the Opioid Crisis. *Se, e.g. Philadelphia Federation of Teachers Health and Welfare Fund v. Purdue Pharma, L.P., et al.*, No. 2:17-cv-04746-TJS (E.D. Penn. Oct. 26, 2017). Representing numerous other unions and governmental entities in similar soon-to-be-filed litigation.
- *In re: National Collegiate Athletic Association Single School/Single Sport Concussion Litig.*, No. 16-cv-8727, MDL No. 2492 (N.D. Ill.): Appointed co-lead counsel in MDL brought against the NCAA, its conferences and member institutions alleging personal injury claims on behalf of college football players resulting from repeated concussive and sub-concussive hits.
- *Bouzerand v. United States*, No. 1:17-cv-01195-VJW (Ct. Fed. Claims): Filed putative class action on behalf of homeowners alleging the government has to fairly compensate the class under the Fifth Amendment’s Takings Clause after the government flooded their homes by releasing reservoir waters during Hurricane Harvey. (Note: Court is expected to decide lead counsel in December).
- *Aaron v. Chicago Housing Authority*, No. 99 L 11738 (Cir. Ct. Cook Cnty., Ill.): Part of team representing a group of public housing residents bringing suit over contamination-related injuries. Case settled on a mass basis for over \$10 million.

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- *Januszewski v. Horseshoe Hammond*, No. 2:00CV352JM (N.D. Ind.): Part of team of attorneys in mass suit alleging that defendant riverboat casino caused injuries to its employees arising from exposure to second-hand smoke.
- *Merck/Vioxx Lawsuits*: Represented hundreds of individuals claiming medical problems including heart attacks and strokes after taking the prescription medication Vioxx. Cases resolved as part of Merck's global settlement.

The firm's cases regularly receive attention from local, national, and international media. Our cases and attorneys have been reported in the Chicago Tribune, USA Today, the Wall Street Journal, the New York Times, the LA Times, by the Reuters and UPI news services, and BBC International. Our attorneys have appeared on numerous national television and radio programs, including ABC World News, CNN, Fox News, NPR, and CBS Radio, as well as television and radio programs outside of the United States. We have also been called upon to give congressional testimony and other assistance in hearings involving our cases.

MORTGAGE & BANKING

EDELSON PC has been at the forefront of class action litigation arising in the aftermath of the federal bailouts of the banks. Our suits include claims that certain banks unlawfully suspended home credit lines based on pre-textual reasons, and that certain banks have failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP trial plans under state law. The court noted that "[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements have restored billions of dollars in home credit lines to people throughout the country. Representative cases and settlements include:

- *In re JP Morgan Chase Bank Home Equity Line of Credit Litig.*, No. 10-cv-3647 (N.D. Ill.): Court appointed interim co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between \$3.2 billion and \$4.7 billion in credit to the class.
- *Hamilton v. Wells Fargo Bank, N.A.*, No. 09-cv-04152-CW (N.D. Cal.): Lead counsel in class actions challenging Wells Fargo's suspensions of home equity lines of credit. Nationwide settlement restores access to over \$1 billion in credit and provides industry leading service enhancements and injunctive relief.
- *In re Citibank HELOC Reduction Litig.*, No. 09-cv-0350-MMC (N.D. Cal.): Lead counsel in class actions challenging Citibank's suspensions of

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home equity lines of credit. The settlement restored up to \$653,920,000 worth of credit to affected borrowers.

- *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): In ongoing putative class action, obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP trial plans.

PRIVACY/DATA LOSS

Data Loss/Unauthorized Disclosure of Data

We have litigated numerous class actions involving issues of first impression against Facebook, Uber, Apple, Netflix, Sony, Gannett, Redbox, Pandora, Sears, Storm 8, Google, T-Mobile, Microsoft, and others involving failures to protect customers' private information, security breaches, and unauthorized sharing of personal information with third parties. Representative settlements and ongoing cases include:

- *City of Chicago and People of the State of Illinois, ex rel. Kimberly M. Foxx, State's Attorney of Cook County, Illinois*, No. 17-CH-15594 (Cir. Ct. Cook Cnty, Ill.): Several Edelson attorneys appointed Special Assistant Corporation Counsel for the City of Chicago and Special Assistant State's Attorney for Cook County, Illinois in their consolidated data breach/failure to notify lawsuit against Uber Technologies.
- *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing Internet analytics company of improper data collection practices. The court has finally approved a \$14 million settlement.
- *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of identity theft.
- *In re Netflix Privacy Litig.*, No. 11-cv-00379 (N.D. Cal.): Sole lead counsel in suit alleging that defendant violated the Video Privacy Protection Act by illegally retaining customer viewing information. Case resulted in a \$9 million dollar *cy pres* settlement that has been finally approved.
- *N.P. v. Standard Innovation (US), Corp.*, No. 1:16-cv-08655 (N.D. Ill.): Brought and resolved first ever IoT privacy class action against adult-toy manufacturer accused on collected and recording highly intimate and sensitive personal use data. Case resolved for \$3.75m (Canadian).

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- *Sekura v. L.A. Tan Enterprises, Inc.*, No. 15 CH 16694 (Cir. Ct. Cook County, Ill.): Reached the first ever settlement under Illinois's biometric privacy statute. Settlement provided the class with \$1.25m and released only the franchiser and related companies, thus allowing additional ongoing suits against franchisees to continue.
- *Halaburda v. Bauer Publishing Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Communications, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Consolidated actions brought under Michigan's Preservation of Personal Privacy Act, alleging unlawful disclosure of subscribers' personal information. In a groundbreaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic \$5,000 award to each aggrieved consumer. In January and July of 2015, final approval was granted to a settlement reached in the *Bauer Publishing* matter and an adversarial class was certified in the *Time* case, respectively.
- *Standiford v. Palm*, No. 09-cv-05719-LHK (N.D. Cal.): Sole lead counsel in data loss class action, resulting in \$640,000 settlement.
- *In re Zynga Privacy Litig.*, No. 10-cv-04680 (N.D. Cal.): Appointed co-lead counsel in suit against gaming application designer for the alleged unlawful disclosure of its users' personally identifiable information to advertisers and other third parties.
- *In re Facebook Privacy Litig.*, No. 10-cv-02389 (N.D. Cal.): Appointed co-lead counsel in suit alleging that Facebook unlawfully shared its users' sensitive personally identifiable information with Facebook's advertising partners.
- *In re Sidekick Litig.*, No. C 09-04854-JW (N.D. Cal.): Co-lead counsel in cloud computing data loss case against T-Mobile and Microsoft. Settlement provided the class with potential settlement benefits valued at over \$12 million.
- *Desantis v. Sears*, No. 08 CH 00448 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in injunctive settlement alleging national retailer allowed purchase information to be publicly available through the Internet.

Telephone Consumer Protection Act

EDELSON PC has been at the forefront of TCPA litigation for nearly a decade, having secured the groundbreaking *Satterfield* ruling in the Ninth Circuit applying the TCPA to

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text messages, *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009), and the largest (up to \$76 million in total monetary relief) TCPA settlement to date. See *Birchmeier v. Caribbean Cruise Line, Inc., et al.*, No. 12-cv-4069 (N.D. Ill.). In addition to numerous settlements—collectively providing over \$200 million to consumers—we have over two dozen putative TCPA class actions pending against companies including Santander Consumer USA, Inc., GrubHub, United Student Aid Funds, NCO Financial Systems, and NRG Energy. Representative settlements and ongoing cases include:

- *Birchmeier v. Caribbean Cruise Line, Inc., et al.*, No. 12-cv-4069 (N.D. Ill.): Co-lead counsel in class action alleging that defendant violated federal law by making unsolicited telemarketing calls. Obtained adversarial class certification of nationwide class of approximately 1 million consumers. On the eve of trial, case resulted in the largest TCPA settlement to date, totaling up to \$76 million in monetary relief.
- *Kolinek v. Walgreen Co.*, No. 13-cv-4806 (N.D. Ill.): Lead counsel in class action alleging that defendant violated federal law by making unsolicited prescription reminder calls. Won reconsideration of dismissal based upon whether provision of telephone number constituted consent to call. Case settled for \$11 million.
- *Hopwood v. Nuance Communications, Inc., et al.*, No. 13-cv-2132 (N.D. Cal.): Lead counsel in class action alleging that defendants violated federal law by making unsolicited marketing calls to consumers nationwide. \$9.245 million settlement provided class members option to claim unprecedented relief based upon total number of calls they received. Settlement resulted in some class members receiving in excess of \$10,000 each.
- *Rojas v CEC*, No. 10-cv-05260 (N.D. Ill.): Lead counsel in text spam class action that settled for \$19,999,400.
- *In re Jiffy Lube Int'l Text Spam Litigation*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal.): Co-lead counsel in \$35 million text spam settlement.
- *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.): Lead counsel in \$10 million text spam settlement.
- *Kramer v. B2Mobile*, No. 10-cv-02722-CW (N.D. Cal.): Lead counsel in \$12.2 million text spam settlement.
- *Wright, et al. v. Nationstar Mortgage, LLC*, No. 14-cv-10457 (N.D. Ill.): Co-lead counsel in \$12.1 million debt collection call settlement.
- *Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D. Cal.): Lead counsel in class action alleging that defendant co-opted group text messaging lists to

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send unsolicited text messages. \$6 million settlement provides class members with an unprecedented \$500 recovery.

- *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.): Lead counsel in \$10 million text spam settlement.
- *Miller v. Red Bull*, No. 12-CV-04961 (N.D. Ill.): Lead counsel in \$6 million text spam settlement.
- *Woodman v. ADP Dealer Services*, No. 2013 CH 10169 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in \$7.5 million text spam settlement.
- *Lockett v. Mogreet, Inc.*, No 2013 CH 21352 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in \$16 million text spam settlement.
- *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.): Lead counsel in class action alleging that defendants violated federal law by sending unsolicited text messages to cellular telephones of consumers. Case settled for \$16 million.
- *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): Co-lead counsel in in \$10 million text spam settlement.
- *Weinstein v. Airtit2me, Inc.*, No. 06 C 0484 (N.D. Ill): Co-lead counsel in \$7 million text spam settlement.

CONSUMER TECHNOLOGY

Fraudulent Software

In addition to the settlements listed below, EDELSON PC has consumer fraud cases pending in courts nationwide against companies such as McAfee, Inc., Avanquest North America Inc., PC Cleaner, AVG, iolo Technologies, LLC, among others. Representative settlements include:

- *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$9.75 million.
- *Gross v. Symantec Corp.*, No. 12-cv-00154-CRB (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$11 million.
- *LaGarde v. Support.com, Inc.*, No. 12-cv-00609-JSC (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$8.59 million.

- *Ledet v. Ascentive LLC*, No. 11-CV-294-PBT (E.D. Pa.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$9.6 million.
- *Webb v. Cleverbridge, Inc.*, No. 1:11-cv-04141 (N.D. Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$5.5 million.

Video Games

EDELSON PC has litigated cases video-game related cases against Activision Blizzard Inc., Electronic Arts, Inc., Google, and Zenimax Media, Inc.

PRODUCTS LIABILITY CLASS ACTIONS

We have been appointed lead counsel in state and federal products liability class settlements, including a \$30 million settlement resolving the “Thomas the Tank Engine” lead paint recall cases and a \$32 million settlement involving the largest pet food recall in the history of the United States and Canada. Representative settlements include:

- *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement is valued at over \$30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.
- *In re Pet Food Products Liability Litig.*, No. 07-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United States history. Settlement provided \$24 million common fund and \$8 million in charge backs.

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INSURANCE CLASS ACTIONS

We have prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds. Representative settlements include:

- *Holloway v. J.C. Penney*, No. 97 C 4555 (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. The case settled in or around December 2000, resulting in a multi-million dollar cash award to the class.
- *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant’s termination of health insurance to

groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination and eventually settled the case ensuring that each class member would remain insured.

GENERAL CONSUMER PROTECTION CLASS ACTIONS

We have successfully prosecuted countless class actions against computer software companies, technology companies, health clubs, dating agencies, phone companies, debt collectors, and other businesses on behalf of consumers. In addition to the settlements listed below, EDELSON PC have litigated consumer fraud cases in courts nationwide against companies such as Motorola Mobility, Stonebridge Benefit Services, J.C. Penney, Sempris LLC, and Plimus, LLC. Representative settlements include:

Mobile Content

We have prosecuted over 100 cases involving mobile content, settling numerous nationwide class actions, including against industry leader AT&T Mobility, collectively worth over a hundred million dollars.

- *McFerren v. AT&T Mobility, LLC*, No. 08-CV-151322 (Fulton Cnty. Super. Ct., Ga.): Lead counsel class action settlement involving 16 related cases against largest wireless service provider in the nation. “No cap” settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.
- *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 27 related cases alleging unauthorized mobile content charges. Case settled for \$36 million.
- *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Case settled for \$12 million.
- *Parone v. m-Qube, Inc.*, No. 08 CH 15834 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving over 2 dozen cases alleging the imposition of unauthorized mobile content charges. Case settled for \$12.254 million.
- *Williams v. Motricity, Inc.*, No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 24 cases alleging the imposition of unauthorized mobile content charges. Case settled for \$9 million.

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- *VanDyke v. Media Breakaway, LLC*, No. 08 CV 22131 (S.D. Fla.): Lead counsel in class action settlement alleging unauthorized mobile content charges. Case settled for \$7.6 million.
- *Gresham v. Cellco Partnership*, No. BC 387729 (L.A. Super. Ct., Cal.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Settlement provided class members with full refunds.
- *Abrams v. Facebook, Inc.*, No. 07-05378 (N.D. Cal.): Lead counsel in injunctive settlement concerning the transmission of allegedly unauthorized mobile content.

Deceptive Marketing

- *Van Tassell v. UMG*, No. 1:10-cv-2675 (N.D. Ill.): Lead counsel in negative option marketing class action. Case settled for \$2.85 million.
- *McK Sales Inc. v. Discover Bank*, No. 10-cv-02964 (N.D. Ill.): Lead counsel in class action alleging deceptive marketing aimed at small businesses. Case settled for \$6 million.
- *Farrell v. OpenTable*, No. 11-cv-01785 (N.D. Cal.): Lead counsel in gift certificate expiration case. Settlement netted class over \$3 million in benefits.
- *Ducharme v. Lexington Law*, No. 10-cv-2763 (N.D. Cal): Lead counsel in CROA class action. Settlement resulted in over \$6 million of benefits to the class.
- *Pulcini v. Bally Total Fitness Corp.*, No. 05 CH 10649 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in four class action lawsuits brought against two health clubs and three debt collection companies. A global settlement provided the class with over \$40 million in benefits, including cash payments, debt relief, and free health club services.
- *Kozubik v. Capital Fitness, Inc.*, 04 CH 627 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in state-wide suit against a leading health club chain, which settled in 2004, providing the over 150,000 class members with between \$11 million and \$14 million in benefits, consisting of cash refunds, full debt relief, and months of free health club membership.
- *Kim v. Riscuity*, No. 06 C 01585 (N.D. Ill.): Co-lead counsel in suit against a debt collection company accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with full debt relief and return of all money collected.

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- *Jones v. TrueLogic Financial Corp.*, No. 05 C 5937 (N.D. Ill.): Co-lead counsel in suit against two debt collectors accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with approximately \$2 million in debt relief.
- *Fertelmeyster v. Match.com*, No. 02 CH 11534 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under Illinois consumer protection statutes. The settlement provided the class with a collective award with a face value in excess of \$3 million.
- *Cioe v. Yahoo!, Inc.*, No. 02 CH 21458 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under state consumer protection statutes. The settlement provided the class with a collective award with a face value between \$1.6 million and \$4.8 million.
- *Zurakov v. Register.com*, No. 01-600703 (N.Y. Sup. Ct., N.Y. Cnty.): Co-lead counsel in a class action brought on behalf of an international class of over one million members against Register.com for its allegedly deceptive practices in advertising on “coming soon” pages of newly registered Internet domain names. Settlement required Register.com to fully disclose its practices and provided the class with relief valued in excess of \$17 million.

GENERAL COMMERCIAL LITIGATION

Our attorneys have handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to “bet the company” cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations and mediations.

OUR ATTORNEYS

JAY EDELSON is the founder and CEO of EDELSON PC. e is considered one of the nation’s leading class and mass action lawyers, having secured over \$1 billion in settlements and verdicts for his clients.

Law360 described Jay as a “Titan of the Plaintiff’s Bar“. The American Bar Association recognized Jay Edelson as one of the “most creative minds in the legal industry.” Law360 noted that he has “taken on some of the biggest companies and law firms in the world and has had success where others have not.” Another publication explained that “when it comes to legal strategy and execution, Jay is simply one of the best in the country.” Prof. Todd Henderson, the Michael J. Marks Professor of Law at the University of Chicago Law School, opined that when thinking about “who’s the most innovative lawyer in the US ... [Jay is] at or near the top of my list.”

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Jay has received special recognition for his success in taking on Silicon Valley. The national press has dubbed Jay and his firm the “most feared” litigators in Silicon Valley and, according to the New York Times, tech’s “babyfaced ... boogeyman.” Most recently, Chicago Lawyer Magazine dubbed Jay “Public Enemy No. 1 in Silicon Valley.” In the emerging area of privacy law, the international press has called Jay one of the world’s “profilier testen (most prominent)” privacy class action attorneys. The National Law Journal has similarly recognized Jay as a “Cybersecurity Trailblazer” — one of only two plaintiff’s attorneys to win this recognition.

Jay has taught class actions and negotiations at Chicago-Kent College of Law and privacy litigation at UC Berkeley School of Law. He has written a blog for Thomson Reuters, called Pardon the Disruption, where he focused on ideas necessary to reform and reinvent the legal industry and has contributed opinion pieces to TechCrunch, Quartz, the Chicago Tribune, law360, and others. He also serves on law 360’s Privacy & Consumer Protection editorial advisory board. In recognition of the fact that his firm runs like a start-up that “just happens to be a law firm,” Jay was recently named to “Chicago’s Top Ten Startup Founders over 40” by Tech.co.

Jay currently serves on Chicago’s 47th Ward Democratic Organization Judicial Recommendation Committee, which is responsible for interviewing, vetting and slating Cook County Judicial Candidates for election.

RYAN D. ANDREWS is a Partner at EDELSON PC. He presently leads the firm’s complex case resolution and appellate practice group, which oversees the firm’s class settlements, class notice programs, and briefing on issues of first impression.

Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over \$100 million dollars in refunds to consumers, including: *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.); *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.); *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.); and *Lofston v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.).

Representative reported decisions include: *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999 (N.D. Ill. 2010), *Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009), *Kramer v. Autobyte, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010); *In re Jiffy Lube Int’l Text Spam Litig.*, 847 F. Supp. 2d 1253 (S.D. Cal. 2012); *Lee v. Stonebridge Life Ins. Co.*, 289 F.R.D. 292 (N.D. Cal. 2013); and *Kristensen v. Credit Payment Servs.*, 12 F. Supp. 3d 1292 (D. Nev. Mar. 26, 2014).

Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal

Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

Ryan is licensed to practice in Illinois state courts, the United States District Court for the Northern District of Illinois, the U.S. Court of Appeals for the Seventh Circuit, and the U.S. Court of Appeals for the Ninth Circuit.

RAFEY S. BALABANIAN is the Managing Partner of EDELSON PC and its director of nationwide litigation. He started his career as a trial lawyer, serving as a prosecutor for the City of Chicago where he took part in dozens of trials. Rafey went on to join a litigation boutique in Chicago where he continued his trial work, before eventually starting with EDELSON in 2008. He is regarded by his peers as a highly skilled litigator, and has been appointed lead class counsel in more than two dozen class actions in state and federal courts across the country. His work has led to groundbreaking results in trial courts nationwide, and he has secured hundreds of millions of dollars on behalf of his clients.

Some of Rafey's more notable achievements include nationwide settlements involving the telecom industry, including companies such as AT&T, Google, Sony, Motricity, and OpenMarket valued at more than \$100 million.

Rafey has also been appointed to the Executive Committee in the NCAA concussion cases, considered to be "one of the largest actions pending in the country, a multi district litigation ... that currently included about 100 personal injury class actions filed by college football players[.]" He also represents labor unions and governmental entities in lawsuits against the drug manufacturers and distributors over the on-going opioid crisis, and serves as trial court counsel in *Robins v. Spokeo, Inc.*, 2:10-cv-05306-ODW-AGR, which has been called the most significant consumer privacy case in recent years.

Rafey's class action practice also includes his work in the privacy sphere, and he has reached groundbreaking settlements with companies like Netflix, LinkedIn, Walgreens, Nationstar and comScore. Rafey also served as lead counsel in the case of *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.), where he led the effort to secure class certification of what is believed to be the largest adversarial class to be certified in a privacy case in the history of US jurisprudence.

Rafey's work in general complex commercial litigation includes representing clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases.

Rafey is a frequent speaker on class and mass action issues, and has served as a guest lecturer on several occasions at UC Berkeley Boalt School of Law. Rafey also serves on the Executive Committee of the Antitrust, Unfair Competition and Privacy Section of the State Bar of California where he has been appointed Vice Chair of Privacy, as well as the Executive Committee of the Privacy and Cybersecurity Section of the Bar Association of San Francisco.

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Rafey received his J.D. from the DePaul University College of Law in 2005. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

CHRISTOPHER L. DORE is a Partner at EDELSON PC where he focuses his practice on emerging consumer technology and privacy issues.

Chris is the Partner-in-Charge of the Firm's Case Development & Investigations Group. His team investigates complex technological fraud and privacy related violations, including fraudulent software and hardware, undisclosed tracking of online consumer activity, illegal data retention, and large-scale commercial data breaches. In the privacy space, Chris plays an active role in applying older federal and state statutes to new technologies. He has been appointed class counsel in multiple class actions, including one of the largest settlements under the Telephone Consumer Protection Act, ground-breaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy. Chris has been asked to appear on television, radio, and in national publications to discuss consumer protection and privacy issues, as well as asked to lecture at his alma mater on the class action practice.

Chris received his law degree from The John Marshall Law School, his M.A. in Legal Sociology from the International Institute for the Sociology of Law (located in Onati, Spain), and his B.A. in Legal Sociology from the University of California, Santa Barbara. Chris also serves on the Illinois Bar Foundation, Board of Directors.

DAVID I. MINDELL is a Partner at EDELSON PC where he helps direct a team of attorneys and engineers in investigating and litigating cases involving complex tech fraud and privacy violations. His team's research has led to lawsuits involving the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, and the Bitcoin industry. On the other side, David also serves as a consultant to a variety of emerging technology companies.

Prior to joining EDELSON PC, David co-founded several tech, real estate, and hospitality related ventures, including a tech startup that was acquired by a well-known international corporation within its first three years. David has advised tech companies on a variety of legal and strategic business-related issues, including how to handle and protect consumer data. He has also consulted with startups on the formation of business plans, product development, and launch.

While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.

David has spoken to a wide range of audiences about his investigations and practice.

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ROGER PERLSTADT is a Partner at EDELSON PC, where he concentrates on appellate and complex litigation advocacy. He has briefed and argued appeals and motions in both federal and state appellate courts.

Prior to joining EDELSON PC, Roger was a law clerk to United States District Court Judge Elaine E. Bucklo, an associate at a litigation boutique in Chicago, and a Visiting Assistant Professor at the University of Florida Levin College of Law. He has published articles on the Federal Arbitration Act in various law reviews.

Roger has been named a Rising Star by *Illinois Super Lawyer Magazine* four times since 2010.

Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

EVE-LYNN J. RAPP is a Partner at EDELSON PC, where she focuses her practice on consumer technology class actions, with a particular emphasis on cell phone telephony and Telephone Consumer Protection Act (“TCPA”) cases and “negative option” enrollment consumer fraud cases. She also regularly handles plaintiff’s side employment class actions, including federal Fair Labor Stands Act cases and their state law counterparts. Eve is the hiring partner for the firm’s Chicago office.

Eve has helped lead approximately 20 TCPA class actions, including *Birchmeier v. Caribbean Cruise Line, Inc. et al.*, No. 12-cv-04069 (N.D. Ill.), where she secured the largest adversarial TCPA class in this nation’s history. She is also lead counsel in one of the few “Do Not Call” TCPA cases to settle, resulting in a multi-million dollar settlement and affording class members with as much as \$5,000 individually. Eve has also prosecuted TCPA cases on an individual basis in arbitrations, winning six-figure settlements.

She has led over a half-dozen consumer fraud and “negative option” enrollment cases, against a variety of industries, including e-cigarette sellers, the on-line gaming companies, and electronic and sport products distributors.

Eve is also leading a series of employment class actions involving the cell tower industry, securing a six-figure settlement for the named plaintiff.

In a nationally publicized products liability case, Eve help secure a reversal from the United States Supreme Court, paving the way for hundreds of thousands of people to litigate their claims of deceptive marketing.

In 2015, Eve was selected as an Illinois Emerging Lawyer by Leading Lawyers.

Eve received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, she was an Associate Editor of Loyola’s International Law Review and externed as a “711” at both the Cook County State’s Attorney’s Office and for Cook County Commissioner Larry Suffredin. Eve also clerked for both civil and

criminal judges (The Honorable Judge Yvonne Lewis and Plummer Lott) in the Supreme Court of New York. Eve graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

Eve is actively involved with the Chicago Lawyers' Committee for Civil Rights Under Law, Inc.'s Settlement Assistance Project where she represents a number of pro bono clients for settlement purposes.

BENJAMIN H. RICHMAN is the Managing Partner of EDELSON PC's Chicago office. He handles plaintiff's-side class and mass actions, helping employees in the workplace, consumers who were sold deceptive products or had their privacy rights violated, student athletes suffering from the effect of concussions, and labor unions and governmental bodies seeking to recover losses arising out of the opioid crisis. He also routinely represents technology and brick and mortar companies in a wide variety of commercial litigation and other matters. Overall, Ben has been appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases. His suits have recovered hundreds of millions of dollars for his clients.

On the plaintiff's side, Ben is currently part of the team leading the *National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation – Single Sport/Single School (Football)* multi-district litigation, bringing personal injury lawsuits against the NCAA, athletic conferences, and its member institutions over concussion-related injuries. He is also representing labor unions and governmental entities in lawsuits against the drug manufacturers and distributors over the opioid crisis. And he is currently pursuing claims of Houston area homeowners against United States seeking recovery for alleged constitutional takings of their properties in the wake of Hurricane Harvey. In addition, Ben is lead counsel in numerous class actions involving alleged violations of class members' common law and statutory rights (e.g., violations of Alaska's Genetic Privacy Act, Illinois' Biometric Information Privacy Act, the federal Telephone Consumer Protection Act, and others).

Some of Ben's notable achievements include acting as lead counsel and securing settlements collectively worth \$50 million dollars in over a half-dozen nationwide class actions against software companies involving claims of fraudulent marketing and unfair business practices. He was part of the team that litigated over a half-dozen nationwide class actions involving claims of unauthorized charges on cellular telephones, which ultimately led to settlements collectively worth hundreds of millions of dollars. And he has been lead counsel numerous multi-million dollar privacy settlements, including several that resulted in individual payments to class members reaching into the tens of thousands of dollars and another that –in addition to securing millions of dollars in monetary relief – also led to a waiver by the defendants of their primary defenses to claims that were not otherwise being released.

Ben's work in complex commercial matters includes successfully defending multiple actions against the largest medical marijuana producer in state of Illinois related to the issuance of its cultivation licenses, and successfully defending one of the largest mortgage lenders in the country on claims of unjust enrichment, securing dismissals or settlements that ultimately amounted to a fraction of typical defense costs in such actions. Ben has also represented startups in various matters, including licensing, intellectual property, and merger and acquisition.

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Each year since 2015, Ben has been recognized by Super Lawyers as a *Rising Star* and Leading Lawyers as an *Emerging Lawyer* in both class action and mass tort litigation.

Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the Honorable John W. Darrah of the United States District Court for the Northern District of Illinois. Ben has also routinely guest-lectured at various law schools on issues related to class actions, complex litigation and negotiation.

ARI J. SCHARG is a Partner at EDELSON PC and Chair of the firm's Government Affairs Group, where he counsels governmental entities and officials on a range of policy and strategic issues involving consumer protection, privacy, technology, and data security. Known as an aggressive advocate, Ari also leverages his experience litigating hundreds of complex class and mass action lawsuits to help local governments prosecute large-scale cost recovery actions, including those against the pharmaceutical companies responsible for the opioid crisis.

Recognized as one of the leading experts on privacy and emerging technologies, Ari serves on the inaugural Executive Oversight Council for the Array of Things Project where he advises on privacy and data security matters, Chairs the Illinois State Bar Association's Privacy and Information Security Section, and was recently appointed by the Illinois Senate President to Co-Chair the Illinois Blockchain and Distributed Ledgers Task Force alongside Representative Michael Zalewski (21st Dist.). Ari was selected as an Illinois Rising Star by Super Lawyers (2013 – 2018), and received the Michigan State Bar Foundation's Access to Justice Award (2017) for "significantly advancing access to justice for the poor" through his consumer cases.

Ari regularly speaks about data security and technology at law schools and conferences around the country, and has testified before the Michigan House of Representatives Committee on Commerce and Trade about the privacy implications raised by the surging data mining industry and the Nevada Assembly Commerce and Labor Committee about the privacy implications raised by the surreptitious collection and use of geolocation data.

Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for THE JOHN MARSHALL LAW REVIEW and competed nationally in trial competitions. During law school, he also served as a judicial extern to The Honorable Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

ALFRED K. MURRAY II is Senior Litigation Counsel at EDELSON PC.

Alfred's prior experience includes handling a myriad of cases in his solo practice after spending several years at a well-respected civil litigation firm. Alfred's prior experience includes practice areas of civil right & municipal liability defense, commercial litigation, real estate litigation, and professional negligence. Known as a skilled yet reasonable litigator, Alfred has conducted bench trials, jury trials, and evidentiary hearings throughout the Northern District of Illinois, the Circuit Court of Cook County, and the surrounding suburbs. His experience in commercial litigation

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and real estate litigation led to substantive experience with judgment enforcement proceedings, where he eventually co-authored the *Equitable Remedies* chapter in the 2011 Supplement and 2013 Update to the *Illinois Institute of Continuing Legal Education, Creditors' Rights in Illinois*. Alfred has also lectured on supplemental proceedings, complex asset recovery, and post-judgment causes of action for the Illinois Creditors Bar Association, Illinois State Bar Association, Illinois Institute of Continuing Legal Education, and Chicago Bar Association. Alfred was selected as an Illinois Rising Star by Super Lawyers (2014, 2015, 2016, 2017, 2018).

Alfred received his B.S. in Political Science from the University of Illinois at Urbana-Champaign, and received his J.D. from The John Marshall Law School. During law school, Alfred served as the Chief Justice on the Moot Court Honors Board and participated in a number of national moot court competitions. While a law student, he also served as a judicial extern to The Honorable Abishi C. Cunningham of the Circuit Court of Cook County and served as a law clerk in the criminal enforcement division of the Office of the Illinois Attorney General, Lisa Madigan.

LILY HOUGH is an Associate at EDELSON PC where her practice focuses on consumer privacy-related class actions.

Lily received her J.D., *cum laude*, from Georgetown University Law Center. In law school, Lily served as a Law Fellow for Georgetown's first year Legal Research and Writing Program and as the Executive Editor of the Georgetown Immigration Law Journal. She participated in D.C. Law Students In Court, one of the oldest clinical programs in the District of Columbia, where she represented tenants in Landlord & Tenant Court and plaintiff consumers in civil matters in D.C. Superior Court. She also worked as an intern at the U.S. Department of State in the Office of the Legal Adviser, International Claims and Investment Disputes (L/CID).

Prior to law school, Lily attended the University of Notre Dame, where she graduated *magna cum laude* with departmental honors and earned her B.A. in Political Science and was awarded a James F. Andrews Scholarship for commitment to social concerns. She is also a member of the Pi Sigma Alpha and Phi Beta Kappa honor societies.

SYDNEY JANZEN is an Associate at EDELSON PC where her practice focuses on consumer privacy-related class actions.

Sydney received her J.D., *cum laude*, from The John Marshall Law School. While in law school, she was Executive Justice of the Moot Court Honor Society, a staff editor of The John Marshall Law Review, and a teaching assistant for Contracts and Legal Writing and Civil Procedure. Sydney represented John Marshall at the Pepperdine National Entertainment Law Competition where she was a quarter-finalist and won Best Petitioner's Brief. Sydney was a 2016 Member of the National Order of Scribes.

Prior to attending law school, Sydney attended DePaul University where she graduated, *summa cum laude*, with a B.A. in English and French.

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J. AARON LAWSON is an Associate at EDELSON PC where his practice focuses on appeals and complex motion practice.

Prior to joining EDELSON PC, Aaron served for two years as a Staff Attorney for the United States Court of Appeals for the Seventh Circuit, handling appeals involving a wide variety of subject matter, including consumer-protection law, employment law, criminal law, and federal habeas corpus. While at the University of Michigan Law School, Aaron served as the Managing Editor for the Michigan Journal of Race & Law, and participated in the Federal Appellate Clinic. In the clinic, Aaron briefed a direct criminal appeal to the United States Court of Appeals for the Sixth Circuit, and successfully convinced the court to vacate his client's sentence.

TODD LOGAN is an Associate at EDELSON PC. He focuses his practice on class and mass actions and large-scale governmental suits. Todd represents labor unions and governments seeking to recover losses arising out of the opioid crisis, Houston area homeowners in litigation against the United States seeking recovery for alleged constitutional takings of their properties in the wake of Hurricane Harvey, student athletes suffering from the harmful effects of concussions, employees and consumers who have had their privacy rights violated, and consumers who were defrauded.

Todd has litigated dozens of lawsuits in federal and state courts. He led Edelson's efforts in litigating and ultimately obtaining the first ever class action settlement under Illinois' Biometric Information Privacy Act. Overall, his cases have resulted in settlements that have paid out tens of millions of dollars.

From 2016–17, Todd clerked for the Honorable James Donato in the Northern District of California.

MICHAEL OVCA is an Associate at EDELSON PC where he focuses on consumer, privacy-related and technology-related class actions.

Michael received his J.D. *cum laude* from Northwestern University, where he was an associate editor of the Journal of Criminal Law and Criminology, and a member of several award winning trial and moot court teams.

Prior to law school, Michael graduated *summa cum laude* with a degree in political science from the University of Illinois.

ALBERT J. PLAWINSKI is an Associate at EDELSON PC where he focuses on investigating privacy violations by consumer products and IoT devices.

Albert received his J.D. from the Chicago-Kent College of Law. While in law school, Albert served as the Web Editor of the Chicago-Kent Journal of Intellectual Property. Albert was also a research assistant for professor Hank Perritt for whom he researched various legal issues relating to the emerging consumer drone market—e.g., data collection by drone manufacturers and federal preemption obstacles for states and municipalities seeking to legislate the use of drones. Additionally, Albert earned a CALI award, for receiving the highest course grade, in Litigation

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Technology.

Prior to law school, Albert graduated with Highest Distinctions with a degree in Political Science from the University of Illinois at Urbana-Champaign.

DAN SCHNEIDER is an Associate at EDELSON PC where he focuses on consumer protection and privacy-related class actions.

Dan received his J.D. *summa cum laude* from the University of Wisconsin, where he served as an Articles Editor for the Wisconsin Law Review.

Prior to law school, Dan graduated *magna cum laude* with a B.A. in Visual and Media Arts from Emerson College. He later worked as a freelance journalist for many years covering economics, activism, and music in the Boston area. His work has appeared in *The Atlantic*, *The Boston Globe*, and *In These Times*, among other outlets.

BEN THOMASSEN is an Associate at EDELSON PC where he focuses on consumer litigation, with an emphasis on privacy and data breach class actions.

Ben's work at the firm has achieved significant results for classes of consumers. He has been appointed as class counsel in several high profile cases, including, for example, *Harris v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.) (appointed class counsel in case against data analytics company, which is estimated to be the largest privacy class action certified on adversarial basis and resulted in \$14MM settlement). Ben has also played critical and leading roles in developing, briefing, and arguing novel legal theories on behalf of his clients, including by delivering the winning oral argument to the Eleventh Circuit in the seminal case of *Resnick, et al. v. AvMed, Inc.*, No. 10-cv-24513 (S.D. Fla.) (appointed class counsel in industry-changing data breach case, which obtained a landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred) and recently obtaining certification of a class of magazine subscribers in *Coulter-Owens v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.) (achieved adversarial certification in privacy case brought by class of magazine subscribers against magazine publisher under Michigan's Preservation of Personal Privacy Act). His cases have resulted in millions of dollars to consumers.

Ben graduated *magna cum laude* from Chicago-Kent College of Law, where he also earned a certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. He also served as Vice President of Chicago-Kent's Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts. In 2017, Ben was selected as an Illinois Emerging Lawyer by Leading Lawyers.

Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years experience) for commercial theatres, museums, and educational institutions.

Ben received a Master of Arts degree from the University of Chicago and his Bachelor of Arts degree, *summa cum laude*, from St. Mary's College of Maryland.

ALEXANDER G. TIEVSKY is an Associate at EDELSON PC, where he concentrates on complex motion practice and appeals in consumer class action litigation.

He received his J.D. from the Northwestern University School of Law, where he graduated from the two-year accelerated J.D. program. While in law school, Alex was Media Editor of the Northwestern University Law Review. He also worked as a member of the Bluhm Legal Clinic's Center on Wrongful Convictions. Alex maintains a relationship with the Center and focuses his public service work on seeking to overturn unjust criminal convictions in Cook County.

Alex's past experiences include developing internal tools for an enterprise software company and working as a full-time cheesemonger. He received his A.B. in linguistics with general honors from the College of the University of Chicago.

SCHUYLER UFKES is an Associate at EDELSON PC where he focuses on consumer and privacy-related class actions.

Schuyler received his J.D. *magna cum laude* from the Chicago-Kent College of Law. While in law school, Schuyler served as an Executive Articles Editor for the Chicago-Kent Law Review and was a member of the Moot Court Honor Society. Schuyler earned five CALI awards for receiving the highest grade in Legal Writing II, Legal Writing III, Pretrial Litigation, Supreme Court Review, and Professional Responsibility.

Prior to law school, Schuyler studied Consumer Economics and Finance at the University of Illinois Urbana-Champaign.

ELI WADE-SCOTT is an Associate at Edelson PC where his practice focuses on consumer, privacy-related, and tech-related class actions.

Before joining Edelson, Eli was a Skadden Fellow at LAF, Cook County's federally-funded legal aid provider. There, Eli represented dozens of low-income tenants in affirmative litigation against their landlords to remedy dangerous housing conditions, such as pest infestations, absence of heat and hot water, and sewage back-ups. Eli secured numerous temporary restraining orders requiring landlords to perform necessary repairs, and obtained tens of thousands of dollars in damages for his clients.

Most recently, Eli served as a law clerk to the Honorable Judge Rebecca Pallmeyer of the Northern District of Illinois. During law school, he was an Executive Editor on the Harvard Law and Policy Review.

JACOB WRIGHT is an Associate at EDELSON PC where his practice focuses on consumer and privacy-related class actions.

Jacob graduated with honors from the University of Texas at Austin with a degree in

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Government and Middle Eastern Studies. He received his J.D. *cum laude* from American University College of Law.

Jacob is a Member of the Equality Illinois Political Action Committee as well as a Next Generation Board Member of La Casa Norte.

SHAWN DAVIS is the Director of Digital Forensics at EDELSON PC, where he leads a technical team in investigating claims involving privacy violations and tech-related abuse. His team's investigations have included claims arising out of the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through digital devices, unlawful collection, storage, and dissemination of consumer data, large-scale data breaches, receipt of unsolicited communications, and other deceptive marketing practices.

Prior to joining EDELSON PC, Shawn worked for Motorola Solutions in the Security and Federal Operations Centers as an Information Protection Specialist. Shawn's responsibilities included network and computer forensic analysis, malware analysis, threat mitigation, and incident handling for various commercial and government entities.

Shawn is an Adjunct Industry Associate Professor for the School of Applied Technology at the Illinois Institute of Technology (IIT) where he has been teaching since December of 2013. Additionally, Shawn is a faculty member of the IIT Center for Cyber Security and Forensics Education which is a collaborative space between business, government, academia, and security professionals. Shawn's contributions aided in IIT's designation as a National Center of Academic Excellence in Information Assurance by the National Security Agency.

Shawn graduated with high honors from the Illinois Institute of Technology with a Masters of Information Technology Management with a specialization in Computer and Network Security. During graduate school, Shawn was inducted into Gamma Nu Eta, the National Information Technology Honor Society.

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


From: Jay Edelson <jedelson@edelson.com>
Date: Wed, Dec 28, 2016 at 12:40 PM
Subject: Re: WSJ story today/ cybersecurity
To: "Randazzo, Sara" <sara.randazzo@wsj.com>
Cc: Chris Dore <cdore@edelson.com>, Lauren Gard <lgard@zumado.com>

Nice speaking to you, Sara. Here is the case info, per your request:
Case Name: Shore et al v. Johnson & Bell, Ltd
Case Number: [1:16-cv-04363](#)
Northern District of Illinois

We will also add you to the list of reporters interested in new developments re: our law firm privacy suits.

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Jay Edelson | Edelson PC
300 North LaSalle Street, Suite 1300
Chicago, Illinois 60654
1.312.589.6375 (direct) | [1.312.589.6370](tel:1.312.589.6370) (firm) | [1.312.589.6378](tel:1.312.589.6378) (fax)
jedelson@edelson.com | www.edelson.com
 @JayEdelson  @EdelsonPC  Edelson-PC  EdelsonLaw

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Pursuant to requirements related to practice before the U.S. Internal Revenue Service, any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

On Wed, Dec 28, 2016 at 11:49 AM, Randazzo, Sara <sara.randazzo@wsj.com> wrote:

Thanks Jay, sorry to miss you was on the other line. I've got another call scheduled in a bit but will try you again around in about 20-30 mins.

Sara Randazzo
REPORTER

THE WALL STREET JOURNAL.

O: 310-498-4710
E: sara.randazzo@wsj.com
A: [5900 Wilshire Blvd., Suite 2900, Los Angeles CA 90036](#)

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

D | DOW JONES

On Wed, Dec 28, 2016 at 9:36 AM, Jay Edelson <jedelson@edelson.com> wrote:
Hi, Sara. I'm around. [312-589-6375](tel:312-589-6375).

Best,

Jay

Jay Edelson | Edelson PC
[350 North LaSalle Street, Suite 1300](https://www.edelson.com)
[Chicago, Illinois 60654](https://www.edelson.com)
[1.312.589.6375](tel:13125896375) (direct) | [1.312.589.6370](tel:13125896370) (firm) | [1.312.589.6378](tel:13125896378) (fax)
jedelson@edelson.com | www.edelson.com

 @JayEdelson  @EdelsonPC  Edelson-PC  EdelsonLaw

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Pursuant to requirements related to practice before the U.S. Internal Revenue Service, any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

On Wed, Dec 28, 2016 at 10:27 AM, Randazzo, Sara <sara.randazzo@wsj.com> wrote:
Hi Jay,

I'm a legal reporter at the Wall Street Journal and I'm working on a follow-up article today to [this week's news](#) of an indictment against three Chinese traders who allegedly hacked into law firm systems to steal M&A information. I'm looking into how law firms work to prevent such attacks and also am hoping to mention the litigation you've brought against law firms over lax security. Do you have time to speak today about the issue?

I'll be finishing up by this afternoon.

Let me know, thanks!

Sara Randazzo
REPORTER

THE WALL STREET JOURNAL

O: 310-498-4710
E: sara.randazzo@wsj.com
A: [5900 Wilshire Blvd., Suite 2900, Los Angeles CA 90036](https://www.wsj.com)

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EXHIBIT 3

Edelson PC

350 North LaSalle, 13th Floor
Chicago, Illinois 60622
t 312.589.6370 | f 312.589.6378 | www.edelson.com

April 6, 2016

VIA ELECTRONIC MAIL

Jason Shore
jay@coinabul.com

Re: Retention Agreement and Waiver of Conflicts

Dear Mr. Shore:

I am writing to set out the terms of the retainer agreement through which we will investigate and potentially prosecute matters related to the **Johnson & Bell LTD** law firm. By signing this letter-agreement, both you and your company, Coinabul, LLC (collectively "You") will have retained the law firm of Edelson PC as well as such attorneys as may work with us to represent You regarding the aforementioned matters. **And by signing this letter-agreement, You also acknowledge that You have been made aware of and knowingly waived potential and/or actual conflicts of interest related to our representation of You.** Should we ultimately decide to file lawsuits, we may pursue them on behalf of You individually, on behalf of You and all others similarly situated, or some combination or derivation of those two possibilities.

I. Generally

If we do file suit, whether on behalf of You individually or on behalf of You and a class, we will represent You (and any class) on a contingent basis. Should we achieve a recovery, settlement, and/or judgment on behalf of, or for the benefit of You individually, You agree to pay us forty percent of any such recovery, settlement, and/or judgment, subject to the modifications noted in Part III of this letter-agreement.

Should we achieve a recovery, settlement, and/or judgment on behalf of, or for the benefit, of a class, we will petition the court for an award of attorneys' fees and expenses. Although the court will determine what to award, You agree that a fair award of attorneys' fees from a fund recovered for the class would be forty percent of the total recovery plus reimbursement of all costs and expenses.

Alternatively, if we achieve a recovery, settlement, and/or judgment on behalf of a class, but the court uses the lodestar method of awarding fees (number of hours worked times a multiplier), You agree that a fair award of fees would be a lodestar based on our then-current hourly rates with a multiplier of at least three, plus the reimbursement of all our costs and expenses (the "Enhanced Lodestar").

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Edelson PC

You understand and agree that we may associate with other attorneys to represent You in this matter and that we may share a percentage of any attorneys' fees awarded and/or costs and expenses reimbursed with such attorneys.

Under no circumstances will You be responsible for the payment of any attorneys' fees, costs, expenses, or any amount whatsoever. But You agree You will not settle or otherwise resolve Your claims in any matter in which we represent You on an individual and/or injunctive basis (*i.e.*, a "Pick Off") unless it is consistent with Your obligations as a fiduciary to the putative (or actual) class and the settlement offer expressly provides for the reimbursement of all our costs and expenses as well as payment of our attorneys' fees calculated as our Enhanced Lodestar. You also agree that You will not settle or otherwise resolve Your claims in this matter without first communicating with us about any such offer of settlement.

You understand that You may have to produce evidence, either to demonstrate Your ability to be an adequate plaintiff, or to support Your claims. This may include assisting with answering written discovery, having Your deposition taken, giving oral testimony and/or appearing at trial, and possibly producing physical evidence. We understand and appreciate that You may object to an opposing party's unchecked access to Your personal information. We will vigorously oppose the production of any irrelevant personal information and seek protective orders that limit any defendant's access to any evidence that contains confidential information (including attorney-client communications).

You also understand that You have an obligation to preserve evidence, including electronic evidence such as Your electronic communications. You must preserve evidence that common sense would dictate is relevant to Your claims. You should communicate with us prior to destroying any evidence You believe might be relevant to Your claims.

You also agree to provide us up-to-date contact information, including Your current address, e-mail and telephone number where You can readily be reached.

This letter-agreement is meant to bind and benefit the heirs and successors of each of the parties to this agreement. To that end, You hereby grant the lawyers a lien on any claims, causes of action or recovery that You obtain, whether through settlement, judgment or otherwise, relating to the subject of this agreement. The lien will be based upon the amount of our attorneys' fees, costs and expenses as set forth above. This lien will not apply if we withdraw as Your counsel purely out of our own choice.

II. Actual and Potential Conflicts

As You know, we represent Yazan Hussein in litigation against You (the "Hussein/Coinabul Litigation"). That representation presents a potential conflict of interest in our representation of You in any other matter, including Your potential litigation against J&B outlined in this letter (the "Shore/J&B Litigation"). Consequently, we ask that You consent to our continued representation of Mr. Hussein while representing You in the Shore/J&B Litigation or any other matters. In making Your decision, there are a few important things You should know. First, whatever You decide, we will continue to represent Mr. Hussein in the

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Edelson PC

Hussein/Coinabul Litigation, subject to the limited exception stated below. That means that if You do not consent to our continued representation of Mr. Hussein, we will not be able to represent You in the Shore/J&B Litigation or any other matters. Second, we are *not* proposing to represent You in the Hussein/Coinabul Litigation. Mr. Hussein is our client in that litigation, and we cannot represent You both in the same litigation.

That said, given that Mr. Hussein has obtained a judgment against You in the Hussein/Coinabul Litigation on which he is attempting to collect, we believe that Your interests and Mr. Hussein's interests are aligned in certain respects, namely, in Your recovering the largest amount possible from J&B in the Shore/J&B Litigation. To that end, we have proposed the following course of action to Mr. Hussein, and are proposing the same course of action to You: (1) All efforts to collect on the judgment entered in the Hussein/Coinabul Litigation will be stayed while the Shore/J&B Litigation proceeds. (2) In the event You are able to obtain some monetary recovery from J&B through the Shore/J&B Litigation, You and Mr. Hussein will make a good faith attempt to agree on how to divide that recovery between yourselves. We will not represent either You or Mr. Hussein in the course of any such negotiations; You will each need to retain separate, independent counsel to negotiate any such agreement (though we are more than willing to help You find suitable counsel). (3) If, after thirty days, You and Mr. Hussein are unable to come to a mutually agreeable resolution, Mr. Hussein can resume collection efforts against You in the Hussein/Coinabul Litigation, and we will represent Mr. Hussein in doing so. In addition, in order to encourage You and Mr. Hussein to reach a mutually agreeable division of any recovery obtained as a result of an individual judgment on Your behalf in the Shore/J&B Litigation, we propose the following **fee structure**.

III. Fee Structure: Results Of Recovery Obtained In Any Individual Action

Should we obtain any settlement, verdict, judgment, or other recovery as a part of any individual action, You agree that we are entitled to attorneys' fees in the amount of 40% of any recovery. However, if You and Mr. Hussein *finally* resolve Your dispute during the aforementioned thirty-day period, we are willing to reduce our fee entitlement in the manner that follows.

Immediately upon our receipt of any recovery related to our representation of You in the Shore/J&B Litigation, we will place the funds in an IOLTA account. Thereafter there will be a 7-day period in which we disengage from our representation of (1) You, and (2) Mr. Hussein. We understand You and Mr. Hussein will both retain other counsel during that period, and engage in a good faith negotiation to resolve Your dispute related to the judgment in the Hussein/Coinabul matter.

Out of any money You transfer to Mr. Hussein as a result of a settlement, we will reduce our attorneys' fees from 40% to 20% of that money. To be clear, Mr. Hussein will also be paying 20% of the recovery that he receives (instead of the 40% we are entitled to under our agreement with him). Because we are reducing the fees we are entitled to under our agreement with Mr. Hussein, this arrangement represents an exceptionally appealing model to both You and Mr. Hussein. We are happy to discuss in further detail if this issue remains unclear to You.

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Edelson PC

To be clear, if You and Mr. Hussein do not resolve Your dispute during the 7-day period, we will continue our representation of Mr. Hussein in the Hussein/Coinabul litigation (and, obviously, cease any and all representation of You).

* * *

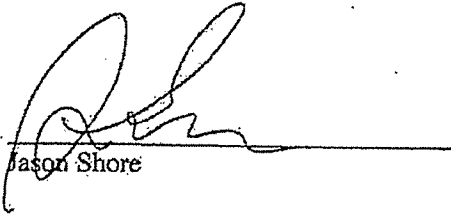
Please let me know if You have any questions or would like to discuss any of the issues raised in this letter further. If, after considering what I have disclosed to You here, You consent to the proposed course of action, including our continued representation of Mr. Hussein in the Hussein/Coinabul Litigation, please indicate Your consent by signing and dating below.

Best regards,

EDELSON PC

Jay Edelson

Agreed to:


Jason Shore


Date

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EXHIBIT B

HIGHLY CONFIDENTIAL AND ATTORNEYS' EYES ONLY

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOHNSON & BELL, LTD., an Illinois
professional corporation,

Plaintiff,

v.

EDELSON P.C., an Illinois professional
corporation and JAY EDELSON,

Defendants.

Case No: 2017 L 003169

**J&B'S DISCOVERY RESPONSES
PURSUANT TO THIS COURT'S MAY 29, 2019 ORDER**

Pursuant to this Court's May 22, 2019 Order, Plaintiff, JOHNSON & BELL, LTD.

("J&B") submits the following Responses to Defendants' requested information.

**THESE RESPONSES ARE DESIGNATED IN THEIR ENTIRETY AS
"HIGHLY CONFIDENTIAL AND ATTORNEYS' EYES ONLY"
PURSUANT TO THIS COURT'S ATTACHED APRIL 8, 2019
PROTECTIVE ORDER.**

(a) Copies of J&B's income tax returns, income and expense statements and audited financial statements, and all business loan applications of J&B to any financial institution (with supporting documentation) for the past five (5) years.

RESPONSE: J&B did not have any audited financial statements or business loan applications during the past five years. See JB000089-JB000192 (Tax Returns) and JB0000193-JB000194 (Income and Expenses Statement).

HIGHLY CONFIDENTIAL AND ATTORNEYS' EYES ONLY

(b) The identities and contact information of any potential, current and/or former clients of J&B that expressed concern to J&B regarding data security or the allegations of the Shore Complaint at any time since 2016.

RESPONSE: None.

(c) Documents relating to each economic opportunity that J&B alleges it lost as a result of Defendants' actions.

RESPONSE: See JB000089-JB000196.

(d) J&B's top line revenue from January 2015 to the present broken down by month.

RESPONSE: See JB0000195-JB000196.

RULE 214 VERIFICATION

I, Joseph R. Marconi, being duly sworn upon oath, and pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, deposes and states that, to the best of my knowledge, the above J&B'S DISCOVERY RESPONSES PURSUANT TO THIS COURT'S MAY 29, 2019 ORDER, are complete, true and correct at this time to the best of my information, knowledge and belief.



Joseph R. Marconi

PROOF OF SERVICE

The undersigned, on oath, states that on July 15, 2019 the foregoing document was served upon the attorneys of record on the service list via email.

[x] /s/ Brian C. Langs

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure I certify that the statements set forth herein are true and correct.

EXHIBIT C

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

JOHNSON & BELL, LTD., an)
Illinois professional)
corporation,)
Plaintiff,)

vs.) No. 17 L 3169

EDELSON P.C., an Illinois)
professional corporation and)
JAY EDELSON,)
Defendants.)

REPORT OF PROCEEDINGS at the hearing of
the above-entitled cause before the Honorable Jerry
A. Esrig, Judge of said court, on Friday, July 19,
2019, commencing at 11:39 a.m.

Reported by: Kathleen A. Hillgard
CSR No. 084-004093

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1 APPEARANCES:

2 JOHNSON & BELL, LTD., by

3 MR. BRIAN C. LANGS

4 (33 West Monroe Street, Suite 2700

Chicago, Illinois 60603-5404

312.372.0770

Langsb@jbltd.com)

5 -and-

6 SPELLMIRE BRUCK LLP, by

7 MR. TIMOTHY J. McINERNEY

(One East Wacker Drive, Suite 2350

Chicago, Illinois 60603

312.258.9400

Tjm@spellmirebruck.com)

8 appeared on behalf of the plaintiffs;

9

10 FUNKHOUSER VEGOSEN LIEBMAN & DUNN LTD., by

11 MR. NEIL M. ROSENBAUM

(55 West Monroe Street, Suite 2300

Chicago, Illinois 60603

312.701.6824

12 Nrosenbaum@fvldlaw.com)

13 appeared on behalf of the defendants.

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Page 4

1 MR. ROSENBAUM: It was not authorized by the

2 May 22nd order and it was not noticed up to the

3 Court for presentment, so if -- the back pocket

4 motion to reconsider would violate the circuit

5 court rules under those circumstances, and so we

6 did not file a response to that motion to

7 reconsider.

8 But I did notice that -- I believe,

9 I'm not sure, but I think it looked like counsel

10 included a copy of it in your Honor's courtesy

11 copy.

12 THE COURT: He did.

13 MR. ROSENBAUM: And I just want it to be

14 clear that it's our position that that's not -- you

15 know, it hasn't been presented, it's not before the

16 Court today, and it hasn't been briefed.

17 THE COURT: Well, I'm going to rule on it

18 anyway.

19 MR. ROSENBAUM: Okay.

20 THE COURT: Okay.

21 MR. ROSENBAUM: All right. I'll take it.

22 MR. LANGS: Just for the record, I don't have

23 it in front of me, but I thought the notice had

24 both the motions on there, but I could be mistaken.

Page 3

1 MR. LANGS: Good morning, your Honor. Brian

2 Langs for the plaintiff.

3 MR. McINERNEY: Tim McInerney for the

4 plaintiff.

5 MR. ROSENBAUM: Neil Rosenbaum on behalf of

6 the Edelson defense.

7 THE COURT: Okay. So I've read most of this.

8 MR. ROSENBAUM: One point to clarify, your

9 Honor, just in terms of what's up today.

10 THE COURT: Yeah.

11 MR. ROSENBAUM: You know, we thought that we

12 were supposed to be here on a motion for leave to

13 amend. And I understand that Johnson & Bell filed

14 two motions to reconsider.

15 One of them sought the alternative

16 relief for leave to amend, and we did respond to

17 that per the order.

18 THE COURT: Right.

19 MR. ROSENBAUM: The other motion to

20 reconsider is basically for a do-over on the

21 Court's orders from last August 29th with respect

22 to the dismissal of various claims of per se

23 defamation.

24 THE COURT: Yeah.

Page 5

1 THE COURT: Well, I don't know, but I'm

2 looking at page 4.

3 MR. ROSENBAUM: Of which, I'm sorry?

4 THE COURT: Of the motion to reconsider this

5 Court's August 29, 2018 order which deals with the

6 per se statements.

7 MR. ROSENBAUM: Okay.

8 THE COURT: First of all, I don't appreciate

9 this, I got to tell you. It's certainly true that

10 the Court can correct itself at any time and should

11 correct itself at any time if it improperly rules.

12 But if it takes you guys a year to

13 figure out that the Court's made an improper

14 ruling, then that suggests to me that maybe it's

15 not so improper or it wouldn't have been so hard to

16 discover. That's number one.

17 Number two, I found specifically

18 relating to the per se allegations that the one

19 thing that was perhaps a per se violation was

20 statements to the effect that they failed to

21 protect confidential client information.

22 So looking at page 4, you asked me

23 to reconsider 60(C), the language that J&B had

24 overrepresented its data security to clients.

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1 I don't know what would make you
2 think overrepresented its data security would be a
3 per se defamatory statement. I don't know of any
4 law that would support such a construction. So
5 that's definitely denied.
6 With respect to 60(C), the article
7 there that you're referring to, Exhibit J, quotes
8 the lawsuit, number one.
9 Number two, it does not contain any
10 per se defamatory statements.
11 The same is true for 61 -- well,
12 61 has an even more significant problem. Let me
13 see if I can find the first amended complaint.
14 MR. ROSENBAUM: I have a copy, your Honor.
15 THE COURT: I got it here. Just tell me
16 where it's attached.
17 MR. ROSENBAUM: I have a free-standing
18 version.
19 THE COURT: I got notes on mine.
20 MR. ROSENBAUM: Oh, sure.
21 THE COURT: I think. It's attached to
22 somebody's pleading.
23 MR. LANGS: Are you looking for the
24 complaint?

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1 THE COURT: Yeah.
2 MR. LANGS: I think it's Exhibit --
3 THE COURT: 2.
4 MR. LANGS: Okay.
5 THE COURT: So 61(B) says, last sentence
6 of the introductory paragraph, These media
7 publications have republished Jay Edelson's
8 previously defamatory statements -- which I
9 haven't found to be defamatory, at least per se
10 defamatory -- with the specific references to J&B
11 now that Edelson has publically stated that one of
12 the 15 law firms and the Chicago law firm
13 originally referenced was J&B.
14 So in other words, you got to put
15 two statements together to figure out that this is
16 defamatory, according to your allegations. By
17 definition that's not per se defamation.
18 So I don't even have to consider
19 anything that's said in A through B of 61 because,
20 according to your own allegations, you've got media
21 putting together two statements made at two
22 different times to draw a connection. That is not
23 defamation per se, in my understanding of what the
24 law is.

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1 So there is nothing for me to
2 reconsider with regard to that, or at least you
3 haven't convinced me that there's anything to be
4 reconsidered, so that motion's denied.
5 MR. LANGS: Just for clarification, your
6 Honor, the one you're talking about, 61(B), is
7 Exhibit M, correct?
8 THE COURT: I'm talking about your
9 allegations. I don't have to go to the exhibits.
10 You -- you said it.
11 MR. LANGS: I mean, to the extent that they
12 are different, and I got to look at it.
13 THE COURT: You --
14 MR. LANGS: Wouldn't the exhibit control?
15 THE COURT: You said, These media
16 publications have now republished Jay Edelson's
17 previous statements with specific references to
18 J&B. The media has. Now that Edelson has
19 publically stated in another -- at another time and
20 place that one of the 15 law firms and the Chicago
21 law firm was J&B. I'm not saying it's not per
22 quod, but it's not per say.
23 And then you say "for example" and
24 then you give me two examples. You give me two

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1 examples in what you -- what you allege is the
2 media putting together two separate statements made
3 in two different periods of time and drawing a
4 conclusion. That's --
5 MR. LANGS: I guess my only response to your
6 Honor is if you look at the actual article --
7 THE COURT: I'm not going to look at
8 anything. I'm looking at your pleadings. You have
9 pled this.
10 MR. LANGS: I would think that the -- what
11 the pleadings say, your Honor, is that they did do
12 that in some -- in some places, and then there's
13 specific examples of where Edelson had given quotes
14 to different media publications.
15 THE COURT: That's not what this says. This
16 says what I just read to you, that Edelson made
17 previous defamatory statements, he's now made
18 another statement, and the media put two and two
19 together and came up with four, and here are
20 examples, A and B.
21 MR. LANGS: Right, but --
22 THE COURT: That's what you said.
23 MR. LANGS: But if you look at B and you look
24 at the article in B, the actual article states that

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1 Jay Edelson had identified 15 firms with less --
 2 one of which was Johnson & Bell.
 3 THE COURT: I'm sorry, that Jay Edelson had?
 4 MR. LANGS: And then Jay Edelson said that
 5 J&B failed to protect their client information.
 6 THE COURT: That's not what you pled.
 7 MR. LANGS: And that's what I -- that's
 8 what's quoted in 61(B).
 9 THE COURT: Well, I just quoted your
 10 pleadings, your allegations. You characterized
 11 what happened in 61. I'm going to go with your
 12 characterization. It's your complaint.
 13 MR. LANGS: And just for the record, and I
 14 understand your ruling, the pre -- the pre-article
 15 61, before A and B were the -- the examples in it,
 16 it's just -- it's going with the flow of the
 17 narrative in the complaint, but the actual
 18 defamatory statement that's alleged are the
 19 statements that are in the article.
 20 THE COURT: We're rearguing the same thing.
 21 MR. LANGS: Okay.
 22 THE COURT: You alleged something. You're
 23 bound by your allegations.
 24 MR. LANGS: I understand your ruling.

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1 what they actually allege in the complaint.
 2 MR. ROSENBAUM: Did you say imply?
 3 MR. LANGS: It says there was breach.
 4 THE COURT: Well, if it says -- if it's
 5 implied, it's not per se, so make up your mind.
 6 MR. LANGS: Well, it says -- it says, and I
 7 quote, Edelson filed the first breach class action
 8 malpractice lawsuit against Johnson & Bell that
 9 cited critical lapses.
 10 And I think somebody in the -- a
 11 member of the public could read that as they --
 12 they filed a lawsuit.
 13 THE COURT: Here -- here's your allegation,
 14 That Edelson P.C.'s tweet therefore falsely implies
 15 that J&B's data security was breached and falsely
 16 implies that a lawsuit was filed against J&B
 17 because data security was breached.
 18 That's what you plead. Okay?
 19 That's not defamation per se as a matter of law.
 20 MR. LANGS: Okay.
 21 THE COURT: Okay. Now, second amended -- so
 22 now you want me to reconsider a couple other
 23 things.
 24 Okay. The first thing you ask me to

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1 THE COURT: Okay.
 2 MR. ROSENBAUM: I have no objection to
 3 deciding that motion today.
 4 THE COURT: Thank you.
 5 MR. ROSENBAUM: No problem.
 6 THE COURT: Okay. So now I'm on your other
 7 motion to reconsider.
 8 MR. LANGS: I didn't mean to -- did you get
 9 to the part about the data breach tweet that's also
 10 alleged in that motion?
 11 THE COURT: I thought I got through
 12 everything. Where are we at now?
 13 MR. LANGS: This is on page 5 of the motion
 14 at the very bottom in paragraph 62(B).
 15 THE COURT: Yeah.
 16 MR. LANGS: I mean, I guess if you're ruling
 17 the same thing, that you're not going to look at
 18 the exhibit that's attached.
 19 THE COURT: No. I --
 20 MR. LANGS: Because the tweet itself says
 21 that Edelson filed a breach class action against
 22 Johnson & Bell, which implies that the actual
 23 computer systems were actually hacked, not just
 24 that they had vulnerabilities. So that's not even

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1 reconsider is Section C, Deceptive Trade Practices.
 2 MR. LANGS: Correct.
 3 THE COURT: You say I should reconsider
 4 because I made an error of law. And then you go on
 5 over the course of roughly two pages, pages 7, 8,
 6 and part of 9, and you don't cite a single case.
 7 So what's the error of law.
 8 MR. LANGS: The error of law, your Honor, is
 9 that we believe that in the pleading it -- it
 10 states in multiple places that J&B suffered
 11 reputational damages, damage to their goodwill,
 12 things of that nature, and that that qualifies
 13 under the Uniform Deceptive Trade Practices Act as
 14 injunctive relief and it shows future harm.
 15 THE COURT: Well, where's the case? What --
 16 what case did I misinterpret? What did I do wrong.
 17 MR. LANGS: Well, I have a couple cases that
 18 I brought with me, your Honor, but --
 19 THE COURT: Why are they not in the motion?
 20 They were -- we're talking about a motion to
 21 reconsider that's filed a year after my ruling and
 22 you don't cite a single case. So I'm denying that
 23 one.
 24 MR. LANGS: The basis of that, your Honor,

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1 was the ruling that you made at the last hearing,
 2 was what we based it on, and that you said that --
 3 in that transcript that you didn't think that we
 4 could plead injunctive relief or for future harm, I
 5 believe.
 6 THE COURT: Yeah, but you got to show me
 7 where I -- give me a case that says what we pled
 8 was adequate, that I misinterpreted. I mean, what
 9 did I misinterpret? What error did I make? You
 10 disagree with what I said? Okay, I understand.
 11 MR. LANGS: Well, I mean, do you -- I have a
 12 case here.
 13 THE COURT: No.
 14 MR. LANGS: No.
 15 THE COURT: I mean, we're a year into this.
 16 MR. LANGS: Your Honor, we understand that
 17 the year -- we're a year into this, but we still
 18 are at the pleading stage, your Honor, and --
 19 THE COURT: I understand; I understand. But
 20 how do I manage a docket or a caseload where I make
 21 a ruling and you come back a year later and tell me
 22 I made a mistake? Which I certainly am capable of
 23 doing. I don't deny that at all. I have granted
 24 motions to reconsider.

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1 But you told me I made a mistake and
 2 you don't cite a single case. And then you walk in
 3 on the day of the hearing and you say, Oh, by the
 4 way, I've got one in my hip pocket. Un-uhn.
 5 You'll get a chance if you want to give it to me
 6 when we talk about your proposed second amended
 7 complaint.
 8 Okay. With regard to the Consumer
 9 Fraud and Protection Act issues, the two cases --
 10 first of all, this is an uncertain area, as far as
 11 I'm concerned. You've given me two cases.
 12 Volkswagen and Empire and you've given me
 13 Sullivan's, all of which are different than this
 14 case in one critical respect. And that is they all
 15 involve businesses competing against one another.
 16 That is not the case here. It's not
 17 alleged -- it's not alleged here and it's not the
 18 case here. It's not alleged for a reason.
 19 MR. ROSENBAUM: It's the opposite, that
 20 they're --
 21 THE COURT: Yeah.
 22 MR. ROSENBAUM: It's alleged that they're not
 23 competitors.
 24 THE COURT: Yeah, they're not competitors.

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1 And in the absence of competition
 2 between these two parties, I don't believe the
 3 Consumer Fraud Act comes into play.
 4 Now, I realize there's no case that
 5 says that specifically, but I find no case and no
 6 one cite's me a case involving parties who are
 7 noncompetitors, number one.
 8 Number two is whatever happened here
 9 was not addressed directly to your clients. It was
 10 addressed to the world at large.
 11 Now, I know you cite some cases that
 12 talk about the market, but I don't know what the
 13 market means in the absence of competition between
 14 the two parties. If that's what the -- if that's
 15 what market means, then it's anybody who could
 16 possibly at some point or another think about
 17 hiring a lawyer. And I don't think that's what
 18 this -- I don't think the Consumer Fraud Act is
 19 designed to get at this conduct that's alleged in
 20 this case.
 21 So, again, I'm not saying this is a
 22 closed question, but that's where I've come out at.
 23 MR. ROSENBAUM: One other point on this too,
 24 your Honor, just for the record as well.

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1 THE COURT: Sure.
 2 MR. ROSENBAUM: I would disagree with the --
 3 the characterization of their allegations as to
 4 the -- to the world at large for the market. I
 5 would look at it in terms of what's alleged, you
 6 know, a publication to Mr. Edelson's or the firm's
 7 Twitter feed, and I would -- and I would also look
 8 at comments to the press. That's what's been
 9 alleged, the folks spoke to the press, but that's
 10 not the same as putting an article or an
 11 advertisement in the newspaper.
 12 I mean, if someone's speaking to the
 13 press about an issue of public concern, they don't
 14 know what's going to be published. They have no
 15 control over what the reporter's going to write or
 16 what the journalist is going to write, if they're
 17 going to write anything.
 18 And so I don't think making a
 19 statement in an interview to a journalist is the
 20 same thing as publishing an article to the
 21 relevant -- you know, putting into the market for
 22 the world at large or a greater audience other than
 23 just the journalist.
 24 THE COURT: Taking the pleadings most

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1 favorably to plaintiff, what they essentially
 2 allege is that you folks went on a promotional
 3 campaign to increase business for your law firm,
 4 and in the course of doing so you said commercially
 5 disparaging and perhaps defamatory things about
 6 them that affected their business.
 7 So is that consumer fraud?
 8 MR. ROSENBAUM: Not.
 9 THE COURT: Phrased that way?
 10 MR. LANGS: And, your Honor, one thing, we
 11 didn't have the opportunity to reply -- and I did
 12 read their response. I do have a case that says
 13 what you're saying about the competition with me
 14 right now. It's an old case. It's one of the ones
 15 that started with the Illinois consumer fraud, I
 16 guess, Crinkly v. Dow, that all the other cases
 17 cite.
 18 And it says specifically, Thus we
 19 hold that the absence of competition between
 20 plaintiff and defendants did not render plaintiff's
 21 proposed amendment insufficient in law.
 22 And in that proposed amendment was a
 23 proposed amendment for a Consumer Fraud Act claim.
 24 THE COURT: That's a case no one's ever cited

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1 before today?
 2 MR. LANGS: Well, that -- that case is cited
 3 in the --
 4 MR. ROSENBAUM: I think I cited it.
 5 MR. LANGS: -- Wigglesworth case.
 6 MR. ROSENBAUM: The issue there too, again,
 7 if I had a reply, if I had a reply I would have
 8 then pointed out that -- and frankly, your Honor,
 9 this was an issue, and I kind of want to -- that we
 10 raised in March of 2018 when they moved -- when we
 11 first moved to dismiss their first amended
 12 complaint and these claims came out of the
 13 woodwork. We anticipated the -- this consumer --
 14 we put these arguments in our brief and -- and they
 15 didn't -- they thought so little of them that they
 16 didn't even respond to them --
 17 THE COURT: Okay.
 18 MR. ROSENBAUM: -- in response. Well, that's
 19 a waiver, your Honor. And we cited case law to
 20 that affect as well based on a case that they cited
 21 that -- that one of their primary cases, the
 22 failure to respond in response to a motion to
 23 dismiss is acquiescence or waiver. It was a
 24 Northern District case, but one they cited

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1 extensively.
 2 THE COURT: Well, if I made a mistake based
 3 on -- if there's a case out there that says my
 4 analysis is wrong, I'm not going to hold them to a
 5 waiver, I don't think, particularly where we're at
 6 now.
 7 But I'd like to see that case
 8 because that's not something I looked at. It
 9 certainly -- if it's something you want to rely on,
 10 you haven't really called it to my attention.
 11 MR. ROSENBAUM: They were still --
 12 THE COURT: Do you have it?
 13 MR. LANGS: I don't have an actual copy of
 14 the case with me. I have the cite. It's Crinkly
 15 v. Dow, Dow Jones.
 16 THE COURT: Give it to me.
 17 MR. LANGS: It's 67 Ill.Ap.3d 869, First
 18 District 1978.
 19 THE COURT: Are you familiar with it?
 20 MR. ROSENBAUM: I'm familiar with the case
 21 name because it's -- counsel's correct it's cited a
 22 lot, but I'm not familiar with the facts. I
 23 couldn't --
 24 THE COURT: Hold on one second.

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1 My clerk's going to print it out.
 2 I'll take a quick look at it, and then I -- I don't
 3 know when I'll be able to come to a definitive --
 4 if I do -- if I think it's something that I should
 5 think about, I'll certainly give you a chance to
 6 respond to it.
 7 MR. ROSENBAUM: Thank you, appreciate it.
 8 THE COURT: But here's my problem with the
 9 second amended complaint. To the extent we're
 10 talking about the Consumer Fraud Act, it doesn't
 11 cure the problem that I raised, but we'll set that
 12 aside for a minute.
 13 Let's talk about the -- it's really
 14 two counts you're seeking to amend?
 15 MR. LANGS: Yes.
 16 THE COURT: Yes.
 17 MR. LANGS: It's the Deceptive Trade
 18 Practices Act claim and then also the --
 19 THE COURT: And where is that? That's
 20 attached to what?
 21 MR. LANGS: The second amended complaint.
 22 It's Exhibit F to the August 3rd, 2018 order,
 23 motion.
 24 MR. ROSENBAUM: Huh?

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1 MR. LANGS: It's Exhibit F to --
 2 MR. ROSENBAUM: Oh, gotcha.
 3 THE COURT: And what I understand you to be
 4 saying is that somewhere out in the ether the
 5 statements continue to exist and therefore continue
 6 to cause unquantifiable harm, right?
 7 MR. LANGS: Well, not only that, your Honor,
 8 but also continue to damage the goodwill of
 9 Johnson & Bell and their business reputation.
 10 THE COURT: That's the unquantifiable, yeah.
 11 MR. LANGS: Um-hmm.
 12 THE COURT: Yeah.
 13 MR. LANGS: And --
 14 THE COURT: Okay. So what are you asking to
 15 do? I'm looking at the wherefore clause. You
 16 asked me to prohibit them from disseminating a
 17 public document, to prohibit them from saying that
 18 J&B had vulnerabilities or security holes in its
 19 data security. Two statements that I have already
 20 found not to be defamatory per se and which are
 21 clearly matters of opinion for which there is no
 22 objective test.
 23 MR. LANGS: Your Honor --
 24 THE COURT: Hold on.

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1 MR. LANGS: Okay.
 2 THE COURT: Three, that -- from making
 3 statement -- public statements that J&B ever fixed
 4 or patched alleged vulnerabilities or security
 5 holes, when I believe that there's an admission,
 6 isn't there, before Judge Darrah that exactly that
 7 happened, which I read as an admission.
 8 MR. LANGS: There's --
 9 THE COURT: Hold on.
 10 Two, requiring them to issue a press
 11 release. In other words, I'm supposed to put words
 12 in their mouth, force them to say something. Make
 13 declaratory relief in subparagraph 3, which gets us
 14 absolutely nowhere. And award you fees and costs
 15 for pursuing something that at this point I haven't
 16 found you have any right to pursue.
 17 So my question is: Let's assume
 18 that you're right, that there's some statements out
 19 there that continue to cause you damage, what in
 20 the world is the legal authority for me granting
 21 any of this relief?
 22 MR. LANGS: Well, one of the things that
 23 we're concerned about is the fact that they
 24 continue to post these articles on their website.

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1 THE COURT: Well, I understand your -- yeah.
 2 I understand you're concerned about it, but given
 3 the fact that we have a First Amendment, given the
 4 fact that these things are out in the public, given
 5 the fact that we have an unsealed lawsuit, given
 6 the fact that you folks made certain admissions, at
 7 least I found them to be admissions when I read --
 8 was it the transcript?
 9 MR. ROSENBAUM: Yes. There was a transcript
 10 in front of one judge, I believe it was Judge
 11 Shadur, and then there was an order of --
 12 MR. LANGS: An order.
 13 THE COURT: Right.
 14 MR. LANGS: And I don't know if it was
 15 addressed in front of your Honor. I think it might
 16 have been addressed in front of Judge Mitchell, but
 17 there -- there's some discrepancies in what -- in
 18 Judge Darrah's order.
 19 And what happened was it was a
 20 cut-and-paste job from their motion. We have it
 21 written down. I can give you our argument as to
 22 why.
 23 MR. ROSENBAUM: Judge, we already heard that
 24 argument.

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1 THE COURT: Wait, wait.
 2 Are you telling me that there was --
 3 that Judge Darrah made mistakes?
 4 MR. LANGS: Correct, your Honor.
 5 THE COURT: Well, that's --
 6 MR. ROSENBAUM: He's claiming -- and we
 7 talked about this before, your Honor, how he's
 8 suggesting that Judge Darrah made an error because
 9 he was copying and pasting from the parties
 10 filings. And your Honor pointed out at the last
 11 hearing that judges do that all the time.
 12 MR. LANGS: The transcript from that hearing,
 13 your Honor, where they pasted in their motion, they
 14 took the lines out of context that Mr. Bruck was
 15 speaking, and I think this is on the Judge Shadur
 16 one, and Judge Shadur asked him if it was okay for
 17 him to recuse himself and they said yes.
 18 THE COURT: No. I had the transcript. I had
 19 the transcript, yeah. I had the transcript. I
 20 didn't just have excerpts from it. I didn't just
 21 read their brief. I had the transcript. And if
 22 Judge Darrah made a mistake, so be it, go vacate
 23 his the order.
 24 MR. ROSENBAUM: They never tried. That was

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1 the point that we made, that if this is so bad, how
 2 come we're not running to correct it? And -- and
 3 they didn't.
 4 THE COURT: Yeah. So -- but leaving all that
 5 aside, I don't know of anything that would entitle
 6 you to the relief that you're asking for.
 7 MR. LANGS: If --
 8 THE COURT: If you can give me some law that
 9 would allow me to issue mandatory injunctions,
 10 telling people what they must and must not say and
 11 preventing people from distributing public
 12 documents, you know, then I might reconsider on
 13 this one.
 14 MR. ROSENBAUM: Isn't that what their motion
 15 was for, to give you that law?
 16 MR. LANGS: Well, your Honor, I guess our
 17 point is that if you can't make public disparaging
 18 statements yourself, then why should you be able to
 19 make public disparaging statements to the media,
 20 have the media print your publically disparaging
 21 statements, and then post them on your website?
 22 That's kind of -- it's kind of a runaround.
 23 So he -- he interviews with media
 24 people that he -- that he has relationships with.

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1 They print what he wants the public to hear.
 2 THE COURT: Yeah.
 3 MR. LANGS: And then he puts that article on
 4 his website, and then he's able to disparage
 5 Johnson & Bell that way.
 6 THE COURT: Well, then you've got a
 7 defamation claim, publically disparaging remarks,
 8 if they're per se defamation or they're -- or
 9 whatever they are, then they are.
 10 MR. LANGS: But defamation and commercial
 11 disparagement are two totally distinct claims.
 12 Commercial disparagement is something that
 13 disparages the goods and services of business.
 14 THE COURT: Well, don't you cite an Illinois
 15 Supreme Court case that says if --
 16 MR. ROSENBAUM: Yes. We -- we went back, and
 17 after speaking with your Honor about commercial
 18 disparagement after a few hearings, I ran into
 19 Imperial enough times, and frankly that was
 20 actually a case one of my partners did. It's
 21 appellate level and the supreme court level. And I
 22 went back to the supreme court and frankly, to me,
 23 this is the case.
 24 The most important issue here is

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1 that the constitutional protections for speech are
 2 going to apply to all derivative causes of action
 3 based on the same publication. This was Imperial
 4 Holding. Imperial Holding -- unlike in our case,
 5 Imperial Apparel was between two close competitors
 6 and the publication at issue is like an
 7 advertisement for their product published in the
 8 Sun-Times, but because the trial court there found
 9 the statements in the advertisement were
 10 non-defamatory, a matter of law, just like -- just
 11 like your Honor did in this case, it concluded that
 12 the plaintiff could not circumvent the defendant's
 13 First Amendment protection by substituting common
 14 law and statutory claims instead.
 15 So in other words, your Honor, the
 16 Illinois Supreme Court has already held that
 17 Johnson & Bell can't do exactly what they're trying
 18 to do right now.
 19 They can't lose their defamation
 20 case and then convert it into an action for
 21 deceptive trade practices relief or for consumer
 22 fraud or even for commercial disparagement.
 23 There's no shortcut to the First Amendment,
 24 Illinois Supreme Court, and they have not responded

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1 to it.
 2 MR. LANGS: Your Honor, I think the Imperial
 3 case itself, because they only recognize commercial
 4 disparagement, is a tort separate and distinct from
 5 the tort of defamation.
 6 If they're separate and distinct,
 7 then there could be commercial disparagement when
 8 there's not defamation. And commercial
 9 disparagement is when a party disparages a
 10 business's goods or services. That's how it's
 11 defined.
 12 And defamation --
 13 THE COURT: If there could be two cause of
 14 action. Why?
 15 MR. ROSENBAUM: There can be. Sometimes you
 16 can -- it's possible to have purely a claim for
 17 commercial disparagement. It's possible to have a
 18 claim for defamation, perhaps, and from -- from
 19 what I'm reading.
 20 But the point is that when the two
 21 causes of action are analytically intertwined, like
 22 in this case where the statement at issue has First
 23 Amendment protection, is protected as non-
 24 defamatory, for purposes of that tort you can't

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1 undo Illinois's defamation and First -- I mean,
 2 it's not even just Illinois. It's also the United
 3 States Supreme Court. You can't just undo it by
 4 saying, Oh, here's commercial disparagement, give
 5 me all the same discovery. You can't do that.
 6 MR. LANGS: They're different statements that
 7 are for different torts.
 8 MR. ROSENBAUM: That's why the supreme court
 9 said you can't do what you're trying to do.
 10 MR. LANGS: I don't think that's what that
 11 case says.
 12 MR. ROSENBAUM: Well, it is.
 13 MR. LANGS: There's eight or nine other cases
 14 that say exactly what I'm saying, your Honor.
 15 THE COURT: You're asking me to stop them
 16 from saying that your computer -- or that your
 17 security had vulnerabilities and security holes.
 18 I think that would be a First Amendment violation
 19 for me to prevent anybody from saying that.
 20 MR. LANGS: Or to issue an injunction that --
 21 that states that they have to publically state that
 22 they were incorrect, if that's what's proven.
 23 THE COURT: You're going to have to find me
 24 some case law somewhere that tells me that the

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1 court can enter an injunction requiring somebody to
 2 say something that they haven't said. I mean, I --
 3 that to me is --
 4 MR. ROSENBAUM: Once the allegations are in
 5 the public domain. Because I agree with your
 6 Honor. Once Judge Darrah unsealed Shore, there's
 7 no injunction for allegations that were in the
 8 Shore complaint. I mean, it's --
 9 THE COURT: They're going beyond that.
 10 They're telling me --
 11 MR. ROSENBAUM: I know.
 12 THE COURT: -- to give a mandatory injunction
 13 compelling you to publish a press relates.
 14 MR. ROSENBAUM: It's -- but I -- I mean,
 15 there's no -- there's no allegation. You need an
 16 extreme likelihood of future harm. They haven't
 17 alleged that any specific person or anybody has
 18 read this stuff since 2016.
 19 THE COURT: Well ...
 20 MR. LANGS: Some of it is published in the
 21 Wall Street Journal, your Honor. And, you know,
 22 there's other case law that say likelihood of
 23 confusion and misunderstanding is exactly what
 24 we're talking about when we're talking

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1 about whether or not --
 2 THE COURT: You've got case -- you've got a
 3 case there that -- where a court has issued a
 4 mandatory injunction --
 5 MR. LANGS: No.
 6 THE COURT: -- requiring somebody to issue a
 7 press release?
 8 MR. LANGS: Not in front of me, no.
 9 THE COURT: No, no. I don't think so.
 10 MR. LANGS: But I -- I have a case that says
 11 that a court can issue injunctive relief under the
 12 Uniform Deceptive Trade Practices when the
 13 deceptive conduct at issue creates a likelihood of
 14 confusion or misunderstanding about the plaintiff's
 15 business.
 16 And in this case, these
 17 statements --
 18 THE COURT: You asked me for two things.
 19 MR. LANGS: All right.
 20 THE COURT: You asked me for a restrictive
 21 injunction prohibiting them from saying that you
 22 had vulnerabilities or security holes in your data,
 23 which, number one, I don't find to be commercially
 24 disparaging in this day and age, and number two,

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1 there's an acknowledgement of that in the federal
 2 court's transcripts and orders.
 3 So I'm not going to grant that
 4 relief under any circumstances, and I'm not going
 5 issue a mandatory injunction requiring somebody to
 6 issue a press release under any circumstances that
 7 I can think of.
 8 So I'm not going to allow you to
 9 amend based -- based on no other grounds but that
 10 the relief you're asking for is relief that I
 11 cannot see the Court enter into under any
 12 circumstances.
 13 MR. LANGS: If we were to amend our complaint
 14 to state what we did state and then also -- and
 15 then also that those vulnerabilities left J&B's
 16 clients' confidential information exposed to theft,
 17 does that fix the problem or no?
 18 THE COURT: I'm -- I'm not going to rule on
 19 anything that's not before me.
 20 MR. ROSENBAUM: I mean, I thought the whole
 21 point after a year, I mean, was that you were
 22 supposed to like replead the second amended
 23 complaint now so that you wouldn't talk about, What
 24 if I come in later, when you're supposed to do it

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1 here and we're going to talk about it so we don't
 2 take another year.
 3 THE COURT: Well, you guys know what you're
 4 claims are. Yeah.
 5 So where are we otherwise?
 6 Oh, did you bring me that case? He
 7 did. Okay.
 8 What -- give me the place you --
 9 MR. LANGS: Well, this is at 875, 876.
 10 MR. ROSENBAUM: And I'll just mention I don't
 11 have a copy in front of me.
 12 THE COURT: Okay. I'll give it to you.
 13 875 to 876. Okay.
 14 Okay. But this is under the
 15 Deceptive Trade Practices Act.
 16 MR. LANGS: Correct, you Honor, but that --
 17 that's where the deceptive business practice comes
 18 from in our pleading for the Consumer Fraud Act.
 19 So under the Consumer Fraud Act,
 20 if there is a deceptive trade practice under
 21 Section 2 of that statute, it qualifies for the
 22 Illinois -- the Consumer Fraud Act.
 23 And then the only other --
 24 THE COURT: Hold on.

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1 MR. LANGS: Okay.
 2 THE COURT: Okay. I see.
 3 MR. ROSENBAUM: And our position on that is
 4 the same position we had in 2018 when we tried to
 5 get in front of this issue, and that is there is a
 6 narrow exception for non-consumer businesses to be
 7 able to seek relief under the act, but they need to
 8 be -- aside from showing a -- in order -- aside
 9 from showing -- you know, meeting the high
 10 standard, because it's not that they have a -- meet
 11 a high standard in order for that exception to
 12 apply, but they also have to show a consumer nexus.
 13 It can't just be two noncompetitors having an
 14 issue.
 15 The -- the actual injury has to be a
 16 consumer-related injury. It has to have a nexus
 17 with consumerism. And that's -- theres' no
 18 allegations of that, how these injuries are
 19 consumer injuries or representative of injuries
 20 suffered by Edelson's customers in that proposed
 21 pleading.
 22 THE COURT: What about J&B's customers?
 23 MR. ROSENBAUM: I didn't mean -- I meant
 24 J&B's customers. I misspoke, but yeah, that's what

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1 I meant to say.
 2 MR. LANGS: Your Honor, if I can respond. I
 3 mean, the Wigglesworth case that we cited and the
 4 Sullivan's Wholesale case and other cases that have
 5 been citing cases that I have in front of me here,
 6 they all -- they say that the only element is that
 7 the businesses who are not consumers have standing
 8 to sue under the Consumer Fraud Act when the
 9 alleged conduct involved trade practices addressed
 10 to the market generally, which we've alleged in
 11 both our complaints.
 12 THE COURT: Well, you've alleged it by saying
 13 it.
 14 MR. ROSENBAUM: Right.
 15 MR. LANGS: Well --
 16 MR. ROSENBAUM: That's another point. You
 17 don't meet the exception by saying over and over
 18 again, This is addressed to the market generally.
 19 You have to -- as Judge Esrig mentioned just a few
 20 minutes ago, you never plead the market.
 21 MR. LANGS: Well, I think we did plea the
 22 market by --
 23 MR. ROSENBAUM: What?
 24 MR. LANGS: -- by showing all the different

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1 instances on this publicity campaign that we allege
 2 that Edelson and his firm went on to basically
 3 disparage J&B's service, which would be -- the
 4 disparaging statements would be that they cannot
 5 protect their clients' confidential information.
 6 And if you look at -- in the first
 7 amended complaint, it's 120 to 123.
 8 THE COURT: Well, let me just look at your
 9 second amended complaint.
 10 MR. LANGS: And the second amended is 127 to
 11 132.
 12 And then all those cases, you Honor,
 13 and this is a good point also, they all say that
 14 the test is the test that was first put forth in
 15 Pain Prevention Lab case, which is 657 F. Supp
 16 1486, and it's a Northern District case that all
 17 the other Illinois cases are citing as the test for
 18 this consumer nexus test when there's a business
 19 versus a business in a Consumer Fraud Act claim.
 20 And it says, However, businesses
 21 have standing to sue under the Consumer Fraud Act
 22 to redress competitive injury they suffer when
 23 other businesses deceive customers by making
 24 alleged misrepresentations in the marketplace and

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1 to actual and/or prospective customers.
 2 So in this case, there -- we're
 3 alleged that these disparaging statements have made
 4 them -- have been stated to the public, which are
 5 consumers of -- possible consumers, potential
 6 consumers, of J&B's legal services.
 7 And then in the Zinser v Rose case,
 8 245 Ill.App.3d 881 --
 9 THE COURT: Where we at in discovery?
 10 MR. ROSENBAUM: Well, that -- that's the
 11 other -- I mean, you asked what's next.
 12 THE COURT: Well, we were here on a motion to
 13 compel.
 14 MR. LANGS: Right.
 15 MR. ROSENBAUM: Correct.
 16 THE COURT: Relating to your seeking them --
 17 information from them relating to their damages.
 18 MR. ROSENBAUM: They produced -- we got
 19 their -- the discovery that we've been on -- you
 20 know, asking, we got it a couple of days ago.
 21 THE COURT: All right. And are you claiming
 22 that there's evidence in the discovery that you
 23 produced that you can show the loss of new and
 24 existing clients?

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1 MR. ROSENBAUM: Absolutely not.
 2 MR. LANGS: Well, there's --
 3 MR. ROSENBAUM: Absolutely --
 4 THE COURT: I'm asking you. Are you claiming
 5 that?
 6 MR. LANGS: I think we have to have our
 7 expert look at the books to determine that.
 8 Because what we produced, your Honor, was top-line
 9 revenue and also our tax return.
 10 MR. ROSENBAUM: They were ordered to identify
 11 any folks, any customers or potential customers,
 12 who read this stuff and came back to them and said,
 13 that, you know, We're concerned about it. And in
 14 answering their interrogatories, they said, None.
 15 THE COURT: Where is that order?
 16 MR. LANGS: To clarify --
 17 THE COURT: They said none?
 18 MR. ROSENBAUM: None. I can show you.
 19 MR. LANGS: To clarify, your Honor, there's
 20 no particular customers we're going to identify,
 21 but that doesn't mean -- and the case law says
 22 that there can be damages to your reputation that
 23 can be measured in certain ways when there's
 24 unquantifiable harm to your reputation, depending

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1 on a lot of market factors, and we would have an
 2 expert to determine that.
 3 I mean, just because we don't have a
 4 client that told us that they quit our firm because
 5 of these statements doesn't mean there's not anyone
 6 out there that found out about these statements and
 7 then didn't hire us.
 8 MR. ROSENBAUM: But what's your basis for
 9 suing then?
 10 THE COURT: First of all, first of all, that
 11 may be true, but you allege here existing clients,
 12 right?
 13 MR. LANGS: Um-hmm.
 14 THE COURT: So you're telling me that you
 15 have no basis for alleging existing clients, that
 16 you're alleging it anyway, you want to file a
 17 second amended complaint to allege that you've lost
 18 existing clients when you know that you didn't?
 19 MR. LANGS: We probably should have taken
 20 that out, your Honor.
 21 THE COURT: What?
 22 MR. LANGS: We should have taken that out.
 23 THE COURT: Yeah, I would say so.
 24 So then what we're talking about is

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1 new clients.
 2 MR. LANGS: Correct.
 3 THE COURT: Okay.
 4 MR. ROSENBAUM: Haven't identified any of
 5 those either.
 6 THE COURT: All right. Well, that may be
 7 harder to identify.
 8 MR. ROSENBAUM: Fair enough.
 9 THE COURT: Presumably there could be some
 10 circumstantial evidence of that.
 11 Do you have any circumstantial
 12 evidence of that?
 13 MR. LANGS: I think that we'll be able to
 14 have circumstantial evidence of that with our
 15 expert's analysis of the books.
 16 THE COURT: Okay. Tell you what I'll do,
 17 I'll --
 18 MR. LANGS: Which -- which count are we on
 19 right now?
 20 THE COURT: I'm on your consumer fraud claim.
 21 MR. LANGS: I mean, under the consumer fraud
 22 claim, what we've pled is enough.
 23 MR. ROSENBAUM: That's not true. You --
 24 there's no --

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1 THE COURT: Well, what you've plead is
2 enough.
3 MR. ROSENBAUM: There's no nexus. Looking
4 back at the --
5 THE COURT: Well, they're claiming that they
6 lost business as a result of your deceptive acts.
7 MR. ROSENBAUM: Yes. That's not -- that's
8 not a consumer nexus. That's a personal -- that's
9 a specific injury for Johnson & Bell. It has
10 nothing to do with -- with --
11 THE COURT: No, no. I don't buy that,
12 because if -- if they -- if you disparage them in
13 the marketplace to consumers in general and that
14 resulted in consumers staying away from their firm
15 because they believe something about their firm
16 that wasn't true, that would be an impact on
17 consumers.
18 MR. ROSENBAUM: Have they alleged that?
19 THE COURT: Well, they've alleged that they
20 lost new and existing business as a result of your
21 going out in the marketplace and promoting yourself
22 at their expense.
23 MR. ROSENBAUM: I understand, but are we fact
24 pleading?

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1 THE COURT: Well, here's what I'm going to
2 do. First of all, 134 does not support this claim,
3 paragraph 134 does not support consumer fraud and
4 protection claim.
5 MR. LANGS: You're on the second amended
6 complaint, your Honor?
7 THE COURT: Yeah.
8 The fact that you went out and had
9 to hire a forensic company has nothing to do with
10 consumer impact.
11 MR. LANGS: Your Honor, there's also case law
12 that says that the damages can be suffered by the
13 business themselves under the Illinois Consumer
14 Fraud Act.
15 THE COURT: Yes. That damages can be
16 suffered, loss of business, loss of business; got
17 to be related to the consumer.
18 MR. ROSENBAUM: Nexus. Thank you.
19 THE COURT: So I'm not going to allow you to
20 file this amended complaint, number one, because
21 134 does not support damages under the Consumer
22 Fraud Act, and number two, you've acknowledged to
23 me that you have no reasonable basis for pleading
24 that you lost existing clients.

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1 I will say that I'll deny it without
2 prejudice to your attempting to refile a
3 consumer-fraud based claim if you identify a
4 reasonable basis for claiming that you lost new
5 business.
6 At that point, I will be willing to
7 reconsider what I said about the requirements that
8 the plaintiff and defendant be in competition and
9 take a closer look at this Crinkly v. Dow Jones &
10 Company case, but I'm not going to do that until
11 you have shown a reasonable basis for pleading that
12 you lost any business as a result of this;
13 otherwise, we're just going down the rabbit hole
14 for no reason. So that's what I'm going to do.
15 MR. LANGS: Your Honor, just for the record,
16 under the Wigglesworth case and also another case,
17 the Zinser v. Rose case, it specifically states
18 that under a Consumer Fraud Act claim, general
19 damage to reputation and perceived goodwill in
20 business is sufficient under the act for pleading.
21 THE COURT: How is hiring a computer expert
22 damage to reputation or goodwill?
23 MR. LANGS: Right. I'm just saying you're --
24 you're asking us to plead specifics as to how

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1 damage to our reputation --
2 THE COURT: I'm asking you to show, to have
3 some reasonable theory before I'm going to allow
4 you to amend the complaint for the fourth or fifth
5 time, that you have some reasonable basis for
6 pleading, that you suffered an injury cognizable by
7 the act.
8 Anybody can say, We lost new and
9 existing clients. Anybody can say that. We
10 already know that you've acknowledged you didn't
11 lose existing clients. Given that, before I'm
12 going to allow you to amend this thing, I'm going
13 to require you to show that you lost something or
14 suffered some damages that's cognizable by the act.
15 And the fact that you inserted
16 paragraph 134 in here makes me think that you don't
17 have anything or you wouldn't have had to put that
18 in. So I'm suspicious about your ability to
19 support this claim.
20 If you can support it, then I will
21 consider an amendment, but, you know, this isn't
22 day one of the lawsuit.
23 MR. ROSENBAUM: Right.
24 MR. LANGS: I understand the ruling, your

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1 Honor. I'm just trying to think in my head.
 2 The way that I would do that, and
 3 maybe I'm way off base, your Honor, is that I would
 4 show that these statements made there way to the
 5 market generally.
 6 THE COURT: Okay.
 7 MR. LANGS: And that would be enough, I would
 8 think.
 9 THE COURT: That would be enough without any
 10 evidence of damage?
 11 MR. LANGS: Well, that would be enough to
 12 show that there -- there could be people out there
 13 or customers out there that didn't hire J&B because
 14 of loss of their business reputation.
 15 THE COURT: So you're going to say that based
 16 on the fact that these statements made their way
 17 out into the public, that from that and that alone
 18 you're going to be entitled to an award of damages
 19 under the Consumer Fraud and Protection Act,
 20 without any evidence of damage, loss of goodwill,
 21 loss of customers?
 22 MR. LANGS: Well, I think it -- what I was
 23 saying is I think that pleading that is good enough
 24 for the pleading.

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1 THE COURT: Well, it may be first time
 2 around, but we're not the first time around.
 3 You've already acknowledged that you can't in good
 4 faith prove the loss of existing clients. You
 5 haven't suggested to me that you have any evidence
 6 that you lost new clients. You haven't suggested
 7 to me that there's any evidence that you lost good
 8 will as a result of these statements.
 9 So absence some proof of that, I'm
 10 just not going to let you file in a 2017 case
 11 another amended complaint absent some showing that
 12 you actually suffered damages as a result of a
 13 Consumer Fraud and Protection Act violation, which
 14 I'm not even sure occurred, but I'm happy -- I will
 15 be more than willing to reconsider that and look at
 16 that, but you're going to have to meet some
 17 threshold requirements that you really did suffer
 18 damages; otherwise, we are -- as I said, we are
 19 just chasing our tails.
 20 MR. LANGS: Understood.
 21 THE COURT: Which I think we may be doing
 22 anyway.
 23 MR. ROSENBAUM: It's starting to feel like
 24 it.

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1 THE COURT: Okay. So with respect to the
 2 count that seeks injunctive relief, it's denied.
 3 With respect to the count under the
 4 Consumer Fraud Act, it's denied without prejudice
 5 based on a showing that I'm requiring you to make
 6 as I've stated on the record.
 7 MR. ROSENBAUM: One question, your Honor.
 8 THE COURT: Yep.
 9 MR. ROSENBAUM: With respect to -- to the
 10 extent they can plead consumer fraud, can we like
 11 have a date when they're going to do that or ...
 12 THE COURT: Well --
 13 MR. ROSENBAUM: I'm just ...
 14 THE COURT: When -- if and when they do it, I
 15 will take into account what stage of the litigation
 16 we're at --
 17 MR. ROSENBAUM: Fair enough.
 18 THE COURT: -- just like any other case.
 19 MR. ROSENBAUM: Okay, your Honor.
 20 THE COURT: Okay. So where are we at
 21 otherwise so we can try to move whatever we have
 22 along?
 23 Do we have another case management
 24 date? Probably not.

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1 MR. LANGS: There's two things, outstanding
 2 things, I think, your Honor. One is our motion to
 3 compel was only partially ruled on, partially
 4 because your Honor wanted to get these motions
 5 heard first because that would affect I think what
 6 your ruling would be on some of the requests we're
 7 making.
 8 THE COURT: Okay.
 9 MR. LANGS: And then also affecting that
 10 motion to compel was that the last time we were up
 11 you had asked -- you didn't ask us to submit it for
 12 this hearing, but you asked us to remind you that
 13 you'd like us to submit some case law that would
 14 better familiarize you with common law commercial
 15 disparagement claim.
 16 MR. ROSENBAUM: And I'll just say, your
 17 Honor, I don't recall it happening quite that way.
 18 As I recall, your Honor first had
 19 said that you would like us to submit a few cases
 20 on the commercial disparagement and you gave us a
 21 few factors, like whether or not special damages
 22 are required, how is it distinguishable from
 23 defamation. You sort of gave a list.
 24 But then rather than put that in the

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1 order and tell us to proceed that way, it --
 2 when you invited them to put on their motion for
 3 leave to amend, it was, you know, at least my
 4 understanding, that -- that those issues related to
 5 that briefing and they would be addressed in that
 6 briefing. And so I -- that's probably why we
 7 covered commercial disparagement the way we did.
 8 THE COURT: So commercial disparagement is
 9 the claim under which you're seeking injunctive
 10 relief?
 11 MR. LANGS: No.
 12 MR. ROSENBAUM: No. They're seeking all of
 13 our -- all of Mr. Edelson's communications with any
 14 members of the press, not just limited to the --
 15 the defamation claim you allowed to survive with
 16 the Wall Street Journal that --
 17 MR. LANGS: The issue was that we were
 18 seeking discovery based on these other statements
 19 to the media outlets in addition to just the Wall
 20 Street Journal defamation claim --
 21 THE COURT: Okay. I --
 22 MR. LANGS: -- on the basis that --
 23 THE COURT: I held that in abeyance until I
 24 was going to review your amended pleadings.

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1 MR. LANGS: Well, that and also I think you
 2 were going to review the amended pleadings and then
 3 we were going to discuss how a commercial
 4 disparagement claim is different from a defamation
 5 claim.
 6 THE COURT: In the context of what discovery
 7 I should allow.
 8 MR. ROSENBAUM: Yeah.
 9 THE COURT: Okay. All right. So sounds like
 10 that's the next step for me.
 11 MR. ROSENBAUM: And, again, I just -- I
 12 wasn't -- I was under the understanding that that
 13 was being done in the course of this present
 14 briefing on their motion for leave.
 15 If you want to do it a different way
 16 and have us submit --
 17 THE COURT: Well, I haven't -- I haven't
 18 looked at the discovery issue again since you were
 19 last here.
 20 MR. ROSENBAUM: Okay.
 21 THE COURT: And whatever questions I had then
 22 I still have.
 23 MR. ROSENBAUM: Okay.
 24 THE COURT: So what do we have? We have your

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1 motion to compel.
 2 MR. LANGS: Right. And we just received
 3 their production for the stuff that you did compel
 4 them to produce this week. We had an agreement,
 5 and I -- I need to go through it all. So I think
 6 maybe we should do a 201(k) on that.
 7 MR. ROSENBAUM: I'm fine with that.
 8 MR. LANGS: If there's anything wrong with
 9 it, then --
 10 THE COURT: Well, let me go back to the issue
 11 that I didn't decide.
 12 You filed a motion to compel.
 13 MR. LANGS: Right.
 14 THE COURT: With respect to those -- that
 15 information.
 16 Did you file a response?
 17 MR. ROSENBAUM: I'm trying to -- was it that
 18 we each filed cross motions with no response?
 19 MR. LANGS: I don't recall.
 20 MR. ROSENBAUM: I have to double-check. I
 21 believe the way your Honor --
 22 MR. LANGS: I don't believe we filed a
 23 response.
 24 MR. ROSENBAUM: I believe the way your Honor

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1 set it up was you told us each to file our
 2 respective cross motion by date certain.
 3 THE COURT: Okay.
 4 MR. ROSENBAUM: And then I think you said no
 5 response.
 6 THE COURT: Okay.
 7 MR. ROSENBAUM: If I'm wrong --
 8 MR. McINERNEY: I think you're right. I
 9 don't think there was any --
 10 THE COURT: That's probably right.
 11 MR. McINERNEY: Yeah.
 12 THE COURT: Okay. And then at that
 13 hearing -- I'm trying to remember. But at that
 14 hearing I must have expressed uncertainty about
 15 their motion to compel based on not having enough
 16 knowledge of my own about commercial disparagement.
 17 MR. ROSENBAUM: And that was front and
 18 central to our position, your Honor. I mean,
 19 absolutely. So that would make sense.
 20 THE COURT: Okay.
 21 MR. ROSENBAUM: There was disagreement on --
 22 between us on that issue.
 23 THE COURT: Okay. So sounds like what I need
 24 to do is give you a chance to respond to that part

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1 of their motion to compel very briefly as to why
 2 their claim for commercial disparagement doesn't
 3 unlock the door to the discovery that they're
 4 asking for. All I need is two or three pages.
 5 MR. ROSENBAUM: Sure. No, no, no. I'm just
 6 thinking.
 7 And I want to just state, limited to
 8 what you want, I'm just -- you know, it's our
 9 position that be it commercial disparagement, be
 10 it -- you know, I just note - note that the
 11 consumer fraud, for example, was dismissed without
 12 prejudice. It's our position that any of these
 13 can't be used as a substitute to end around the
 14 defamation. It just so happened that -- that when
 15 we were filing the -- the one that was pending was
 16 still with commercial disparagement.
 17 THE COURT: Okay.
 18 MR. ROSENBAUM: And I guess that's still the
 19 case.
 20 THE COURT: Whatever argument you want to
 21 make.
 22 MR. ROSENBAUM: Okay. I just --
 23 THE COURT: Make it in writing.
 24 MR. ROSENBAUM: Sure. Keep it short.

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1 THE COURT: And keep it short, yeah.
 2 MR. ROSENBAUM: Yeah.
 3 THE COURT: Okay.
 4 MR. ROSENBAUM: So a response to their motion
 5 to compel.
 6 MR. LANGS: Can we submit some cases to you
 7 that are --
 8 THE COURT: Sure.
 9 MR. LANGS: I mean, we can put them in
 10 writing, if you'd like, or we can submit --
 11 THE COURT: Well, I -- do you want to reply
 12 to them?
 13 MR. ROSENBAUM: Sure.
 14 THE COURT: Okay. I'll give you -- what do
 15 you want? Three pages?
 16 MR. ROSENBAUM: What's that?
 17 THE COURT: Three pages?
 18 MR. ROSENBAUM: Three?
 19 THE COURT: Five?
 20 MR. ROSENBAUM: I'm -- you want to give me a
 21 page number, that's okay. I mean --
 22 THE COURT: I want it short.
 23 MR. ROSENBAUM: No, I -- I want to keep it
 24 short. I know that's -- that's what you want.

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1 THE COURT: To be absolutely honest with you,
 2 I got lost in your response.
 3 MR. ROSENBAUM: Well, I -- okay. I'm sorry.
 4 You know, when you've got lawyers for clients ...
 5 THE COURT: Yeah.
 6 MR. ROSENBAUM: But there's a lot to cover,
 7 so --
 8 THE COURT: Okay. Give me five pages.
 9 MR. ROSENBAUM: Five pages in response to
 10 their motion to compel.
 11 THE COURT: You give me three and a reply.
 12 MR. LANGS: Okay. That's fine.
 13 THE COURT: How long do you want?
 14 And let me tell you something, I'm
 15 in the middle of a four-week jury trial. So ...
 16 MR. ROSENBAUM: Want to do it in a month?
 17 THE COURT: Soonest I will get to this is
 18 September 20th at 1:30.
 19 MR. ROSENBAUM: All right. So what month is
 20 it now, July?
 21 THE COURT: Yeah.
 22 MR. ROSENBAUM: So if I took a month --
 23 THE COURT: I'd want it from you guys by --
 24 courtesy copies by September 6th.

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1 MR. ROSENBAUM: You want us to just figure
 2 out the briefing schedule then?
 3 THE COURT: That's fine.
 4 MR. ROSENBAUM: So by September 16th?
 5 THE COURT: 6th.
 6 MR. ROSENBAUM: 6th. All right.
 7 THE COURT REPORTER: Use my form briefing
 8 schedule order.
 9 MR. ROSENBAUM: Okay.
 10 THE COURT: Where it says clerk status, cross
 11 that out and put hearing at 1:30 on September 20th.
 12 Whatever briefing schedule you want is okay with
 13 me.
 14 And then what I'm going to tell you
 15 is you guys have your 201(k) conference on the
 16 remaining discovery issues and then we'll address
 17 whatever other outstanding discovery issues there
 18 are on that date. Okay?
 19 MR. ROSENBAUM: Okay. So you want the
 20 courtesies on the 6th, but the clerk -- the hearing
 21 is going to be on September 20th?
 22 THE COURT: Yes.
 23 MR. ROSENBAUM: At 1:30.
 24 THE COURT: Right.

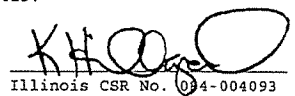
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1 MR. ROSENBAUM: Let me just make sure --
 2 seems so far out.
 3 That's fine.
 4 THE COURT: Okay.
 5 MR. LANGS: That works for me also.
 6 MR. ROSENBAUM: And then with respect to your
 7 rulings?
 8 THE COURT: So I will also at that point hear
 9 you on any remaining discovery issues that arise
 10 after your 201(k) conference, and I'll be looking
 11 for you at that point to enter a case management
 12 order where we start putting some deadlines for
 13 discovery and a trial date. Because this is a '17
 14 case. I don't have any '17 cases without trial
 15 dates.
 16 MR. ROSENBAUM: Okay.
 17 THE COURT: Okay.
 18 MR. ROSENBAUM: And I just meant -- I'm
 19 sorry, but with respect to the -- your rulings on
 20 DTPA and -- deceptive trade practice, consumer
 21 fraud on the reconsideration and for leave to
 22 amend, say something like for the reasons on the
 23 record? Because I believe we have a court reporter
 24 here.

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1
 2
 3 REPORTER'S CERTIFICATE
 4 Re: Johnson & Bell vs. Edelson
 5
 6 No. 17 L 3169
 7
 8 I, Kathleen A. Hillgard, do hereby certify
 9 that the foregoing Report of Proceedings was
 10 recorded stenographically by me and was reduced to
 11 computerized transcript under my direction, and
 12 that the said transcript constitutes a true record
 13 of the proceedings.
 14
 15 I further certify that I am not a relative
 16 or employee or attorney or counsel of any of the
 17 parties, or a relative or employee of such attorney
 18 or counsel, or financially interested directly or
 19 indirectly in this action.
 20
 21 IN WITNESS WHEREOF, I have hereunto
 22 set my hand of office at Chicago, Illinois, this
 23 8th day of August 2019.
 24


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1 THE COURT: For reasons on the record, yeah,
 2 motion to reconsider's denied, and then --
 3 MR. ROSENBAUM: For leave to amend denied,
 4 for deceptive trade practice, and then denied
 5 without prejudice for consumer fraud.
 6 THE COURT: Right.
 7 MR. ROSENBAUM: Okay.
 8 MR. LANGS: I think that's it.
 9 MR. ROSENBAUM: Okay.
 10 THE COURT: Thanks.
 11 MR. LANGS: Thanks, your Honor.
 12 (The proceedings were adjourned
 13 at 12:36 p.m.)
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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1			
2			
3	SUPPRESSED,)	No. 16 C 4363
4)	Chicago, Illinois
5)	April 21, 2016
6	-vs-)	9:15 o'clock a.m.
7	SUPPRESSED,)	
8)	
9	Defendant.)	

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

10		
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22		
23	For the Defendant:	WILLIAMS MONTGOMERY & JOHN, LTD.
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1 THE CLERK: 16 C 4363, Suppressed versus
2 Suppressed.

3 MR. EDELSON: Good morning, your Honor, Jay Edelson
4 on behalf of the plaintiff and the putative class.

5 MR. BALABANIAN: Good morning, your Honor, Rafey
6 Balabanian also on behalf of the plaintiff and the putative
7 class.

8 MR. BRUCK: Good morning, your Honor, Michael
9 Bruck, B-R-U-C-K, on behalf of the defendant.

10 THE COURT: Good morning. I have a preliminary
11 question that you may or may not know the answer to, but it
12 -- as it turns out it is an important one in connection with
13 the assignment of this case to my calendar. I see that
14 Mr. Shore is from California. And I note there is a pro hac
15 vice application that is reflected from the San Francisco
16 office of Edelson by Todd Logan. Can somebody tell me
17 something about Todd Logan.

18 MR. EDELSON: Oh, Logan is right there, your Honor.

19 Todd Logan is a first-year at our firm. He
20 operates currently out of the Chicago office but also spends
21 time in San Francisco as well and will be moving to San
22 Francisco in a month or two, I believe.

23 THE COURT: And he is not here, is he?

24 MR. BALABANIAN: Yeah, he is.

25 MR. EDELSON: Mr. Logan is right there.

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1 THE COURT: Mr. Logan, do you want to step up.

2 MR. LOGAN: Good morning, your Honor, Todd Logan.

3 THE COURT: Are you a Chicagoan originally?

4 MR. LOGAN: No, I am not, your Honor. I am
5 originally from Portland, Oregon.

6 THE COURT: Okay. I ask because Todd is a somewhat
7 unusual first name, and Todd Logan was in ancient days when I
8 was still in practice a client of mine in an odd sense. A
9 Todd Logan who was the son of someone who had been a very
10 close friend as well as client and whose estate I ended up as
11 trustee when he had an untimely early death from pancreatic
12 cancer. So that I had an immediate concern about that. So I
13 gather you are not him, right?

14 MR. EDELSON: Of course.

15 MR. LOGAN: No relation, your Honor.

16 THE COURT: Okay.

17 MR. LOGAN: I believe I am the first Todd in my
18 family.

19 THE COURT: All right. Thank you very much.

20 MR. LOGAN: No problem.

21 THE COURT: Well, that answers that one.

22 There is, however, another problem. I don't know
23 whether any of you are golfers who may have heard the
24 ancient, in today's terms -- I think it was Bobby Jones who
25 commented about one of the upcoming golfers that "He plays a

1 game with which I am not familiar."

2 Well, I must confess that I am in that unwashed
3 group when it comes to reading all of the terms that are
4 included in the Snead declaration. Being a stranger in town
5 my good clerk, who is my odd-numbered law clerk, is far more
6 familiar with it. But I am fearful that it doesn't make a
7 lot of sense for me to retain the case much as I understand
8 the underlying concept but not the technical aspects of it, I
9 am free to admit.

10 In terms of TRO, I find that troubling because so
11 much of the Snead declaration is essentially in hypothetical
12 terms -- he has not made any determinations based on actual
13 input but rather from what he has read in the Complaint. And
14 it is of course -- some of the aspects of it, the fundamental
15 aspects, are clear. That is, the idea of the fiduciary
16 obligation, the obligation to maintain on a secure basis
17 client information, all those things are clear.

18 But the idea of granting threshold interlocutory
19 relief is a very difficult one I would think. I don't think
20 that on its face the thing would support that
21 instantaneously. I suspect that probably it simply makes
22 sense for me to exercise the prerogative that Section 294(b)
23 gives to any senior judge of recusing myself from the case
24 for which I don't have to have a reason as senior judge, in
25 hopes that you might end up, for example, reassigned to Matt

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1 Kennelly or somebody for whom this language is like mother's
2 milk, as it is not for me. And I suspect that that is
3 probably the most sensible thing to do.

4 I am not uncomfortable with that for one reason,
5 and that is I really do not think that what is said here and
6 what has been supplied here supports the notion of the
7 extraordinary threshold remedy of a TRO and certainly not a
8 TRO without a bond because of the fact that if changes of the
9 type that are sought here are made, that would impose I think
10 some extraordinary difficulties for the defendant law firm.

11 So I know this is -- this is not what you
12 anticipated, but it seems to me that in fairness to both
13 sides that is what I ought to be doing, and I think that I
14 will simply enter such an order that will again return the
15 case to the wheel. I still call it a wheel -- the
16 computer-generated assignment system -- and see who you end
17 up with as the presiding judge.

18 Now with that good or bad news -- it depends on
19 your perspective -- is there anything that anybody would want
20 to say to dissuade me from what I have indicated?

21 MR. EDELSON: Your Honor, if I could just speak
22 briefly.

23 THE COURT: Sure.

24 MR. EDELSON: It is bad news just on a personal
25 level because it is nice to be in front of your Honor, but we

1 understand the decision and won't quibble with that.

2 Just to give you actually more relief, we are
3 prepared to take the TRO off calendar, to withdraw without
4 prejudice. We have been talking to the defendant. They have
5 already made two of the three changes to their security
6 system. The third one we are confident we are going to be
7 able to work out together, thus obviating the need for the
8 TRO. So --

9 THE COURT: Well, do you want me to sit with this
10 one on my calendar if you are really talking rather than
11 putting the system through the burden of the reshuffling? I
12 don't care.

13 MR. EDELSON: Our preference would be, if it is
14 going to be reshuffled, we should reshuffle it now, just in
15 case, so there is no -- no delay.

16 THE COURT: Okay. So -- yes?

17 MR. BRUCK: Yeah, we are agreement with that, your
18 Honor. We certainly appreciate and understand your exercise
19 of your prerogative and -- but I think putting it back on the
20 wheel is -- probably makes the most sense right now.

21 THE COURT: Okay. So I will treat the motion for
22 the TRO as continued simply because you haven't resolved
23 everything, unless you want to withdraw the motion.

24 MR. EDELSON: We will withdraw the motion, your
25 Honor --

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1 THE COURT: I will treat.

2 MR. EDELSON: -- without prejudice, please.

3 THE COURT: Yes. I will treat the motion for the
4 TRO as withdrawn without prejudice. Okay? And we will take
5 care of -- Carol, how long does it take them to put the thing
6 through and let counsel know to whose calendar it gets
7 assigned?

8 THE CLERK: Hopefully it should be able to get it
9 done today, if the right person is around to get it all
10 accomplished. I was going to -- so I could do -- start the
11 process now, and maybe if we are lucky --

12 THE COURT: Well, I don't want to just start the
13 process. My question is, why is it not possible for the
14 Clerk's Office to put it through because that is a mechanical
15 item?

16 THE CLERK: I know.

17 THE COURT: And they will then know who the
18 transferee judge is because everybody is here.

19 THE CLERK: I know. I can -- I will probably -- I
20 will send the -- I will -- I will prepare the form and then I
21 will contact the individual supervisors, whatever, to get it
22 done right away.

23 THE COURT: Okay.

24 THE CLERK: Okay?

25 THE COURT: I appreciate your patience. She will

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1 find out for you. And if -- as long as you are all
2 assembled, why don't you stick around for a short period of
3 time at least to find out. I would have expected, but I
4 should by now recognize the -- how would I characterize the
5 administrative problems of Federal District Court? There
6 really are no words to describe it. So we will try.

7 MR. BALABANIAN: Excuse me.

8 THE COURT: And if you will stick around for just a
9 short time, we will see whether you can't get the name of the
10 new assignee judge. Okay?

11 MR. BRUCK: Great.

12 THE CLERK: Should the case still remain under
13 seal?

14 THE COURT: Yes, of course it remains under seal.

15 MR. BRUCK: And, Judge, we also were looking at our
16 answer date coming up.

17 THE COURT: Oh, by the way, I should add a couple
18 of things, of course. The motion for temporary sealing is of
19 course granted.

20 The -- wait just a minute. I had some -- I am
21 granting the motion for pro hac vice appearances. I got a
22 collection of those. And all of those are granted -- or
23 several of them I think. The motion for the TRO we have
24 already talked about.

25 And I think those are the only interim actions that

1 may -- that are really needed at this early point, right?

2 MR. BRUCK: The only concern we have is an answer
3 date --

4 THE COURT: Oh.

5 MR. BRUCK: -- and we would like 30 days to --

6 THE COURT: Okay. I will give you then -- I will
7 give you until May 20 -- no. I will give you until May 20th
8 for the -- do you want an answer or a responsive pleading?

9 MR. BRUCK: Well, responsive pleading.

10 THE COURT: To answer or otherwise plead on or
11 before May 20th, okay?

12 MR. BRUCK: Thank you, your Honor.

13 THE COURT: Thank you all.

14 MR. BALABANIAN: Thank you for your time, your
15 Honor.

16 MR. EDELSON: Thank you, your Honor.

17 (Which were all the proceedings heard.)

18 CERTIFICATE

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

21

22 s/Rosemary Scarpelli/ Date: March 29, 2017

23

24

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EXHIBIT E

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Carlos A. Vera

From: Sean Freund
Sent: Friday, October 06, 2017 12:32 PM
To: Carlos A. Vera
Subject: FW: RE: Important LMS Notification

From: Fink, John [mailto:JFink@rippe.com]
Sent: Monday, December 12, 2016 2:44 PM
To: Friends@jbltd.com; jschweitzer@rippe.com
Subject: RE: Important LMS Notification

Sean – give me a call 513-977-4585

John Fink
M:513.443.2604 W:513.977.4585
jfink@rippe.com
Director of Technical Services

rippe&kingston

law firm management solutions

From: Sean Freund [mailto:Friends@jbltd.com]
Sent: Monday, December 12, 2016 3:23 PM
To: Schweitzer, Jim <jschweitzer@rippe.com>; Fink, John <JFink@rippe.com>
Subject: RE: Important LMS Notification

Hello John and Jim,

Can you tell me what version of JBOSS was running before this update.

Thank you,
Sean

From: Sean Freund [mailto:friends@jbltd.com]
Sent: Monday, December 12, 2016 2:21 PM
To: Sean Freund
Subject: FW: Important LMS Notification

From: "Schweitzer, Jim" <jschweitzer@rippe.com>
Date: Thu Mar 31 10:56:41 EDT 2016
To: "Sean Freund" <Friends@jbltd.com>, "Fink, John" <JFink@rippe.com>
Subject: Important LMS Notification

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Sean I would like to schedule yours today if you have time this afternoon.

From: Sean Freund [mailto:Freunds@jbltd.com]
Sent: Thursday, March 31, 2016 10:38 AM
To: Fink, John <JFink@rippe.com>; Schweitzer, Jim <ischweitzer@rippe.com>
Subject: RE: Important LMS Notification

Oh good. thanks

From: Fink, John [mailto:JFink@rippe.com]
Sent: Thursday, March 31, 2016 9:37 AM
To: Sean Freund; Schweitzer, Jim
Subject: RE: Important LMS Notification

Sean,

Jim Schweitzer is in charge of scheduling the upgrade. I believe we had some issues in the past with a godaddy certificate for your firm. The new installation should be more flexible regarding SSL certificates.

I have copied Jim on this email.

Please note my new mobile phone number:

John Fink
M:513.443.2604 W:513.977.4585
jfink@rippe.com
Director of Technical Services

rippe&kingston


law firm management solutions

From: Sean Freund [mailto:Freunds@jbltd.com]
Sent: Thursday, March 31, 2016 10:30 AM
To: Fink, John
Subject: RE: Important LMS Notification

What ever needs to be done and as soon as possible.

Thanks

From: Fink, John [mailto:JFink@rippe.com]
Sent: Thursday, March 31, 2016 8:51 AM
To: #Technical Services
Subject: Important LMS Notification

Dear Clients,

There has been some recent news regarding the Jboss Web Application platform and vulnerabilities linked to 'ransomware'.

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The Jboss vulnerability is linked to the installation on Microsoft Servers and not IBM iSeries Servers. Although the issue reported has been related to Microsoft installations, it is possible that the iSeries could become exploited in the future. With this in mind, the version of Jboss used for LMS+ should be replaced and we recommend that any public facing LMS+ Servers be migrated to a new Tomcat / IBM Apache HTTP Server configuration. LMS+ Servers that are not accessible via the public internet are not at risk. We can, however, update internal only LMS+ installations as long as you are not using a Kerberos / SSO configuration.

This migration process should take approximately 2 – 4 hours and the Technical Service Department (tech@rippe.com) at Rippe & Kingston will be able to assist with this migration.

We strongly suggest that this issue receives your immediate attention.

Sincerely,

John Fink

John Fink
M:513.443.2604 W:513.977.4585
jfink@rippe.com

Director of Technical Services

rippe&kingston

law firm management solutions

Sean Freund, IT Director

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EXHIBIT F

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - LAW DIVISION
6 JOHNSON & BELL, LTD., an)
7 Illinois professional)
8 corporation,)
9 Plaintiff,)
10 -vs-) No. 17 L 3169
11 EDELSON P.C., an Illinois)
12 professional corporation,)
13 and JAY EDELSON,)
14 Defendants.)

15
16 TRANSCRIPT OF PROCEEDINGS had in the
17 above-entitled cause on December 20, 2017, at 2:04
18 p.m.

19
20 BEFORE: HONORABLE JUDGE RAYMOND W. MITCHELL.
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APPEARANCES:

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BRIAN C. LANGS,
langsb@jbltd.com,

-and-

WILLIAMS MONTGOMERY & JOHN LTD.,
(233 South Wacker Drive, Suite 6100,
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MR. MICHAEL C. BRUCK,
mcb@willmont.com,

appeared on behalf of the Plaintiff;

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7 MR. NEIL M. ROSENBAUM,
8 nrosenbaum@fvldlaw.com,
9 appeared on behalf of the Defendants.

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REPORTED BY: VALERIE A. MACINO, CSR, RPR
CSR No. 84-4162, RPR No. 850291

1 MR. MARCONI: Good afternoon, Judge. Joe
2 Marconi and Brian Langs and, I guess, Mike Bruck
3 just showed up, too.

4 THE COURT: Oh, you've got the whole team
5 here. You look a little uncomfortable,
6 Mr. Marconi. Is that because there is no jury box
7 in this courtroom?

8 MR. MARCONI: And I am up on the 26th floor.
9 I feel like I'm on high air -- or thin air up here.

10 MR. ROSENBAUM: Hi. Good afternoon, Your
11 Honor. Feeling a little outnumbered here, but Neil
12 Rosenbaum on behalf of the Defendants.

13 THE COURT: It's almost a fair fight. Okay.
14 So we're here on a motion to reconsider. I
15 reviewed the briefing and the underlying briefing
16 on the original motion.

17 So anything you want to add or highlight
18 by way of highlighting, I will just appreciate it.

19 MR. ROSENBAUM: Sure. Okay. Your Honor, so
20 this is supposed to be a republication case, right,
21 about the dissemination of a few paragraphs from a
22 federal pleading via social media.

23 The problem is the federal allegations
24 at issue were never republished. And as we've

1 explained in our briefs, J&B's complaint in this
2 case fails to allege republication of any sort.
3 And what's more, the throng of extrinsic material
4 that was attached voluntarily to J&B's response
5 brief demonstrates that the defect in these
6 pleadings cannot be saved by amendment, at least as
7 far as per se defamation is concerned.

8 Since any publication of the Shore
9 complaint in the federal proceedings is subject to
10 the absolute litigation privilege, to make out a
11 republication case, J&B must allege the actual
12 dissemination, the relevant text, to third persons
13 outside the course of the Shore --

14 THE COURT: Let me ask you this.

15 MR. ROSENBAUM: Sure.

16 THE COURT: I know you are an expert on
17 defamation, so that is why I wanted to hear from
18 you. Does it matter for purposes of republication
19 that the individual disseminating -- in this case
20 the author of the tweet -- was the author of the
21 original complaint?

22 MR. ROSENBAUM: It -- not unless the text, the
23 alleged defamation -- defamatory content --

24 THE COURT: But a typical republication

1 situation, is it somebody different, right? It's a
2 wholly different person.

3 MR. ROSENBAUM: Well, not always, though, Your
4 Honor. Not always. It's the -- it's whether
5 the -- really it's the audience that would matter
6 for purposes of republication. But, again, there
7 needs to actually be a republication.

8 THE COURT: I get that part.

9 MR. ROSENBAUM: You know, and so, you know,
10 ultimately --

11 THE COURT: So if they -- if you tweeted out
12 quotes from the complaint, that would be a
13 different kettle of fish than merely referring to
14 the case and its number?

15 MR. ROSENBAUM: Correct. That's right, Your
16 Honor. And, I mean, you're hitting the nail on the
17 head here. Although, the court in the ruling had
18 suggested that the allegations sufficed because of
19 the posting a link on social media --

20 THE COURT: The original briefing was clouded.
21 It was a lot of pages taken up by supposedly
22 something Mr. Brook said in the federal case. And
23 it turned out not to be quite -- and so, you know,
24 that's -- that happens when, you know, you get a

1 lot of pages of extraneous material. People can be
2 confused.

3 MR. ROSENBAUM: No. We completely, completely
4 understand, Your Honor. But when we're talking
5 about the publication, you know, again, what we're
6 talking about here is what was actually alleged,
7 that they -- that the republication arose via a
8 series of Twitter postings directing viewers that
9 the complaint with false and defamatory claims
10 against J&B -- and that's in parens -- was made
11 public. And the name -- case name and number were
12 published for folks to view it.

13 And, you know, the issue here, again, is
14 there is no republication of any of the false and
15 defamatory passages from the Shore complaint in
16 that allegation.

17 How does the statement, Class action is
18 unsealed, Shore versus Johnson & Bell,
19 Case No. 16 CV 4363 --

20 THE COURT: How is that defamatory?

21 MR. ROSENBAUM: -- inform the reader anything?

22 THE COURT: Right. But it's true. It was
23 unsealed. That is the case name.

24 MR. ROSENBAUM: Well, that is also true. But

1 it doesn't inform the reader of any of the alleged
2 defamation.

3 And we don't need to hire an expert to
4 prove to the court that. And just imagine what
5 would happen if merely referencing the case name
6 and number of a case -- which every Illinois
7 attorney is expressly authorized to do under our
8 Supreme Court pretrial publicity rules -- just
9 imagine if that constituted an unprivileged
10 republication of the whole court file.

11 THE COURT: Well, let me ask you about this:
12 What about -- you may be right. I may agree with
13 you on that. But let me ask you about this: There
14 is an allegation in the complaint that it's on the
15 information and belief that the Defendant made
16 copies of the -- was it made copies of the
17 complaint available to media outlets?

18 MR. ROSENBAUM: What I -- you know, what I
19 believe was alleged is, On information and belief
20 that the Defendants provided a copy to one or more
21 members of the media, or something along those
22 lines. And my response to that, as in our original
23 briefing, is, Check the Grundhoefer case.

24 Because as to -- as to that allegation,

1 On information and belief, it's the same exact
2 case. Directly on point.

3 And, you know, again, the issue -- the
4 issue there is that it flunks the specificity
5 requirement. It doesn't say who, where, who from
6 the press. I mean, it was the exact same analysis
7 in Grundhoefer.

8 And then also under the Green case, if
9 there is infor -- you know, if there is information
10 and belief to make that allegation, Plaintiffs have
11 to plea the basis of that information and belief.
12 And they haven't done it.

13 And so as we explained in our brief on
14 reconsideration, we didn't even address it. I know
15 Your Honor's order from September 6th didn't speak
16 to that issue one way or another. But, you know,
17 again, I would just say Grundhoefer, First
18 Appellate District, it's directly on point.

19 THE COURT: Okay. Okay. We'll give you a few
20 minutes' rebuttal. Let me hear from the other
21 side.

22 MR. ROSENBAUM: Okay.

23 MR. MARCONI: I -- if you read everything,
24 Judge, there's not much I can say. You know, this

1 is a 2615. The question is whether or not this
2 complaint states the cause of action.

3 He's trying to raise other facts and
4 bring in other facts. But if we look at the facts,
5 you know, what we see here is an intentional
6 campaign to publish this complaint and its
7 allegations by a very clever lawyer who tried to
8 hide it, hide the fact that he was publishing it.

9 But, I mean, there's a series of events.
10 And we allege that there's a series of events
11 that -- you know, Twitters that led people to this
12 complaint. That was his goal. You know, he was on
13 a -- a mission to get more clients to sue other law
14 firms. And he wanted to show the public at large.

15 I mean, and you're looking at me like,
16 Where did that come from? That's not in the
17 complaint. However, that is in prior emails that
18 he sent -- or not emails -- but messages he sent to
19 blogs, articles that he wrote. This is his new
20 area of practice that he is trying to build up.

21 I think you have to look at the totality
22 of the facts and the circumstances. And there's no
23 question that he made this complaint available to
24 the public.

1 And he made it available to the people
2 that follow him who write blogs, who follow the --
3 you know, the cyber security matters.

4 And, you know, it's -- it's clear that
5 there was a publication, I mean, that he wanted
6 people to read this complaint. And he went about
7 it in the way he did through these tweets.

8 Now you first said -- in your first
9 ruling you said a hyperlink was sufficient.

10 THE COURT: I -- you know, I understand what I
11 said.

12 MR. MARCONI: I mean, if you are going to back
13 off of that, then I'm wasting my air. But if it is
14 still sufficient --

15 THE COURT: There's no other case out there
16 that says hyperlink is sufficient, right?

17 MR. MARCONI: But there's no case that says
18 it's not. There's no Illinois case that says it's
19 not. And to answer your first question, it does
20 make a difference that the person who wrote the
21 complaint is the person who published it. I mean,
22 that's pretty clear. There are several cases that
23 make that clear.

24 But if a hyperlink is sufficient,

1 then -- you know, then hyperlinks that we attach to
2 the response are sufficient. So we're going to ask
3 you to deny the motion, Judge.

4 THE COURT: Okay. Briefly.

5 MR. ROSENBAUM: Briefly. As far as the
6 hyperlink cases are concerned, Your Honor knows we
7 searched far and wide to supply this court with as
8 much persuasive authority as we possibly could.
9 And this includes the Doctor's Data case, which is
10 from the Northern District of Illinois, where Judge
11 Tharp predicted that since hyperlink doesn't
12 duplicate the content of a prior publication, it
13 seems likely that the Illinois Supreme Court would
14 find that a hyperlink does not qualify as a
15 publication.

16 So I would say that as to the hyperlink
17 issue, again, that's pretty persuasive. But at the
18 end of the day, even if the court was inclined to
19 sustain an allegation based on an alleged
20 hyperlink, then -- then our motion to reconsider
21 should still be granted because there is no
22 allegation of an alleged hyperlink.

23 And then to sort of wrap up about the
24 series of tweets that counsel was just referring

1 to -- and he acknowledged that they're not in the
2 complaint -- but what's interesting about that is
3 we're talking about a series of Twitter postings.
4 And this was attached to the response brief, Your
5 Honor.

6 THE COURT: Yes.

7 MR. ROSENBAUM: And it was Exhibit B. And
8 this was by tweets interposed by Mr. Edelson, as
9 well as others. There is a dialogue there. And
10 we're talking about at least 45 separate tweets
11 posted on at least 15 separate dates discussing
12 data privacy law in general.

13 And this includes the so-called triple
14 hyperlink that -- triple secret hyperlink that
15 needs an instruction manual to find that, you know,
16 appears to be invented so we could -- you know, so
17 counsel could say to your honor today, Hey, look,
18 we can allege a hyperlink. But that's not --
19 that's not a hyperlink published by Mr. Edelson.

20 As we pointed out in our reply, the
21 hyperlink was posted by a Florida lawyer. He
22 authored an article that was, in fact, critical of
23 Edelson's theory of recovery in Shore. And he's
24 the one who posted that hyperlink.

1 And yet according to the response
2 brief -- and this was page nine -- and I'm going to
3 quote it because it's important language -- the
4 cumulative effect of the series of Twitter postings
5 is what creates the false impression in the mind of
6 the reader. The defamatory statements in the Shore
7 complaint --

8 THE COURT: Your position is --

9 MR. ROSENBAUM: -- are true.

10 THE COURT: -- that they're resorting to
11 extrinsic evidence?

12 MR. ROSENBAUM: Well, of course, Your Honor.
13 This is precisely the argument that a per se
14 defamation plaintiff can't ever make.

15 You know, the First District explained
16 in the Schaffer case, defamatory statements can be
17 per se actionable or actionable per quod. It's per
18 se if the defamatory character of the statement is
19 apparent on its face and extrinsic facts aren't
20 necessary to explain.

21 Statements are actionable per quod if
22 they necessitate extrinsic facts or innuendo to
23 explain their meaning. And so since J&B is now
24 acknowledging that a reader needs to consider more

1 than a year's worth of Twitter activity in order to
2 perceive and understand the alleged defamatory
3 meaning of the tweet in question, we respectfully
4 request that an order dismissing Count 1 with
5 prejudice is in order at least as far as defamation
6 per se is concerned.

7 THE COURT: Okay. Thank you. That was very
8 helpful. And I will have a written order for you
9 in a few days. And we will get it out to you;
10 okay? I do appreciate you coming in. It's always
11 helpful. It's a very interesting issue, case.

12 MR. MARCONI: Judge, one point. If you are so
13 inclined to grant the motion, we would seek leave
14 to amend, of course.

15 THE COURT: Of course. It's a 2615.

16 MR. MARCONI: Right.

17 THE COURT: Pretty rare for a 2615 to
18 definitively resolve.

19 MR. MARCONI: He just made that comment, and I
20 just --

21 MR. ROSENBAUM: Less rare in defamation cases
22 than others, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. MARCONI: Thank you, Judge.

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MR. ROSENBAUM: Thank you very much.

(WHICH WERE ALL THE PROCEEDINGS HAD
IN THE ABOVE-ENTITLED CAUSE ON THIS
DATE.)

FILED DATE: 12/17/2019 3:19 PM 2017L003169
FILED DATE: 10/7/2019 4:08 PM 2017L003169

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, VALERIE A. MACINO, CSR No. 84-4162, a
5 Certified Shorthand Reporter of the State of
6 Illinois, do hereby certify that I reported in
7 shorthand the proceedings had at the motion
8 aforesaid, and that the foregoing is a true,
9 complete, and correct transcript of the proceedings
10 of said motion as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 IN WITNESS WHEREOF, I do hereunto set my
14 hand at Chicago, Illinois, this January 3, 2018.

15 *Valerie A. Macino*

16
17 VALERIE A. MACINO, CSR No. 84-4162

18 Certified Shorthand Reporter

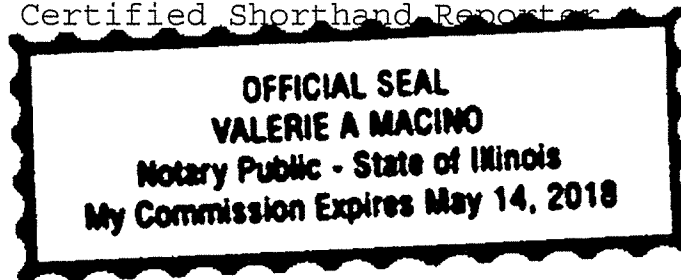



EXHIBIT B

- (xii) Assess costs and attorney fees against the Edelson Defendants, pursuant to 815 ILCS 510/3, because they willfully engaged in deceptive trade practices by falsely disparaging the legal services of J&B; and
- (xiii) Such other relief as the Court deems just and proper.

Respectfully submitted,

JOHNSON AND BELL, LTD.

By: 
One of Its Attorneys

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Responses to Rule 216 Requests to Admit Facts are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

JOHNSON & BELL, LTD.

By: Joseph Marcori

Its: Vice President

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Chicago, IL 60606-6359
T: 312/443-3200
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mcb@willmont.com

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Responses to Rule 216 Requests to Admit Facts are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

JOHNSON & BELL, LTD.

By: Joseph Marconi

Its: Vice President

RULE 214 AFFIDAVIT

I, Joseph R. Marconi, being duly sworn upon oath, and pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, deposes and states that, to the best of my knowledge, the production of documents requested in response to the Second Requests for Production from Plaintiff, is complete, true and correct at this time to the best of my information, knowledge and belief, pursuant to Illinois Supreme Court Rule 214.


Joseph R. Marconi

judicial proceeding the Plaintiff is presently aware is the J&B Press Release regarding the *Shore Complaint* which is already in Defendants' possession.

VERIFICATION

I, Joseph R. Marconi, being duly sworn upon oath, and pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, deposes and states that, to the best of my knowledge, the above answers to Defendant's Second Set of Interrogatories, are complete, true and correct at this time to the best of my information, knowledge and belief.

s/ Joseph R. Marconi

Joseph R. Marconi

RULE 214 AFFIDAVIT

I, Joseph R. Marconi, being duly sworn upon oath, and pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, deposes and states that, to the best of my knowledge, the production of documents requested in response to the Second Requests for Production from Plaintiff, is complete, true and correct at this time to the best of my information, knowledge and belief, pursuant to Illinois Supreme Court Rule 214.

s/ Joseph R. Marconi
Joseph R. Marconi

Subject to and without waiving these and any of Plaintiff's applicable General Objections, J&B answers as follows: None relevant other than the pending Shore arbitration.

INTERROGATORY NO. 30

Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required by Rule 213(f) for each witness, including lay witnesses, independent expert witnesses, and controlled expert witnesses.

ANSWER: J&B will disclose its witnesses, expert witnesses, and opinions in accordance with the Court's scheduling orders regarding such disclosures.

VERIFICATION

I, Joseph R. Marconi, being duly sworn upon oath, and pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, deposes and states that, to the best of my knowledge, the above answers to Defendant's Second Set of Interrogatories, are complete, true and correct at this time to the best of my information, knowledge and belief.

s/ Joseph R. Marconi
Joseph R. Marconi

HIGHLY CONFIDENTIAL AND ATTORNEYS' EYES ONLY

(b) The identities and contact information of any potential, current and/or former clients of J&B that expressed concern to J&B regarding data security or the allegations of the Shore Complaint at any time since 2016.

RESPONSE: None.

(c) Documents relating to each economic opportunity that J&B alleges it lost as a result of Defendants' actions.

RESPONSE: See JB000089-JB000196.

(d) J&B's top line revenue from January 2015 to the present broken down by month.

RESPONSE: See JB0000195-JB000196.

RULE 214 VERIFICATION

I, Joseph R. Marconi, being duly sworn upon oath, and pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, deposes and states that, to the best of my knowledge, the above J&B'S DISCOVERY RESPONSES PURSUANT TO THIS COURT'S MAY 29, 2019 ORDER, are complete, true and correct at this time to the best of my information, knowledge and belief.



Joseph R. Marconi

PROOF OF SERVICE

The undersigned, on oath, states that on July 15, 2019 the foregoing document was served upon the attorneys of record on the service list via email.

[x] /s/ Brian C. Langs

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure I certify that the statements set forth herein are true and correct.

EXHIBIT C

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOHNSON & BELL, LTD., an Illinois
professional corporation,

Plaintiff,

v.

EDELSON P.C., an Illinois professional
corporation and JAY EDELSON,

Defendants.

Case No: 2017 L 3169

AGREED MODIFIED BRIEFING SCHEDULE

This cause coming on for entry of an order modifying the October 31, 2019 briefing schedule for Plaintiff's Rule 191(b) Affidavit, IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants' have served supplemental discovery responses.
2. Parties have conducted Rule 201(k) conferences on around November 8, 20189 and on December 3, 2019. Defendants' counsel is conferring with his client regarding the issues raised during the December 3, 2019 Rule 201(k) conference.
3. Plaintiff's Rule 191(b) affidavit was previously due on December 4, 2019. However, Plaintiff's president, Joe Marconi, was lead counsel for an arbitration during the week of December 2, 2019, and Mr. Marconi's wife was hospitalized on December 6, 2019. Plaintiff therefore requires additional days to file its Rule 191(b) affidavit.
4. The due date for Plaintiff's Rule 191(b) affidavit is extended to December 10, 2019.
5. Defendants to file response to Plaintiff's Rule 191(b) affidavit on December 17, 2019.

6. Plaintiff to provide paper and electronic courtesy copies (see reverse side) of its Rule 191(b) affidavit and Defendants' response on December 18, 2019.

7. The December 18, 2019 hearing previously set for status on discovery is reset for 1/6/20, 2019 at 1:30 PM .

By: _____
Judge Jerry A. Esrig No. 2101

EXHIBIT D

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

JOHNSON & BELL, LTD., an Illinois professional corporation,)
)
)
Plaintiff,)
) Case No: 2017 L 003169
v.)
)
EDELSON P.C., an Illinois professional corporation and JAY EDELSON,)
)
)
Defendants.)

**DEFENDANT EDELSON P.C.'S THIRD SUPPLEMENTAL ANSWERS
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant, EDELSON P.C. ("EPC"), through its undersigned counsel, pursuant to Illinois Supreme Court Rules ("ISCR") 213 and 201(k) and the Court's orders dated May 22, 2019, and October 31, 2019, respectively, and for its third supplemental answers to Plaintiff JOHNSON & BELL, LTD.'s ("J&B") First Set of Interrogatories, states as follows:

ANSWERS TO INTERROGATORIES

1. State the name and home and business addresses of the person answering these interrogatories. Identify any person with whom that individual consulted in connection with the preparation of these answers. If the party responding to these interrogatories is a business entity, state the name address and title of the person answering these interrogatories on behalf of the entity.

ANSWER: Rafey S. Balabanian answered these interrogatories on behalf of EPC in consultation with Jay Edelson and Benjamin H. Richman, and EPC's counsel of record. The foregoing employees of EPC may be contacted only through EPC's counsel of record.

2. State the names and addresses of each person or entity who has knowledge regarding the facts described in the Complaint and describe in detail the nature of their knowledge. Indicate whether you have obtained written or oral statements from any of these persons. If written, indicate in whose custody such statements are being kept. If oral, indicate the date of the statements, to whom they were made, and whether written memorializations or transcripts of such statements exist and, if so, in whose custody such memorializations or

transcripts are kept.

ANSWER: Subject to its continuing investigation, EPC identifies the following persons with knowledge regarding J&B's allegations:

- a. Jay Edelson
- b. Rafey S. Balabanian
- c. Benjamin H. Richman
- d. Shawn Davis
- e. Sara Randazzo
- f. Joseph Marconi
- g. Michael Bruck
- h. John Fink
- i. Jim Schweitzer
- j. Sean Freund

EPC has not obtained any written statements or memorializations from these individuals at this time. EPC reserves the right to supplement its answer as the appropriate topics for discovery are further refined, whether through negotiations between counsel pursuant to ISCR 201(k) or order of the Court, and as a result of information learned by EPC in discovery.

3. Provide a list of all documents you are aware of that are relevant to this litigation, including the document type, date, author and current location/custodian.

ANSWER: EPC objects insofar as the interrogatory calls for information already in J&B's possession or otherwise available to J&B through the public record. Subject to the foregoing objections, and pursuant to ISCR 213(e), EPC refers J&B to those documents produced in this case previously by Defendants. Investigation continues.

4. Were you named or covered under any policy of liability insurance effective

on the date of the occurrence alleged in the complaint and, if so, state the name of each such company, the policy number, the effective period, and the maximum liability limits for each person and each occurrence, including but not limited to primary and excess policies.

ANSWER: Pursuant to ISCR 213(e), EPC refers J&B to documents numbered EDEL0001 through EDEL0014, which Defendants produced in this case previously.

5. State the names, occupations, and last known address of anyone with personal knowledge of any and all claims or alleged facts contained in the complaint in the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill. Case No. 16 CV 4363.

ANSWER: Subject to its continuing investigation, EPC identifies the following persons with personal knowledge of the factual allegations of the *Shore* Complaint:

- a. Jason Shore
- b. Joseph Marconi
- c. John Fink, Technical services/ IT
- d. Jim Schweitzer, Technical services/ IT
- e. Sean Freund, IT Director
- f. Michael Bruck
- g. Shawn Davis

EPC reserves the right to supplement its answer as the appropriate topics for discovery are further refined, whether through negotiations between counsel pursuant to ISCR 201(k) or order of the Court, and as a result of information learned by EPC in discovery.

6. State the names, occupations, and last known addresses of anyone with personal knowledge of how the complaint from the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill. Case No. 16 CV 4363 was disseminated to any media outlets, any social media outlets or any other publication.

ANSWER: EPC objects insofar as the interrogatory is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the

action “as to all statements and publications [alleged in the FAC] except publication of the statement, “[t]hese vulnerabilities demonstrate that Johnson & Bell has deficient security and fails to protect Confidential Information,” (the “Statement”) “contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)”; Order dated Sept. 20, 2019 (denying J&B’s motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). Moreover, as J&B is now aware, that sole surviving allegation of defamation and/or disparagement is false: at no time have Defendants ever disseminated a copy of the *Shore* complaint to Ms. Randazzo. Under the circumstances, the interrogatory not only stands in violation of Defendants’ First Amendment rights and threatens to chill and diminish citizen participation in government, 735 ILCS 110/1, *et seq.*, but it also runs afoul of J&B’s and its counsel’s obligations under ISCR 137.

7. State the full names, business, and address of any and all public relations consultants/firms hired by you in the last 5 years.

ANSWER: EPC objects insofar as the scope of the interrogatory is impermissibly overbroad and the information sought is protected from disclosure by the attorney-client privilege. For example, as written, the interrogatory ostensibly implicates PR firms hired by EPC for matters having nothing to do with data privacy and even seeks disclosure of consultants hired by EPC on behalf of its clients (regardless of who they may be). EPC further objects insofar as the interrogatory is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. Nowhere does the FAC allege that Defendants published any statements of any nature via a public relations consultant. More fundamentally, the interrogatory seems to misunderstand that it is *J&B’s image and reputation* that is relevant to this action—not that of EPC. Accordingly, EPC further objects insofar as the interrogatory is unduly burdensome and harassing.

Subject to the foregoing objections and its continuing investigation, EPC responds that assuming, *arguendo*, that EPC can “hire” a public relations consultant by copying her on an email, J&B is aware that Lauren Gard of Zumado Public Relations was copied on Defendant Jay Edelson’s Dec. 28, 2016 email to Ms. Randazzo providing the *Shore* case caption in response to Ms. Randazzo’s unsolicited request (see EDEL0015 through EDEL0016). That said and for the sake of clarity, EPC did not “hire” or otherwise engage any public relations consultants or firms with respect to Ms. Randazzo’s coverage of the Statement. Indeed, as the documents previously produced by Defendants make clear, Ms. Randazzo—not Defendants or any consultant or firm acting on their behalves—initiated contact with Defendants regarding the matters at issue in this case.

8. State the full names; addresses; email addresses; cell phone numbers, including cellular company; direct line numbers; and fax numbers, including personal fax numbers of any and all attorneys, staff, paralegals, and/or clerks involved in the creation of any pleadings in the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill. Case No. 16 CV 4363.

ANSWER: EPC objects insofar as the interrogatory is unduly burdensome, overly broad, harassing, calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. In particular, the creation of pleadings, generally, in the *Shore* litigation speaks nothing to the sole substantive allegation at issue in the FAC, namely “the publication of the [Statement] contained in the copy of the complaint [allegedly] provided to Sara Randazzo, as alleged in paragraph 59(c).” Moreover, the Court has already held that “the [S]tatement was originally made in a court filing and was subject to the absolute litigation privilege.” Order dated 8/29/18 at 9. J&B has no right and there is no legitimate purpose to delve into EPC’s representation or litigation activities more generally, nor to communicate with any EPC employees directly (including on their cell phone and personal fax numbers), and thus, the

interrogatory suggests that its purpose is to “fish” through EPC’s and its employees’ e-mail and telecommunications data in hopes of identifying conduct that J&B has failed to even allege occurred.

9. State the full names; addresses; email addresses; cell phone numbers, including cellular company; direct line numbers; and fax numbers, including personal fax numbers; of any and all attorneys, staff, paralegals, and/ or clerks involved in the dissemination of the complaint, or any other pleadings, filed in the lawsuit of *Shore v. Johnson & Bell, Ltd.* - N.D. Ill. Case No. 16 CV 4363.

ANSWER: EPC restates its answer and objections to Interrogatory No. 8 as its answer to the instant interrogatory and states further that, notwithstanding the false allegations of FAC ¶59(c), at no time have Defendants (or their employees or agents) ever disseminated a copy of the *Shore* Complaint to Ms. Randazzo.

10. State the full names, addresses, email addresses and phone numbers of each person you spoke to, or corresponded with, either in writing or orally, regarding the plaintiff and/or the lawsuit of *Shore v. Johnson & Bell, Ltd.* - N.D. Ill. Case No. 16 CV 4363, regardless of whether in such conversation or correspondence the plaintiff and/or the lawsuit of *Shore v. Johnson & Bell, Ltd.* - N.D. Ill. Case No. 16 CV 4363 were identified explicitly or implicitly, from three years prior to filing the lawsuit on April 15, 2016 until the present.

ANSWER: EPC objects to the interrogatory insofar as “implicitly” identifying J&B or the *Shore* litigation is irrelevant to a defamation or disparagement *per se* claim and J&B’s *per quod* claim has been dismissed. Additionally, EPC objects to the interrogatory’s ambiguity insofar as it calls for “implicit” references to J&B or the *Shore* Litigation, which lacks a clear or understandable meaning. For example, the interrogatory implicates communications “explicitly or implicitly” regarding the *Shore* litigation which pre-date the *Shore* litigation by three years. Finally, EPC objects insofar as the interrogatory is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. More particularly, the FAC alleges (albeit falsely) that EPC once defamed J&B to only one publication—the *Wall Street Journal* (FAC, ¶59(c)), and J&B makes no effort to restrict,

tailor or confine the interrogatory to that subject matter. Subject to its foregoing objections and continuing investigation, EPC identifies its counsel of record and Sara Randazzo.

11. Identify all written documents that you, or any person acting on your behalf, authored in full or part, regarding the plaintiff and/or the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill. Case No. 16 CV 4363, regardless of whether in such written document the plaintiff and/or the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill. Case No. 16 CV 4363 were identified explicitly or implicitly, from three years prior to filing the lawsuit on April 15, 2016 until the present.

ANSWER: EPC adopts and restates its answer and objections to Interrogatory No. 10 as its answer to the instant interrogatory, and further objects insofar as the interrogatory is unduly burdensome. For example, the interrogatory would require EPC to identify virtually every court filing and communication between counsel made in this case, not to mention various irrelevant privileged communications between Defendants and their attorneys.

12. Identify all of the information you relied on to support your allegation from the complaint filed in *Shore v. Johnson & Bell, LTD.*, - N.D. Ill. Case No. 16 CV 4363, that "Defendant's JBoss system is listed as running version 4.0.2" (Case No. 16 CV 4363 Compl. at ¶21). If the facts or documents from which the above statement is based were provided by any individual or entity other than the parties, state that individual or entity's name, address and phone number, the date you were made aware of said fact or facts, along with an identification of any correspondence between the parties and said individual or entity.

ANSWER: EPC objects insofar as the interrogatory is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action "as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)"); Order dated Sept. 20, 2019 (denying J&B's motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). J&B makes no effort to restrict, tailor or confine the interrogatory to that subject matter. Notwithstanding the foregoing objections, and pursuant to ISCR 213(e), EPC refers J&B to EDEL0026 through EDEL0040,

which Defendants produced in this case previously.

13. Identify all of the information you relied on to support your allegation from the complaint filed in *Shore v. Johnson & Bell, LTD*, - N.D. Ill. Case No. 16 CV 4363, that "Specifically, Johnson & Bell's email server:

- Supports SSL 2, which is obsolete, insecure, and is exploited by the "DROWN" attack, and
- Supports 512 bit export suites and is vulnerable to the "FREAK" attack."

These vulnerabilities demonstrate that Johnson & Bell has deficient security and fails to protect Confidential Client Information. However the fact Johnson & Bell's email server is exploitable by the DROWN attack is concerning. The DROWN attack (short for Decrypting RSA with Obsolete and Weakened Encryption) "allows attackers to break the encryption and read or steal sensitive communications, including passwords, credit card numbers, trade secrets or financial data." By using a DROWN attack, hackers can gain access to a server's secrets in under 8 hours at a cost of \$440." And once the server is breached, hackers can access the contents of Johnson & Bell's previously encrypted emails and attachments." (Case No. 16 CV 4363 Compl. at ¶ 32).

If the facts or documents from which the above statement is based were provided by any individual or entity other than the parties, state that individual or entity's name, address and phone number, the date you were made aware of said fact or facts, along with an identification of any correspondence between the parties and said individual or entity.

ANSWER: EPC adopts and restates its answer to Interrogatory No. 12 as its answer to the instant interrogatory.

14. Identify all of the information you relied on to support your allegation from the complaint filed in *Shore v. Johnson & Bell, LTD*, - N.D. Ill. Case No. 16 CV 4363, that Johnson & Bell "has improperly configured the service and left it running out-of-date software." (*Shore* Compl. at ¶19).

ANSWER: EPC adopts and restates its answer to Interrogatory No. 12 as its answer to the instant interrogatory.

15. Identify all of the information you relied on to support your allegation from the complaint filed in *Shore v. Johnson & Bell, LTD*, - N.D. Ill. Case No. 16 CV 4363, that Johnson & Bell's "VPN supports insecure renegotiation, leaving it vulnerable to man-in-the-middle attacks. (*Shore* Compl. at ¶28).

ANSWER: EPC adopts and restates its answer to Interrogatory No. 12 as its answer to the instant interrogatory.

16. Identify all of the "public information" that you referred to in the following statement from the complaint filed in *Shore v. Johnson & Bell, LTD*, - N.D. Ill. Case No. 16 CV 4363, "a review of public information, though shows that Johnson & Bell has failed to maintain up- to-date security."

ANSWER: EPC adopts and restates its answer to Interrogatory No. 12 as its answer to the instant interrogatory.

17. State the date that you began to represent Jason Shore and Coinabul, LLC and state all actions you have taken on behalf of Jason Shore and Coinabul, LLC to set aside, vacate, or otherwise defend against enforcement of the default judgment awarded against Shore and Coinabul, LLC in the lawsuit of *Hussein v. Coinabul, LLC, et al*- N.D. Ill. No. 14 CV 5735.

ANSWER: Subject to its continuing investigation, and pursuant to ISCR 213(e), EPC refers J&B to its Retention Agreement and Waiver of Conflicts with Mr. Shore and Coinabul, LLC, attached as Exhibit 3 to the Declaration of Jay Edelson dated March 30, 2018. EPC further states that it has taken no actions on behalf of Mr. Shore or Coinabul, LLC, to defend against enforcement of the default judgment and that any such activities would (1) fall outside the limited scope of EPC's engagement by Mr. Shore and Coinabul, (2) be contrary to EPC's obligations to Mr. Hussein, and (3) frustrate the intentions of the parties to the Confidential Forbearance and Settlement Agreement dated 7/1/16 (the "Settlement Agreement").

18. State the date that you began representing Yazan Hussein, and, if applicable, state the date that such representation terminated. Additionally, state all actions you have taken on behalf of Yazan Hussein to enforce the default judgment awarded to Hussein in *Hussein v. Coinabul, LLC, et al*. - N.D. Ill Case No. 14-CV-5735. Identify any communications between you and any other person or entity, including Yazan Hussein or his subsequent counsel regarding the collection or enforcement of the above mentioned default judgment.

ANSWER: EPC objects insofar as the date it began to represent Mr. Hussein is irrelevant to the instant case. EPC further objects to the interrogatory on the grounds that J&B lacks standing to charge someone else's attorney with violating Illinois conflicts rules. *Evink v. Pekin Ins.*, 122 Ill. App. 3d 249 (2d Dist. 1984). Notwithstanding the foregoing objections, EPC

states that on March 16, 2016, EPC appeared at a judgment debtor examination in San Diego, California. EPC further states that, pursuant to ISCR 213(e), any responsive communications in EPC's possession or control have been previously produced by Defendants in this case.

19. State the names, occupations, and last known address of anyone with personal knowledge of any and all claims or alleged facts contained in the complaint in the lawsuit of *Hussein v. Coinabul, LLC, et al.* -N.D. Ill. Case No. 14-CV-5735.

ANSWER: EPC objects insofar as the allegations of the *Hussein* pleadings are irrelevant to the instant case. Subject to its foregoing objections and continuing investigation, EPC identifies the following persons with personal knowledge of the facts alleged in the *Hussein* complaint:

- a) Yazan Hussein
- b) Jason Shore

20. State the full names; addresses; email addresses; cell phone numbers, including cellular company; direct line numbers; and fax numbers, including personal fax numbers of any and all attorneys, staff, paralegals, and/or clerks involved in the lawsuit of *Hussein v. Coinabul, LLC, et al.* -N.D. Ill. Case No. 14-CV-5735.

ANSWER: EPC objects insofar as the interrogatory is harassing, calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. J&B has no right to communicate with any EPC employees directly (including on their cell phone and personal fax numbers), particularly as the allegations of the *Hussein* pleadings are irrelevant to the instant case. Subject to the foregoing objections, EPC refers J&B to those attorneys identified as Mr. Hussein's counsel of record in the public court file.

21. State the full names; addresses; email addresses; cell phone numbers, including cellular company; direct line numbers; and fax numbers, including personal fax numbers of any and all attorneys, staff, paralegals, and/or clerks involved in the lawsuit of *Shore v. Johnson & Bell, LTD,* - N.D. Ill. Case No. 16 CV 4363.

ANSWER: EPC adopts and restates its answer and objections to Interrogatory No. 8 as its answer to the instant interrogatory. Subject to the objections therein, EPC refers J&B to those attorneys identified as Mr. Shore's counsel of record in the public court file.

22. Identify any actions you took to determine whether any conflicts of interest existed in engaging to represent Jason Shore in the lawsuit of *Shore v. Johnson & Bell, LTD*, - N.D. Ill. Case No. 16 CV 4363? If the answer is in the affirmative please state what actions or efforts were taken to determine whether a conflict of interest existed, and, what if any precautions were taken to prevent any exchanges or communications that could lead to conflicts of interests.

ANSWER: EPC objects to the interrogatory because J&B lacks standing to charge someone else's attorney with violating Illinois conflicts rules. *Evink, supra*. EPC further objects to the interrogatory's ambiguity insofar as it requests additional information "if the answer [to an initial question] is in the affirmative" even though J&B's initial question cannot be answered with a "yes" or "no." Notwithstanding the foregoing objections, EPC examined its records of previous clients and matters to determine whether it has represented any parties with interests adverse to those of Mr. Shore. EPC further performed certain legal and other research to determine whether any perceived or actual conflicts exist as relates to the representations of Mr. Shore and Mr. Hussein, specifically. And finally, out of an abundance of caution and as identified in the documents previously produced by Defendants, EPC secured written conflicts waivers from both Mr. Shore and Mr. Hussein.

23. State the name, address and phone number of each person that you, or any of your agents, spoke to, or corresponded with, either in writing or orally, regarding the lawsuit of *Hussein v. Coinabul, LLC, et al.* -N.D. Ill. No. 14 CV 5735.

ANSWER: EPC objects insofar as the interrogatory is harassing, calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. EPC represented the plaintiff class in *Hussein* and spoke or corresponded with various persons

regarding the litigation in the ordinary course of business. Because the allegations of the *Hussein* pleadings are wholly irrelevant to the instant case, the interrogatory is unduly and disproportionately burdensome to EPC.

24. Provide the login information for any and all of your social media accounts, including but not limited to the twitter account associated with username/handle "@edelsonpc."

ANSWER: EPC objects on the grounds that the interrogatory is overly broad and unduly burdensome, harassing, calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. EPC further objects on the grounds that the information sought is confidential and proprietary and protected from disclosure by the attorney-client privilege and work product doctrine. EPC also objects to the interrogatory's ambiguity insofar as "social media accounts" lacks any clear or understandable meaning. Additionally, in requesting login information for any and all of EPC's social media accounts, the interrogatory stands in violation of Defendants' First Amendment rights and threatens to chill and diminish citizen participation in government. 735 ILCS 110/1, *et seq.* EPC moreover objects to the interrogatory's undue interference with EPC's privacy interests and professional activities. For example, providing the requested login information would enable J&B to access the "@edelsonpc" Twitter account and post material as "@edelsonpc," usurping EPC's identity. Moreover, as the Twitter feed applicable to the handle "@edelsonpc" is accessible to the public, EPC further objects insofar as the interrogatory calls for information already in J&B's possession or otherwise available through the public record.

25. Identify all television programs, webcasts, and or conferences which Defendant appeared in or participated in and either Plaintiff, the matter(s) alleged in *Shore v. Johnson & Bell, LTD*, - N.D. Ill. Case No. 16 CV 4363, and/or law firm data security issues were discussed or mentioned. For each program, webcast, or conference identified, please

state: (1) its name; (2) date; (3) the member of Defendant who appeared; and (4) a brief summary of what was stated.

ANSWER: EPC objects insofar as the interrogatory is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action “as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)”); Order dated Sept. 20, 2019 (denying J&B’s motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). J&B makes no effort to restrict, tailor or confine the interrogatory to that subject matter. Given J&B’s inability to state a claim based upon any other alleged activities of Defendants, the interrogatory stands in violation of EPC’s First Amendment rights and threatens to chill and diminish citizen participation in government. 735 ILCS 110/1, *et seq.*

Dated: December 17, 2019

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Attorneys for Defendants

Respectfully submitted,
Defendant **EDELSON P.C.**

By: /s/ Neil M. Rosenbaum
One of Its Attorneys

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the above third supplemental answers to interrogatories are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Rafey Balabanian
Managing Partner
Edelson P.C.

CERTIFICATE OF SERVICE

I, Neil M. Rosenbaum, an attorney, hereby certify that on December 17, 2019, I served the above and foregoing *Defendant Edelson P.C.'s Third Supplemental Answers to Plaintiff's First Set of Interrogatories* by transmitting true and accurate copies of such papers to all counsel of record shown below via e-mail.

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/s/ Neil M. Rosenbaum

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

JOHNSON & BELL, LTD., an Illinois professional corporation,)	
)	
Plaintiff,)	
)	Case No: 2017 L 003169
v.)	
)	
EDELSON P.C., an Illinois professional corporation and JAY EDELSON,)	
)	
Defendants.)	

**DEFENDANTS' THIRD SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S FIRST SET OF PRODUCTION REQUESTS**

Defendants EDELSON P.C. (“EPC”) and JAY EDELSON (collectively, the “Defendants”), pursuant to Illinois Supreme Court Rules (“ISCR”) 214 and 201(k) and the Court’s orders dated May 22, 2019, and October 31, 2019, respectively, and for their third supplemental responses to Plaintiff JOHNSON & BELL, LTD.’s (“J&B”) first set of production requests (the “Requests”), state as follows:

RESPONSES TO REQUESTS

1. All documents which Defendants referred to or relied upon in responding to any of the interrogatories in Plaintiff’s First Set of Interrogatories to Defendants.

RESPONSE: Defendants object to the ambiguity of the Request insofar as J&B did not propound a single “First Set of Interrogatories to Defendants” as the Request suggests. Rather, J&B propounded “First Sets of Interrogatories” upon each Defendant. Notwithstanding any such objection, Defendants relied upon the pleadings on file in this case and in the *Shore* litigation, the various orders entered by Judge Mitchell and Judge Esrig, J&B’s written discovery responses, the Declaration of Jay Edelson dated March 30, 2018, and documents numbered EDEL0001 through EDEL0176, which Defendants produced in this case previously.

2. All documents that constitute, reflect, refer or relate to communications between Defendants and Plaintiff regarding any matter alleged in the Complaint or the Shore Complaint.

RESPONSE: Defendants object on the grounds that the Request calls for documents already in J&B's possession or otherwise available through the public record. For example, read literally, this request would require the production of every written communication exchanged between counsel in the course of the *Shore* litigation even though, as a party to such communications, J&B is or should already be in possession of any such material. Pursuant to ISCR 214(c), the burden and expense of producing the requested materials would be disproportionate to the likely benefit to J&B in accessing copies of communications with itself.

Defendants further object on the grounds that the Request calls for information protected from disclosure by the attorney-client privilege and attorney work product doctrine. In requesting all documents that "relate to" communications between Defendants and J&B regarding *Shore*, the Request calls for privileged communications between Defendants and their clients in *Shore*, for example, discussing the strategic implications of Defendants' communications with their opposing counsel. Such privileged communications would have no bearing on whether the statement, "[t]hese vulnerabilities demonstrate that Johnson & Bell has deficient security and fails to protect Confidential Client Information" (the "Statement") is true or false. Accordingly, Defendants further object to the extent the Request is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action "as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)"); Order dated Sept. 20, 2019 (denying J&B's motion to compel discovery except with respect to the alleged

publication of the Statement to Ms. Randazzo). ISCR 201(n) does not require parties to log *irrelevant* privileged material.

3. Copies of any and all detailed billing records, including the numbers for calls placed, calls received, text messages sent, and text messages received, for cellular phones for Defendant Edelson, P.C. and for any agent of Defendant Edelson, P.C. who had knowledge of the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363 during the time period between January 2015 through March 2017.

RESPONSE: Defendants object insofar as the Request is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action “as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)”); Order dated Sept. 20, 2019 (denying J&B’s motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). J&B makes no effort to restrict, tailor or confine the scope of the Request to that subject matter, and thus, the Request suggests that its purpose is to “fish” through EPC’s e-mail and telecommunications data in hopes of identifying conduct that J&B has failed to even allege occurred. Indeed, in seeking the discovery from every agent of EPC with mere “knowledge” of the *Shore* litigation, this Request would require the production of all cellular billing, phone and text messaging records for every attorney and staff member at EPC, and for a period of almost two years. Thus, in addition to seeking irrelevant information beyond the scope of this litigation and being otherwise improper, pursuant to ISCR 214(c), the burden and expense of producing the requested materials would be disproportionate to any theoretical benefit J&B might enjoy if permitted to engage in its improper fishing expedition.

4. All documents including email or other electronic transmissions, faxes, letters or any other correspondence or communications between you and any media regarding the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363, regardless of whether the lawsuit is identified specifically or generally in said correspondence.

RESPONSE: Defendants object insofar as the Request is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action “as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)”); Order dated Sept. 20, 2019 (denying J&B’s motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). J&B makes no effort to restrict, tailor or confine the Request to that subject matter, and thus, the Request suggests that its purpose is to “fish” through EPC’s e-mail and telecommunications data in hopes of identifying conduct that J&B has failed to even allege occurred. Additionally, Defendants object to the Request’s ambiguity insofar as it calls for documents “*generally*” identifying the *Shore* litigation, which lacks any clear or understandable meaning, and on the ground that, consistent with the Court’s dismissal of Count II of the FAC, a “general” reference to J&B is irrelevant to a defamation *per se* claim. Subject to the foregoing objections, Defendants refer J&B to documents numbered EDEL0015 through EDEL0016, which Defendants produced in this case previously.

5. Copies of any text messages sent to any media regarding the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363, regardless of whether the lawsuit is identified specifically or generally in said correspondence.

RESPONSE: Defendants adopt and restate their responses and objections to Request No. 4 as their response to the instant request.

6. Copies of any and all communications to any public relations or media consultant regarding the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363, regardless of whether the lawsuit is identified specifically or generally.

RESPONSE: Defendants adopt and restate their responses and objections to Request No.

4 as their response to the instant request.

7. Produce any and all emails and documents stored locally on defendants' or custodian's laptop or desktop computers; emails and documents stored in custodial accounts on email and file servers; emails stored in defendants' or custodian's web-based email accounts; text messages on defendants' or custodians' cell phones or other text messaging devices; fax machines that have internal electronic storage; and local and network storage accounts associated with facsimile data during the time period between January 2015 through March 2017, for forensic presentation and in camera review to protect the privacy and attorney/client privilege in unrelated matters.

RESPONSE: Defendants object insofar as the Request is overly broad and unduly burdensome, harassing, calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. Defendants further object on the grounds that the Request, on its face, calls for a vast amount of information that is protected from disclosure by the attorney-client privilege and the attorney work product doctrine. Incredibly, the scope of the Request is not limited to any specific case or matter or any particular custodian(s) of documents. The Request seeks the production and forensic examination of *all* EPC ESI created and held by *all* of its employees on *all* of their equipment and devices, *regardless of client or matter*, over a period of nearly two years. The proposed *in camera* review of this massive amount of Defendants' data (assuming the Court would even undertake such an immense task) does nothing to justify the disruption to EPC's business and undue invasion of its employees' and clients' privacy, not to mention the unnecessary waste of judicial resources. Therefore, pursuant to ISCR 214(c), the burden and expense of producing the requested materials would be disproportionate to any theoretical benefit J&B might enjoy if permitted to engage in an improper fishing expedition.

8. Your entire file from the lawsuit of *Hussein v. Coinabul, LLC, et al.* - N.D. III Case No. 14-CV-5735, including, but not limited to, all hand written notes, all typed notes,

all emails, all correspondence, all pleadings, all orders, all discovery, all time records/sheets, and all billing records.

RESPONSE: Defendants object insofar as the information sought is already in J&B's possession or otherwise available through the public record. Defendants further object on the grounds that the Request calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. Obviously, class counsel's "entire file" from the *Hussein* litigation is not relevant to the allegations set forth in the FAC. Defendants likewise object to the Request's ambiguity insofar as it calls for Defendants' "entire file" from the *Hussein* litigation, which lacks a clear or understandable meaning.

Defendants further object based on their understanding that Jason Shore and Coinabul, LLC, have abandoned their malpractice action against J&B, which necessarily precludes J&B from recovering any damages award for contribution liability in connection with the same. *See Patch v. Glover*, 248 Ill. App. 3d 562, 570 (1st Dist. 1993) (holding that an action for contribution "is contingent on the party seeking the relief first having been found liable in tort to the plaintiff in the underlying action"). Therefore, pursuant to ISCR 214(c), the burden and expense of producing the requested materials would be disproportionate to the likely benefit J&B would derive from taking discovery in support of a worthless "claim."

Defendants further object on the grounds that the Request plainly calls for information protected from disclosure by the attorney-client privilege and work product doctrine, and note that ISCR 201(n) does not require parties to log *irrelevant* privileged material.

Finally, Defendants object to the extent that the Court already ruled on the permissible scope of this Request on May 22, 2019, when it granted, in part, J&B's first motion to compel and ordered Defendants to produce, subject to privilege, documents relating to (1) negotiation and

discussion regarding the Confidential Forbearance and Settlement Agreement dated 7/1/16 (the “Settlement Agreement”), and (2) the “bulletproof defense.” Defendants complied with the Court’s 5/22/19 order, notwithstanding their foregoing objections, by producing all documents in their possession or control relating to negotiation and discussion regarding the Settlement Agreement and the “bulletproof defense” on July 16, 2019. J&B fails to explain how the *additional* requested discovery into, *e.g.*, class counsel’s “time records/sheets and all billing records”—which the Court previously declined to compel—is relevant to any issue in this case.

9. Your entire file from the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363, including, but not limited to, all hand written notes, all typed notes, all emails, all correspondence, all pleadings, all orders, all discovery, all time records/sheets, and all billing records.

RESPONSE: Defendants object insofar as the information sought is already in J&B’s possession or otherwise available through the public record. Defendants further object to the extent that the court previously denied J&B’s motion to compel with respect to this Request in its order dated 5/22/19, and as to the Request’s ambiguity insofar as it calls for Defendants’ “entire file” from the *Shore* litigation, which lacks a clear or understandable meaning. Defendants further object on the grounds that the Request plainly calls for information protected from disclosure by the attorney-client privilege and work product doctrine, and note that ISCR 201(n) does not require parties to log *irrelevant* privileged material.

Finally, Defendants object on the grounds that the Request calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. Obviously, class counsel’s “entire file” from the *Shore* litigation does not bear on whether the Statement is true or false; nor is it germane to Count IV. Indeed, in light of EPC’s agreement to respond to J&B’s Interrogatories 12 through 16, seeking discovery regarding the factual basis of various allegations

from the *Shore* complaint (including for the Statement), along with Defendants' production pursuant to the Court's 5/22/19 order, including all documents in their possession or control relating to negotiation and discussion regarding the Settlement Agreement and the "Bulletproof Defense," class counsel's "entire file" is cumulative and irrelevant.

10. Any correspondence with any person involved in collecting or otherwise enforcing the default judgment awarded to Yazan Hussein in *Hussein v. Coinabul, LLC, et al.* -N.D. Ill Case No 14-CV-5735.

RESPONSE: Defendants object to the Request on the grounds that the information sought is already in J&B's possession or otherwise available through the public record. Defendants further object on the grounds that the Request calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. As written, responsive "correspondence" is not limited in any way to the subject matter of this litigation. Notwithstanding the foregoing objections, and pursuant to the Court's 5/22/19 order, Defendants have previously produced all relevant documents in their possession or control responsive to this Request, including documents that relate to negotiations and discussions regarding the Settlement Agreement and/or the "Bulletproof Defense."

11. Any correspondence with Attorney Ariel Weissberg of Weissberg and Associates Ltd., 401 S. LaSalle St., Ste 403, Chicago, IL 60605, or any of his employees or agents, concerning settlement and or forbearance of Yazan Hussein's claim and or judgment against Jason Shore and Coinabul, LLC.

RESPONSE: Defendants adopt and restate their responses and objections to Request No. 10 as their response to the instant request.

12. Any correspondence with Attorney Alan Sege of The Sege Law Practice, 6601 Center Drive West, Suite 700, Los Angeles, CA 90045, or any of his employees or agents, concerning settlement and or forbearance of Yazan Hussein's claim and or judgment against Jason Shore and Coinabul, LLC.

RESPONSE: Defendants adopt and restate their responses and objections to Request No. 10 as their response to the instant request.

13. Any correspondence with Ariel Weissberg of Weissberg and Associates Ltd., concerning settlement and or forbearance of Yazan Hussein's claim and or judgment against Jason Shore and Coinabul, LLC.

RESPONSE: Defendants object to the extent the Request is largely duplicative of Request No. 11. Notwithstanding any such objection, Defendants adopt and restate their responses and objections to Request No. 11 as their response to the instant Request.

14. Any affidavits or declarations referring to, relating to or supporting any of the allegations or claims asserted in the Complaint in *Hussein v. Coinabul, LLC, et al.* - N.D. Ill Case No. 14-CV-5735.

RESPONSE: Defendants object insofar as the Request calls for irrelevant information, and is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. In particular, the allegations or claims asserted in the *Hussein* Complaint are not germane to the remaining allegations of the FAC. Notwithstanding the foregoing objections, and subject to their continuing investigation, Defendants refer J&B to Exhibit G to Defendants' Memorandum of Law in Support of their Motion to Dismiss J&B's FAC.

15. Any affidavits or declarations referring to, relating to or supporting any of the allegations or claims asserted in *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363.

RESPONSE: Defendants refer J&B to the Declaration of Jay Edelson dated March 30, 2018, Exhibit E to Defendants' Memorandum of Law in Support of their Motion to Dismiss J&B's FAC.

16. All documents that constitute, reflect, refer or relate to Defendant's representation of Jason Shore and/or Coinabul, LLC in *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16- CV-4363.

RESPONSE: Defendants object to the Request's ambiguity insofar as it calls for documents that "constitute" and/or "reflect" the Defendants' representation of certain clients in a particular litigation. Subject to the foregoing objections, Defendants refer J&B to EPC's Retention Agreement and Waiver of Conflicts with Mr. Shore and Coinabul, LLC, attached as Exhibit 3 to the Declaration of Jay Edelson dated March 30, 2018.

17. All insurance policies that will or may cover, in whole or in part, the acts alleged in the Complaint in this case.

RESPONSE: Defendants refer J&B to documents numbered EDEL0001 through EDEL0014, which Defendants produced in this case previously.

18. All correspondence with any retained or prospective expert witness concerning the acts alleged in the Complaint in this case.

RESPONSE: No experts or potential experts have been identified as of yet. Defendants' response to this Request will be supplemented as dictated by Defendants' further investigation, the Illinois Supreme Court Rules, and relevant Court orders.

19. Where a document is withheld from disclosure or discovery on a claim that it or they are privileged, please submit a privilege log explaining your reason for withholding such discovery and stating what information or documents Plaintiff have concerning the unanswered or unproduced portion.

RESPONSE: Defendants are in compliance with the Illinois Supreme Court Rules governing written discovery.

20. All posts, direct messages, or linked documents posted on any of your social media accounts that reference either directly or implicitly Plaintiff and/or the lawsuit of *Shore v. Johnson & Bell, Ltd.*, - N.D. Ill Case No. 16-CV-4363.

RESPONSE: Defendants object to the Request on the grounds that the information sought is already in J&B's possession or otherwise available through the public record. See, *e.g.*, FAC at Group Ex. B. Defendants further object insofar as Request is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning

the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action “as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)”); Order dated Sept. 20, 2019 (denying J&B’s motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). J&B makes no effort to restrict, tailor or confine the Request to that subject matter, and thus, the Request suggests that its purpose is to “fish” through Defendants’ Internet communications in hopes of identifying conduct that J&B has failed to even allege occurred. Defendants object further to the extent that Count II of the FAC (for defamation *per quod*) has been dismissed and “implicitly” referencing J&B or the *Shore* Litigation is irrelevant to a defamation *per se* claim. Defendants also object to the request’s ambiguity insofar as “implicit” references lack any clear or understandable meaning.

21. Any and all copies of videos, written material or other documents related to television, webcast, conferences, etc. in which Defendants appeared in or participated in and either Plaintiff, the matter alleged in the Shore Complaint, and/or law firm data security issues were discussed or mentioned.

RESPONSE: Defendants object on the grounds that the Request is not reasonably calculated to lead to the discovery of specific documents, objects or tangible things, or admissible evidence concerning the issues as framed by the pleadings. *See* Order dated Aug. 29, 2018 (dismissing the action “as to all statements and publications [alleged in the FAC] except publication of [the Statement] contained in the copy of the complaint provided to Sara Randazzo, as alleged in paragraph 59(c)”); Order dated Sept. 20, 2019 (denying J&B’s motion to compel discovery except with respect to the alleged publication of the Statement to Ms. Randazzo). J&B makes no effort to restrict, tailor or confine the Request to that subject matter, suggesting that the Request’s real purpose is an improper fishing expedition in hopes of identifying conduct that J&B has failed to even allege occurred. Defendants further object insofar as the Request seeks broad

discovery into Defendants communications with the press regarding a topic of public concern (law firm data security in general) regardless of any mention of J&B or the *Shore* Litigation, let alone the Statement. Under the circumstances, the Request stands in violation of Defendants' First Amendment rights and threatens to chill and diminish citizen participation in government. 735 ILCS 110/1, *et seq.* Therefore, pursuant to ISCR 214(c), the burden of producing the requested materials would be disproportionate to the likely benefit J&B would enjoy if permitted to engage in an improper fishing expedition.

22. A certificate of compliance.

RESPONSE: Defendants have produced previously their affidavit consistent with their obligations under ISCR 214(c).

Dated December 17, 2019

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Respectfully submitted,
Defendants **EDELSON P.C. and JAY EDELSON**

By: /s/ Neil M. Rosenbaum
One of Their Attorneys

CERTIFICATE OF SERVICE

I, Neil M. Rosenbaum, an attorney, hereby certify that on December 17, 2019, I served the above and foregoing *Defendants' Third Supplemental Response to Plaintiff's First Set of Production Requests* by transmitting true and accurate copies of such papers to all counsel of record shown below via e-mail.

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