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

EROS INTERNATIONAL PLC, Plaintiff, -against- MANGROVE PARTNERS, NATHANIEL H. AUGUST, MANUEL P. ASENSIO, ASENSIO & COMPANY, INC., MILL ROCK ADVISORS, INC., GEOINVESTING, LLC, CHRISTOPHER IRONS, DANIEL E. DAVID, FG ALPHA MANAGEMENT, LLC, FG ALPHA ADVISORS, FG ALPHA, L.P., CLARITYSPRING INC., CLARITYSPRING SECURITIES LLC, NATHAN Z. ANDERSON AND JOHN DOES NOS. 1-30, Defendants.	Index No. 653096/2017 Hon. Eileen Bransten Mot. Seq. No. 004

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO THE GEOINVESTING DEFENDANTS' ORDER TO SHOW CAUSE

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Plaintiff Eros International Plc ("Eros" or "Plaintiff") respectfully submits this memorandum of law in opposition to the Memorandum of Law in Support of Order to Show Cause by Defendants GeoInvesting, LLC, Christopher Irons, Daniel E. David, FG Alpha Management, LLC, FG Alpha Advisors, and FG Alpha, L.P. (collectively, "GeoInvesting" or the "GeoInvesting Defendants"), which seeks dismissal of Plaintiff's Complaint pursuant to New York Civil Practice Law and Rules ("CPLR") 3211(a)(1) and (7).[1]

PRELIMINARY STATEMENT

Plaintiff's Complaint alleges in substantial detail a multi-year market manipulation scheme pursued by a group of corrupt short-sellers that are trying to eviscerate Eros's reputation and business for their own financial gain. To fraudulently profit from their short positions, Defendants have published hundreds of false and defamatory statements about Eros between 2015 and present, and have repeatedly sabotaged its share price.

GeoInvesting, a short-seller and research shop co-founded by defendant David that purports to present neutral investment advice but in fact does anything but, joined the scheme in March 2017. Upon joining, GeoInvesting quickly took on a prominent role within the scheme, publishing three reports defaming Eros in a matter of weeks. Though each of those reports touted that "all information contained herein is accurate and reliable," they actually contained myriad false statements and unsavory innuendo, and demonstrated that GeoInvesting was relying on exceptionally stale (not to mention false) information – in one instance a CNN report that was

[1] Citations to "¶¶ __" refer to paragraph numbers of Plaintiff's Complaint, dated September 29, 2017 (Dkt. No. 3) (the "Complaint"). "Ex. __" refers to the exhibits of the Affirmation of Michael J. Bowe, dated January 23, 2018, in support of Eros' opposition to the orders to show cause submitted by Mangrove, GeoInvesting, and ClaritySpring. Citations to "GB at __" refer to the page numbers of GeoInvesting's Memorandum of Law in Support of its Order to Show Cause (Dkt. No. 72).

five years old – for claims of impropriety currently ongoing at Eros.

All of GeoInvesting's attacks were done with the singular goal of inflicting as much harm on Eros as possible, in order to profit from the decrease in the company's stock price that GeoInvesting aimed to induce. Indeed, evidencing the highly planned and financially-motivated nature of its attacks, GeoInvesting's first report was published on the same day, March 8, 2017, on which short-sellers bought 3,175 put options in Eros, valued at approximately $3.5 million – the largest single-day purchase of put options on Eros stock in all of 2016 and the first half of 2017. Similarly, GeoInvesting's July 2017 attacks were strategically timed to disrupt Eros' release of its FY 2017 and Q4 financial results.

Now GeoInvesting hopes to avoid liability for its clearly inappropriate and illicit conduct as it asks this Court to dismiss the entirety of Eros' allegations against it. However, as detailed below, GeoInvesting's order to show cause fails to demonstrate that the Complaint does not state viable claims against the GeoInvesting Defendants. Though GeoInvesting argues that Eros has not demonstrated that any of its statements were false, this challenge is both legally improper and factually incorrect. Similarly, while GeoInvesting claims that all of its defamatory statements are mere opinions that enjoy Constitutional protection, it both disregards that it previously touted the accuracy and reliability of the information in its reports and ignores that the clear context of those "opinions" – including its claims that it had "concrete proof" that Eros was in the midst of a serious liquidity crunch and "explosive evidence" that Eros is a fraud and engaged in self-dealing – conveyed to a reasonable investor that GeoInvesting was asserting provable facts about Eros. Indeed, Eros's share price declined precipitously in response to GeoInvesting's attacks, falling more than 19.5% in a month.

Accordingly, Eros respectfully submits that the Court should deny GeoInvesting's motion

to dismiss and permit this case to proceed to discovery.

FACTUAL ALLEGATIONS

GeoInvesting publicly joined the short-and-distort campaign against Eros in March 2017.[2] ¶ 223. Not coincidentally, GeoInvesting's emergence perfectly corresponded with that of its co-conspirator ClaritySpring,[3] who, among other things, began disseminating GeoInvesting's reports via Twitter in March. ¶ 295. Like the defendants who preceded them, GeoInvesting spread its attacks across a number of platforms, including on seekingalpha.com and through multiple accounts on Twitter.[4]

GeoInvesting commenced its initial attacks on Eros with a series of three articles published on GeoInvesting's website and linked to on its Seeking Alpha blog in March 2017, with Defendants David and Irons (as well as the ClaritySpring Defendants) further disseminating these reports via Twitter shortly after they were released. ¶ 224. All of GeoInvesting's reports noted that "***all information contained herein is accurate and reliable***, and has been obtained from public sources we believe to be ***accurate and reliable***." (Dkt. Nos. 62, 63, 64, 65, 66.) GeoInvesting's first short report about Eros was published on March 8, 2017 and its false claims echoed, in part, the false accusations made by the Mangrove Defendants.[5] ¶ 228. In that report

[2] For a more fulsome discussion of the initial attacks on Eros, please see Eros' Memorandum Of Law In Opposition To The Mangrove Defendants' Order to Show Cause, which was filed contemporaneously with this brief.

[3] As used herein, "ClaritySpring" refers to defendants ClaritySpring Inc., ClaritySpring Securities LLC, Nathan Z. Anderson, and the previously anonymous "Hindenburg Investment Research."

[4] Notably, defendant Irons does not disclose his affiliation with GeoInvesting, LLC in his Twitter profile. *See* https://twitter.com/qtrresearch?lang=en.

[5] As used herein, "Mangrove" refers to defendants Mangrove Partners and Nathaniel H. August, as well as the previously anonymous "Alpha Exposure."

GeoInvesting claimed to have uncovered "explosive ***evidence***" from "newly disseminated court filings" that they claimed validated "longstanding" short-seller charges, including that Eros is a fraud and engaged in self-dealing. ¶ 230. Specifically, GeoInvesting claimed that this evidence confirmed that Eros was "siphoning money" from the Company to its founder's family members through "dummy production deals." *Id*. In reality, these "new" court filings were eight month old uncorroborated allegations made by plaintiffs in a putative securities class action filed against Eros.[6] *Id.* The staleness of the information on which GeoInvesting relied in its March 8, 2017 report shows that they were not interested in making honest statements regarding Eros, but instead were intentionally timing its false statements to harm Eros at opportune moments. *Id.*

GeoInvesting continued to publish an array of additional falsehoods about Eros throughout March 2017, frequently using language intended to communicate that they had uncovered incontrovertible facts demonstrating improprieties at Eros, including that they had (i) "***concrete proof***" that Eros was ensnared in a "catastrophic liquidity crunch", (ii) "***evidence***" that money-laundering members of the Indian film industry have "close ties" to Eros, (iii) a "***slate of circumstantial evidence*** spanning the course of five years" that should give Eros investors "their most significant cause for concern yet", and (iv) "***evidence indicating*** that the company may be in the midst of a liquidity crisis." ¶¶ 245-248; *see also* Dkts. 63, 64. GeoInvesting also falsely claimed that Eros had an "[un]healthy relationship with the provider of [its] revolving credit facility," and, as evidence of its "tumultuous financial controls," claimed

[6] On September 22, 2017, the Honorable Alison J. Nathan dismissed the class plaintiffs' complaint in its entirety and with prejudice. *See* Memorandum & Order, *In re Eros Securities Litig.*, 1:15-cv-08956-AJN, Dkt. No. 79 (S.D.N.Y. Sept. 22, 2017). Judge Nathan's decision is now on appeal.

that Eros employed "numerous offshore asset havens," and had used "at least nine different auditors." ¶¶ 240, 243, 249.

However, as Eros makes clear in its Complaint, these statements were patently false, and in many instances, had been debunked prior to the statements being made. For one, Eros' annual reports regularly reflected cash *increases* during the years underlying these reports rather than any perceived "liquidity crisis." ¶ 241. Furthermore, as Eros outlines in the Complaint, the claims of Eros' purported ties to money launderers are completely unfounded. ¶ 247. Moreover, GeoInvesting's claim that Eros had an "unhealthy relationship" with its credit facility was debunked within its own article,[7] and in any event belied by the fact that the credit providers extended the agreement's maturity date for an additional six months on April 1, 2017. ¶ 244.

Not content with the damage they caused to Eros in March 2017, GeoInvesting reemerged with a new wave of short attacks in July 2017, which occurred in concert with the appearance of ClaritySpring's alias "Hindenburg Investment Research," and the reappearance of the Mangrove Defendants under their own alias, "Alpha Exposure." ¶¶ 271, 294, 303, 318. GeoInvesting's July 2017 publications falsely alleged, among other things, that Eros was "***unwinding***" its primary subsidiary, Eros International Media Limited ("EIML"). ¶ 272. Eros again debunked these falsehood by reaffirming to its investors that, while it did sell a minority share in EIML to raise capital, it retained a controlling stake in the entity. ¶ 275.

During both periods of attacks, GeoInvesting's motive was the same. Namely, GeoInvesting made its statements for the purpose of harming Eros so that it and its co-conspirators could profit from its admitted short positions in the company. This is evidenced, in

[7] GeoInvesting's March 16, 2017 article concedes that Eros' maturity date was extended until the end of March 2017: "S&P analysts [] shared that the company had paid $20m of its revolving facility, with the balance of approximately $95 million extended until the end of March." ¶ 242.

part, by the timing of the attacks. For instance, GeoInvesting's March 2017 attacks were purposely timed to disrupt both Eros' negotiations over a U.S. Dollar Reg-S bond offering, which Defendants were aware that Eros was in the final stages of securing around this time, and negotiations regarding the extension of Eros' credit facility agreement. ¶¶ 339, 380.

Tellingly, GeoInvesting's first report was published on March 8, 2017, the same day on which short-sellers bought 3,175 put options (reflecting 317,500 shares of Eros' stock valued at approximately $3.5 million) – the largest single-day purchase of put options on Eros stock in all of 2016 and the first half of 2017. ¶¶ 13, 225. Similarly, GeoInvesting's July 2017 attacks were strategically timed to blunt Eros' release of its FY 2017 and Q4 financial results. ¶ 271.

GeoInvesting's conspiratorial conduct did not end there however, as they almost certainly tipped off the ClaritySpring Defendants to the fact that Eros had instituted this action. On October 2, 2017, the ClaritySpring Defendants deleted *each and every* one of the tweets about Eros that they published under their own name. Ex. A. Notably, they did so before they were served with the Complaint on October 11, 2017 (Dkt. No. 24), and before there was any press, or a press release had been issued, concerning the filing of the lawsuit.[8] Indeed, at the time, outside of Eros, its counsel, and those assisting its counsel, the only parties who were aware that the Complaint had been filed were the GeoInvesting Defendants, who had been served shortly before the tweets were deleted. (Dkt. Nos. 10-15.)

[8] Eros issued a press release on October 3, 2017 at 8:52 a.m., hours after ClaritySpring's tweets had been deleted. *See Eros International Plc Commences Legal Action Against Market Manipulation*, Businesswire.com (Oct. 3, 2017), *available at* https://www.businesswire.com/news/home/20171003005903/en/Eros-International-Plc-Commences-Legal-Action-Market.

ARGUMENT

I. MOTION TO DISMISS STANDARD

"The scope of a court's inquiry on a motion to dismiss under C.P.L.R. 3211 is narrowly circumscribed." *Aris Multi-Strategy Offshore Fund, Ltd. v. Devaney*, 2009 WL 5851192, at *4 (Sup. Ct. N.Y. Cty. Dec. 14, 2009) (Bransten, J.). "Thus, it is well established that, on a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. The court must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference[,] and determine only whether the facts as alleged fit within any cognizable legal theory." *Id.*

Moreover, when examining a defendant's motion for dismissal pursuant to CPLR 3211(a)(7), "the Court of Appeals has consistently [held] that evidence in an affidavit used by a defendant to attack the sufficiency of a pleading 'will seldom if ever warrant the relief [the defendant] seeks ***unless [such evidence] conclusively establishes that plaintiff has no cause of action***." *Basis Yield Alpha Fund (Master) v. Goldman Sachs Grp., Inc.*, 115 A.D.3d 128, 138 (1st Dep't 2014) (emphasis in original).[9]

II. GEOINVESTING DOES NOT DISPUTE THAT EROS ADEQUATELY ALLEGES A CLAIM FOR DEFAMATION *PER SE* (COUNT I)

GeoInvesting does not dispute that its short reports and tweets – many of which accuse Eros of engaging in accounting fraud, siphoning money to insiders through related parties, and concealing a so-called liquidity crisis – are capable of a defamatory meaning. Nor can they, given the well-settled rule that a statement "impugn[ing] the basic integrity of a business" is *per*

[9] Except where noted, all internal citations have been omitted and all emphasis has been added.

se defamatory. *Boule v. Hutton*, 328 F.3d 84, 94 (2d Cir. 2003). Thus, the Complaint states a claim pursuant to Count I.

III. EROS PROPERLY PLEADS A CLAIM FOR DEFAMATION (COUNT II)

To plead a claim for defamation under New York law, a plaintiff must allege (i) a false statement of fact, (ii) published without privilege or authorization to a third party, (iii) constituting fault judged by, at a minimum, a negligence standard, (iv) that has caused special harm or constitutes defamation per se. *Int'l Pub. Concepts, LLC v. Locatelli*, 2015 WL 321852, at *3 (Sup. Ct. N.Y. Cty. Jan. 15, 2015) (Bransten, J.).

Significantly, rather than address the merits of each element, GeoInvesting spends the bulk of its brief arguing that its defamatory statements are immune from liability because they are constitutionally protected opinions. But, as detailed below, the only question at this juncture is "whether a reasonable listener is likely to have understood the[ir] statements as conveying provable facts about [Eros]." *Restis v. Am. Coalition Against Nuclear Iran, Inc.*, 53 F. Supp. 3d 705, 718 (S.D.N.Y. 2014).

GeoInvesting also incorrectly claims that New York courts "regularly dismiss claims for defamation at the pleading stage." GB at 6. To the contrary, the Court of Appeals of New York recently recognized that "[i]f, upon ***any*** reasonable view of the stated facts, plaintiff would be entitled to recovery for defamation, the complaint ***must*** be deemed to sufficiently state a cause of action." *Davis v. Boeheim*, 24 N.Y.3d 262, 268 (2014). Indeed, in *Davis*, Justice Rivera explained that New York courts "apply this ***liberal standard*** fully aware that permitting litigation to proceed to discovery carries the risk of potentially chilling free speech, but do so because we recognize a plaintiff's right to right to seek redress, and not have the courthouse doors closed at the very inception of an action." *Id.*

As set forth below, the Complaint's well-pled allegations – which include dozens of demonstrably false statements that were widely disseminated by GeoInvesting – easily satisfy New York's "liberal" pleading requirements for defamation.

A. The Complaint Adequately Pleads Falsity

In a further attempt to argue that its false and misleading statements are not actionable, GeoInvesting claims that its statements are true and also that Eros "fail[s] to allege the falsity of ***each*** statement" in its reports. GB at 11. This argument, however, undermines GeoInvesting's claim that its false and defamatory statements are protected opinion, *see Enigma Software Grp. USA, LLC v. Bleeping Computer LLC*, 194 F. Supp. 3d 263, 281 (S.D.N.Y. 2016) (only facts are capable of being proven true or false),[10] and fails for several other reasons.

First, New York law presumes falsity at the motion to dismiss stage, and thus, any defense of "truth" is legally irrelevant at this stage. *See Treppel v. Biovail Corp*., 2005 WL 2086339, at *8 (S.D.N.Y. Aug. 30, 2005) ("because the Court accepts the allegations as true, it assumes that the alleged statements are false . . . ."); *see also Garcia v. Puccio*, 17 A.D.3d 199, 201 (1st Dep't 2005) (defense of truth, which must be raised in an answer, is "premature" at the motion to dismiss stage).

Second, GeoInvesting is incorrect that Eros must allege that "each" of GeoInvesting's statements are false. It is well-settled that defamation can be based on a single false statement of fact. *See, e.g.*, *Franklin v. Daily Holdings, Inc.*, 135 A.D.3d 87, 96 (1st Dep't 2015) (plaintiff stated libel claim based on one statement in one article from online newspaper); *Connolly v. Wood-Smith*, 2012 WL 7809099, at *2, *7 (S.D.N.Y. May 14, 2012) (similar).

[10] Indeed, courts have held that a dispute as to the truth of an alleged defamatory statement compels the denial of a motion to dismiss. *See Daniels v. Provident Life & Cas. Ins. Co.*, 2002 WL 31887800, at *5 (W.D.N.Y. Dec. 22, 2002).

Third, Eros' Complaint is rife with allegations as to why statements made by GeoInvesting were false. For example, while GeoInvesting contends that Eros failed to explain why its statement that Eros has "9 different auditors" is false (GB at 20), the Complaint plainly alleges that this statement is "refuted" by Eros' financial reports that disclose that "Eros' Outside Auditor has been its only independent outside auditor since it IPO in 2013." ¶ 250.

Similarly, GeoInvesting argues that Eros does not dispute that "it used NextGen to make payments to family members." GB at 12-13. But this argument misrepresents the statements made by GeoInvesting concerning NextGen, which claimed not just that Eros was making payments to family members of Eros' CEO, but that Eros was using NextGen for the purpose of "siphon[ing] money from company shareholders into the coffers for the Lulla family." ¶ 228. In its Complaint, Eros specifically alleges that such statements are false and details why this is the case. ¶ 230. Specifically, Eros explained that it had disclosed, in every single financial report filed with the SEC, that it had made payments to NextGen and that Eros' relationship with NextGen, and other related parties, were beneficial to Eros as such "certain related party transactions allow [Eros] to achieve more favorable terms than would otherwise be available and confer material benefits on Eros' business." *Id.*

GeoInvesting again is incorrect in contending that Eros "does not dispute" its purported "evidence" of Eros' allegedly misstated earnings and Eros' "highly dubious" RoW data. GB at 13. Eros' Complaint *does* contain allegations disputing these accusations. In particular, Eros claimed that these statements are "false and hinge on a fundamental misunderstanding of Eros' business." ¶ 233. Eros went on to detail why these statements are false, explaining that in its

quarterly report for the period ending December 31, 2016,[11] it disclosed "point-blank" that it "has a high RoW revenue, because its films are enjoyed by consumers . . . all across the non-Western world, including in other South Asian countries such as Bangladesh, Sri Lanka or Pakistan, and in non-South Asian countries that are increasingly consuming a higher number of Bollywood film content in local languages." *Id.*

Therefore, GeoInvesting's arguments concerning the falsity of the challenged statements fail as a matter of law.

B. GeoInvesting's "Opinion" Defense Is Not Applicable

GeoInvesting contends that ***all*** of its defamatory statements are mere expressions of opinion that enjoy Constitutional protection, and tout its self-serving use of "opinion" phrases like "we believe" and "seems to be" that purportedly insulate such statements from liability. GB at 2, 10. As detailed below, the plain context of GeoInvesting's reports demonstrate, however, that GeoInvesting explicitly conveyed that its defamatory statements were predicated upon provable facts, as GeoInvesting repeatedly emphasized that its findings were supported by "explosive evidence," "concrete proof," and "a slate of circumstantial evidence."

1. Reasonable Investors Understood That GeoInvesting's Defamatory "Opinions" Were Supported By Provable Facts

When determining whether a statement constitutes an actionable fact or protected opinion, New York courts consider three factors: whether (i) the specific language at issue has a precise meaning which is readily understood; (ii) the statements are capable of being proved true or false; and (iii) the full context of the communication in which the statement appears would signal to a reader or listener that what is being read or heard is likely to be opinion, not fact.

[11] *See* Eros International Plc. Form 6-K (Feb. 27, 2017), *available at* https://www.sec.gov/Archives/edgar/data/1532981/000117152017000133/eps7219.htm.

Locatelli, 2015 WL 321852, at *5.[12] In conducting this analysis, "a court must determine whether a 'reasonable reader would understand the statements' to be opinion or fact." *Id.* at *6.[13]

Contrary to well-settled New York precedent, GeoInvesting spends the bulk of its brief challenging the context of its statements, under the third prong, by cherry-picking isolated opinion language and engaging in hyper-technical parsing. *See, e.g.*, *Gross v. New York Times Co*., 82 N.Y.2d 146, 156 (1993) ("we stress once again our commitment to avoiding the 'hypertechnical parsing' of written and spoken words" in defamation actions); *Davis*, 24 N.Y.3d at 270 ("[r]ather than sifting through a communication for the purpose of isolating and identifying assertions of fact, the court should look to the over-all context in which the assertions were made and determine on that basis whether the reasonable reader would have believe that the challenged statements were conveying facts about the . . . plaintiff").

Applying these standards, courts have frequently held that the inclusion of opinion language in a short seller's "research" report does not insulate the speaker from liability, particularly where, like here, it purports to convey provable facts about a purported fraud.[14] For example, in one recent matter, a hedge fund with a short position in Amira Nature Foods, Ltd.

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[12] GeoInvesting does not dispute that its defamatory statements satisfy the first prong. And its attempts to challenge the second prong are baseless. As demonstrated above, GeoInvesting's argument that Eros does not plead the challenged statements are false runs counter to both New York law and the Complaint's plain allegations.

[13] Even a "mixed" statement of fact and opinion, in contrast with pure opinion, is actionable when based on "falsely misrepresented or grossly distorted" facts, or implies the existence of undisclosed facts supporting the speaker's opinion. *Chalpin v. Amordian Press, Inc.*, 128 A.D.2d 81, 85 (1st Dep't 1987); *accord Silsdorf v. Levine*, 59 N.Y.2d 8, 11-13 (1983).

[14] As the U.S. Supreme Court recently held in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct. 1318, 1327, 1331 (2015), even when examined under the rigorous pleading requirements of the federal securities laws, statements that "begin with opinion words like 'I believe' [still] contain embedded statements of fact" and can therefore be subject to liability, as "the resulting statements . . . remain perfectly capable of misleading investors."

("Amira") issued two research reports that purported to "prove" that Amira was engaged in fraudulent activity. Almost precisely as GeoInvesting argues here, the hedge fund defendant in *Amira* – represented by its co-conspirator Mangrove's lead defense counsel – urged the court to dismiss Amira's defamation claim because: (i) the hedge fund's reports were couched with opinion language, such as "we believe"; (ii) it purportedly "disclosed in detail how [it] arrived at its opinions"; (iii) the reports "contained hyperlinks and backup for everything that led to the ultimate opinion"; and (iv) the reports disclosed that the hedge fund "had a short position and stood to profit if the stock price of Amira went down." Motion to Dismiss Hearing Transcript at 2-3, *Amira Nature Foods v. Prescience Point LLC,* No. 15-cv-9655, Dkt. No. 66 (S.D.N.Y. Oct. 17, 2016); *accord* Order, *Amira Nature Foods v. Prescience Point LLC*, No. 15-cv-9655, Dkt. No. 65 (S.D.N.Y. Oct. 7, 2016).

In her decision on the record, Judge Caproni flatly rejected each of the hedge fund's arguments and permitted Amira's defamation claim to proceed. Indeed, Judge Caproni reasoned that, "[e]xamining the [hedge fund's] statements as a whole, the Court is left with the clear impression that a reasonable investor would have understood [the hedge fund was] conveying provable facts about [the plaintiff]." *Id.* at 59. In particular, she observed that the hedge fund's two research reports read not as opinion, but "as fact," in that "***[i]t read[] as this company is a house of cards. It is lying to its investors about its revenue, about its exports***." *Id.* at 15-16. Accordingly, consistent with well-settled New York law, Judge Caproni concluded that "[d]efendants cannot avoid liability simply by including a legal disclaimer or sprinkling their [short] reports with words that they believe connote opinion." *Id.* at 16, 59.[15]

[15] *See also Gross*, 82 N.Y.2d at 156 (speaker's charges – that Gross was "corrupt" and was guilty of "possibly illegal" conduct – can be read as fact, in view of the reports' "length," "copious" documentation and apparent basis in "thorough investigation" and "deliberation").

The court's decision in *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688 (2007), is also instructive. Similar to *Amira*, the short seller in *Overstock* published a series of research reports accusing Overstock of engaging in accounting fraud. In support of its motion to dismiss, the short seller argued it could not be held liable for defamation because the reports were "liberally couched in terms of opinion," and were accompanied by a disclaimer that the contents represented the author's "interpretations" and were "based on nondefamatory, disclosed facts." *Id.* at 704. In rejecting these arguments, however, the *Overstock* court held that, "without question," a short-seller's publication of a report stating that Overstock was "cooking the books" and "manipulating accounting procedures to boost the price of its stock" were actionable statements of fact. *Id.* at 673; *Enigma*, 194 F. Supp. 3d at 265 (S.D.N.Y. 2016) (defendants' statements actionable because, "[v]iewed holistically, the overall thrust of [the] thematically similar and mutually reinforcing statements is that [plaintiff] is engaged in a deliberate and fraudulent scam in which it is peddling . . . a rogue product designed to loot customers").[16]

Here, the Complaint plainly identifies numerous examples of statements disseminated by GeoInvesting that conveyed to a reasonable investor that GeoInvesting had evidence that Eros was committing securities fraud. For example:

- GeoInvesting unearthed "explosive evidence" from "newly disseminated court filings" that "validates" prior short-seller claims that Eros' management was engaging in dummy deals (¶ 227; Dkt. No. 62);

[16] While GeoInvesting cherry-picks a few cases where the use of opinion language rendered a short seller's defamatory research reports non-actionable, it ignores the unique facts in those cases. For instance, in *Silvercorp Metals Inc. v. Anthion Mgmt. LLC*, 2012 WL 3569952, at *10 (Sup. Ct. N.Y. Cty. Aug. 16, 2012), which was decided before *Amira* and *Enigma*, "[t]he complaint never actually allege[d] that the postings are false or identif[ied] any particular aspects as false." Our case is dramatically different. Eros' Complaint set forth specific allegations identifying each statement that was false and why those statements was false.

- Eros' non-Indian/Europe/ North America ("Rest of the World" or "RoW") revenue data contain "flagrant anomalies" and are "highly dubious" (¶ 232);

- Eros "swe[pt] under the rug" "extremely important questions about the details of the company's pre-paid ErosNow bundle on LeEco phones," as Eros was "surging" its Eros Now user counts and hid the termination of a partnership with a Chinese technology company from investors (¶ 234);

- Eros is "closely" linked and has "direct ties" to money launderers, and "details of this type of money laundering could go a long way in explaining many of the critical questions raised about EROS over the last few years" (¶¶ 246, 248);

- Unspecified "others" have been "alleging outright that EROS is involved with money laundering" (¶ 248);

- Eros is "approaching a catastrophic liquidity crunch" (¶ 240);

- "$EROS Credit and finance issues continue. Now they are not paying producers" (¶ 290);

- Eros has "[un]healthy relationship with the provider of [its] revolving credit facility" (¶ 244);

- Eros uses "numerous offshore asset havens" (¶ 249);

- Eros uses "at least 9 different auditors," a sign of its "tumultuous financial controls" (*id.*);

- Eros was secretly "unwinding" EIML (¶¶ 272-73); and

- Eros lost majority control in EIML (¶ 286).

Needless to say, "[t]he tone and content is serious, and a typical subscriber would take the materials seriously," and would have left a reasonable reader with the "clear impression" that GeoInvesting was conveying provable facts about Eros. *Overstock*, 151 Cal. App. 4th at 706.[17]

[17] Even if GeoInvesting's statements qualify as opinions, they would still be actionable as "mixed" opinions based on false or grossly misrepresented facts. For instance, GeoInvesting claimed in its March 29 report that "[a] CNN India exposé catches four Eros International [] associated director/producer/writers on hidden camera discussing methods for laundering money through their films" (¶ 246), and they went on to purport, "[w]hile we are not alleging outright that EROS is involved with money laundering, as others have been we want to present a slate of circumstantial evidence spanning the course of the last five years that we think should continue to give EROS investors perhaps their most significant cause for concern yet" (¶ 248). As the

But GeoInvesting did not stop there. As in *Amira* and *Overstock*, the tenor and tone of its lengthy assault on Eros specifically claimed its assertions of fraud were supported by "explosive evidence" and "concrete proof."[18] For instance, in its March 8 report, GeoInvesting falsely claimed that it they had "uncovered" "***explosive evidence***" from "newly disseminated court documents" by a confidential witness and Eros "insider," which "validate" other short-sellers' longstanding accusations of Eros' fraudulent self-dealing. ¶¶ 227-28. On March 16, GeoInvesting claimed that they had "***concrete proof***" that Eros was ensnared in a "catastrophic liquidity crunch." (Dkt. No. 63.)

Similarly, in its March 29 report, GeoInvesting repeatedly claimed to present "evidence": "***evidence***" that money-laundering members of the Indian film industry have "close ties" to Eros; a "***slate of circumstantial evidence*** spanning the course of five years" that should give Eros investors "their most significant cause for concern yet"; "***evidence*** that, surprisingly, ***we have not seen in Eros court filings***"; and "***evidence indicating*** that the company may be in the midst of a liquidity crisis." ¶ 248; Dkt. No. 64.

For these reasons, GeoInvesting's reports cue, to any reasonable reader, that they can be construed as fact. *See, e.g.*, *Restis*, 53 F. Supp. 3d at 718, 721 (S.D.N.Y. 2014) (denying motion to dismiss where "statements [we]re alleged to have been made as part of a sophisticated and

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Complaint alleges, these false statements were based on grossly distorted facts, including that the supposed news "exposé" had nothing to do with Eros. ¶¶ 247, 250. They were never charged or subject to any publicly known investigations. ¶ 247. Thus, because GeoInvesting's supposed "opinions" are based on grossly distorted facts, they are actionable. *See Silsdorf*, 59 N.Y.2d at 11-13; *see also Overstock*, 151 Cal. App. 4th at 705 ("Even where the speaker states facts upon which he or she bases an opinion, if the facts are incorrect or incomplete, or if the speaker's assessment of them is erroneous, the statement can still imply an actionable statement.").

[18] *See also Enigma*, 194 F. Supp. 3d at 284 ("challenged statements 'reasonably imply' that . . . SpyHunter is [] a rogue product designed to loot customers" and thus "could reasonably be understood as assertions of objectively verifiable facts").

coordinated campaign" and "accusations were grounded in assertions of fact about Plaintiffs' business activities and . . . purport[ed] to rely on documents that establish the existence of Plaintiffs' scheme").

2. GeoInvesting's Additional Arguments Fail

In an effort to downplay the severity of its attacks, GeoInvesting muses that because its defamatory reports and commentary were "posted on Internet blogs, rather than in print magazines or newspapers," they would have signaled to "readers and courts alike" that "the content is more informal and represents the author's opinions." Not so.

First, the mere fact that GeoInvesting's statements were published online, in our modern day and age, does not strip them of their serious import or erase their fact-filled content. In fact GeoInvesting ignores the fact that many of its "research" reports were reported and carried on international news wires, including Bloomberg's real-time news feed. *See, e.g.*, Ex. B. And, any suggestion that GeoInvesting's defamatory reports were not taken seriously is plainly belied by the decline in Eros' share price, which plummeted nearly 19.5% in a month in response to GeoInvesting's attacks. ¶¶ 12, 335.[19]

Second, GeoInvesting frequently touted that its reports were based on objective data and were the result of a significant amount of research and investigation. GeoInvesting's reports are flanked by graphics and catch phrases applauding itself as a hitter of "doubles, triples and home

[19] Defendants' reliance on *Jacobus v. Trump*, 51 N.Y.S.3d 330 (Sup. Ct. N.Y. Cty. Jan. 9, 2017), is misplaced. The court in *Jacobus*, in granting dismissal of the plaintiff's allegations, noted that the context of the allegedly defamatory statements was the "familiar back and forth between a political commentator and the subject of her criticism," and found the statements to be "imprecise and hyperbolic political dispute cum schoolyard squabble." *Id.* at 343. Here, there is nothing "familiar" about the short-and-distort campaign that Defendants waged against Eros, and, as discussed throughout this brief, the context of the false statements of fact at issue here rendered those statements anything but imprecise and hyperbolic."

runs"; a source of "internationally recognized research"; and a work horse that "spends hours researching stocks so you don't have to." *E.g.*, Ex. C. *See Gross*, 82 N.Y.2d at 156 (disputed reports' "length," "copious" documentation and apparent "thorough investigation" strengthened their factual import); *see also Restis*, 53 F. Supp. 3d at 721 (online statements' "ground[ed] in assertions of fact about Plaintiffs' business activities" and "purport[ed reliance] on documents that establish the existence of Plaintiffs' 'scheme' counsel in favor of finding them factual).

Third, GeoInvesting framed all of its short reports as neutral "investment research reports," including stating that these reports were rooted in "information, field research, inferences and deductions through due diligence and our analytical process." GeoInvesting even goes on to claim in its reports that "***all information contained herein is accurate and reliable***, and has been obtained from public sources we believe to be ***accurate and reliable***." (Dkt. Nos. 62, 63, 64, 65, 66.) *See Overstock*, 151 Cal. App. 4th at 705 ("[Defendant] characterizes its reports, alerts and bulletins as presenting the firm's 'unbiased, independent and objective analysis of a company's earnings quality' and tells subscribers who ask that they are prepared by professional certified public accountants and financial analysts."); *see also supra* at 3. These facts demonstrate that GeoInvesting held itself out as a serious, legitimate investor, such that "a typical [reader] would take [its] materials seriously." *Overstock*, 151 Cal. App. 4th at 705.[20]

[20] GeoInvesting relies upon *Nanoviricides, Inc. v. Seeking Alpha, Inc.,* 2014 N.Y. Slip Op. 31681 (U), at *6, for the proposition that an report published on *Seeking Alpha* "signal[s] that content is more informal and represents the authors' opinions." GB at 9. In *Nanoviricides*, however, the court was persuaded because the anonymous user had posted only one negative article, and had no activity on *Seeking Alpha* prior its publication. *Id.* at *6. GeoInvesting's other cases are also inapposite. *See* GB at 9-10. For example, the allegations in *Sandals Resorts, Ltd. v. Google, Inc.*, 86 A.D.3d 32, 34-35 (1st Dep't 2011), pertained to an obscure, anonymous emailer that was using a seemingly fake Gmail account.

Fourth, the sheer frequency of GeoInvesting's defamatory attacks – issuing five reports and a slew of tweets in just two months (March and July 2017) – also underscores its concerted effort to continually re-enforce its campaign. *See, e.g.*, *id.* at 704 (factual nature of the defendant's statements "strengthened by the sheer flurry of negative reports"); *Enigma*, 194 F. Supp. 3d at 265 ("thematically similar and mutually reinforcing" nature of the challenged statements militates in favor of construing them as factual); *Restis*, 53 F. Supp. 3d at 721 (distinguishing a series of statements alleged to have been made as part of a "sophisticated and coordinated" "campaign" versus "in a heated public debate").

For these reasons, when all of GeoInvesting's defamatory statements are examined holistically and in the light most favorable to plaintiffs, a reasonable investor would conclude that they were "objectively verifiable" and "provably false." They are therefore actionable.

C. While Not Required, Eros Pleads Particularized Evidence Of Actual Malice

Without any explanation or citations to supporting case law, GeoInvesting claims that Eros is a public figure and must therefore plead factual support that GeoInvesting acted with actual malice.[21] GB at 26. GeoInvesting's superficial discussion of this issue is not surprising, as Eros does not come close to qualifying as a public figure under New York law.

For example, Eros did not thrust itself to the forefront of a public controversy. *See Krauss v. Globe Int'l, Inc.*, 251 A.D.2d 191, 192 (1st Dep't 1998) (limited purpose public figure must "voluntarily inject[] [itself] into a public controversy with a view toward influencing it"). Nor does the mere fact that Eros is a public company automatically convert it into a public figure. *See Behr v. Weber*, 1990 WL 270993, at *2 (Sup. Ct. N.Y. Cty. Jan. 5, 1990), *aff'd*, 172

[21] The case GeoInvesting relies on, *Gear Up, Inc. v. City of New York*, 140 A.D.3d 515, 516 (1st Dep't 2016), merely reflects the standard for actual malice and nowhere holds that a company is rendered a public figure simply because it is listed on an exchange.

A.D.2d 441 (1st Dep't 1991). Nevertheless, even if the Court indulges GeoInvesting's self-serving pleading standard (which it should not), the Complaint alleges numerous particularized examples of GeoInvesting's malice.[22]

First, Eros' Complaint is inundated with facts showing that GeoInvesting had a pecuniary motive to harm Eros. *See, e.g.*, *Overstock*, 151 Cal. App. 4th at 711-12 ("[M]alice is in the very business model and practices that preordain [short-seller's] negative reports, and provides probative evidence that Gradient acted in reckless disregard of the truth in making the false statements and implications that it did"). Eros alleges in detail that GeoInvesting had a short position in Eros' stock and profited from the substantial declines in Eros' share price in response to its defamatory reports and commentary. ¶ 253. GeoInvesting does not dispute its short positions, nor do they dispute that they profited therefrom.[23]

Second, Eros pleads in detail that GeoInvesting's and its co-conspirator's short reports occurred at the same time as abnormal surges in put options purchases. ¶¶ 13, 121, 220-21. For instance, at the outset of the attacks begun in March 2017, short-sellers bought 3,175 put options on March 8, 2017 alone (reflecting 317,500 shares of Eros' stock valued at approximately $3.5 million) – the largest single-day purchase of put options on Eros stock in all of 2016 and the first half of 2017. ¶ 225. On that same day, GeoInvesting published its first short report about Eros, falsely claiming that it has uncovered "explosive evidence" from "newly disseminated court

[22] Regardless, courts have declined to resolve at the pleading stage whether the actual malice standard applies, preferring instead to defer the issue until after the case has developed further. *See Enigma*, 194 F. Supp. 3d at 288 (while "the facts adduced in discovery may yet show that [plaintiff] is a limited-purpose public figure, [one] cannot, on the pleadings, conclude that [plaintiff] must be so").

[23] While pecuniary interest alone may be insufficient to demonstrate malice, Eros alleges far more conduct that corroborates that Defendants acted with malice. *See infra*.

filings." ¶ 227; Dkt. No. 62. This "explosive evidence," however, hinged on unsubstantiated allegations made by the plaintiffs in a putative securities class action as early as July 2016. ¶ 230. That GeoInvesting sat on this stale information for over eight months – only to raise it on the same day that shorts buy a record number of put options – reveals its calculated design to time its publications so as to inflict maximum harm on Eros. *Id.*

Likewise, Eros also pleads specific examples of instances where GeoInvesting (as well as other Defendants) strategically timed its defamatory statements to coincide with crucial business events, such as Eros' (i) U.S. Dollar Reg-S bond offering set for March 2017, (ii) extension and renegotiation of its revolving credit facility throughout the spring and summer of 2017, and (iii) release of its FY 2017 and Q4 results in July 2017. ¶¶ 339, 380. *See, e.g.*, *Coclin v. Lane Press, Inc.*, 210 A.D.2d 98, 99 (1st Dep't 1994) (timing of false communications probative of malice); Amira Tr. at 60 ("Amira [] plausibly alleges an intent to injure" by "alleg[ing] that defendant strategically timed the publication to maximize plaintiff's injury").

Third, the Complaint provides specific examples of instances where GeoInvesting continued to recycle its defamatory themes of purported fraud, even after they had been discredited by independent sources. *See, e.g.*, *Horton v. Guillot*, 2016 WL 4444875, at *5-6 (N.D.N.Y. Aug. 23, 2016) (malice inferable from defendant's re-iteration of false statement that plaintiff cheated in horse race after independent investigation had debunked the statement).

In sum, the combined weight of all these circumstantial factors, set forth with specificity in Eros' Complaint, sufficiently meet the threshold for pleading actual malice.

IV. EROS SUFFICIENTLY PLEADS ITS NON-DEFAMATION CLAIMS[24]

GeoInvesting also urges the Court to dismiss Plaintiff's non-defamation claims, arguing that they are duplicative of defamation and suffer from other purported deficiencies. It is wrong.

GeoInvesting argues, as an initial matter, that all of Eros' non-defamation claims must be dismissed since the "same statements and alleged harm underlie" these claims.[25] Yet the cases they cite in support of this proposition are not applicable here. Unlike the plaintiffs in *Perez v. Violence Intervention Program*, 116 A.D.3d 601 (1st Dep't 2014) and *Chao v. Mount Sinai Hospital*, 476 Fed. App'x 892 (2d Cir. 2012), Eros' non-defamation claims seek to redress specific economic, not reputational, harms that flowed directly from GeoInvesting's tortious conduct. *See Amaranth LLC v. J.P. Morgan Chase & Co.*, 71 A.D.3d 40, 47-48 (1st Dep't 2009) (claim sounding in tortious interference rather than defamation where complaint alleged economic injury to specific business relationships as opposed to reputational harm); *Stapleton Studios, LLC v. City of New York*, 26 A.D.3d 236, 273 (1st Dep't 2006) (similar).

Specifically, Eros alleges that GeoInvesting's conduct harmed the negotiations concerning the extension of Eros' credit facility and that its conduct resulted in Eros extending the facility "on less desirable terms" than would otherwise have been available to Eros. ¶¶ 18, 339, 380. Further, Eros alleges in the Complaint that GeoInvesting intentionally undermined "a significant U.S. Dollar Reg-S bond offering," which had the effect of damaging Eros' credit

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[24] For Eros' responses to the arguments of Defendants Mangrove Partners and Nathaniel H. August in support of dismissal of Counts III, V, VI, and VII, which GeoInvesting adopts in their entirety (GB at 26), please see pages 20 through 25 of Eros' Memorandum Of Law In Opposition To The Mangrove Defendants' Order to Show Cause, which was filed contemporaneously with this brief.

[25] Eros presumes that GeoInvesting intended this argument to apply to Eros's claims for commercial disparagement and tortious interference, and not to its claim for false light or civil conspiracy.

worthiness and foreclosing entirely Eros' access to that source of capital. ¶¶ 223, 339, 380. As Eros pleads the specific business relationships affected and the economic harms suffered, its non-defamation claims are not duplicative of its defamation claims, and should not be dismissed.

A. Eros Sufficiently Pleads Commercial Disparagement (Count III)

GeoInvesting raises a single argument concerning Eros' commercial disparagement claim, contending that Eros fails to allege that GeoInvesting disparaged any of Eros' goods and services. GB at 27. This glosses over key aspects of the Complaint's detailed pleadings, which evince that GeoInvesting published false statements that impugned the value, quality and condition of Eros' products and services – in particular, its streaming service Eros Now. For instance, Eros' Complaint reflects the allegation that GeoInvesting "call[ed] into question [data] provided by the company" on the number of Eros Now's paid subscribers, asserting the false fact that Eros improperly "surg[ed]" the number of Eros Now paid subscribers by counting LeEco subscribers as part of that tally. ¶¶ 226, 234-37. By this accusation, GeoInvesting maligned the value and the viability of Eros Now. Thus, Eros' adequately pled commercial disparagement.

B. Eros Sufficiently Pleads Tortious Interference With Prospective Business Relations And Contract (Counts V and VI)

GeoInvesting claims that Eros' causes of action for tortious interference with prospective business relations and tortious interference with contract must be dismissed because Eros fails to specify the business relationships GeoInvesting threatened or the contracts it damaged. This argument, however, ignores that the Complaint identifies several concrete examples.

For example, with regard to Eros' claim for tortious interference with prospective business relations, Eros specifically alleges that the defamatory reports and tweets published by GeoInvesting between March 8, 2017 and March 29, 2017 interfered with Eros' ability to raise capital through a U.S. Dollar Reg-S bond offering in March 2017. ¶¶ 339, 380. As to Eros'

cause of action for tortious interference with contract, Eros pleads that these same reports and tweets interfered with Eros' efforts to extend its revolving credit facility and ultimately led to that facility being extended "on less desirable terms" than Eros otherwise would have achieved. ¶¶ 18, 339, 380. Thus, Eros sufficiently pleads these causes of action. *See McGill v. Parker*, 179 A.D.2d 98, 105 (1st Dep't 1992) (a complaint only need make a "particular allegation of interference with a specific contract or business relationship").

GeoInvesting also argues that, because Eros alleges that GeoInvesting "published [its] articles with an intent to maximized [its] profits," Eros cannot claim that GeoInvesting interfered with Eros' prospective business relations for the "sole purpose of harming Eros." GB at 28. Yet, this argument misrepresents the nature of Eros' allegations, namely that GeoInvesting's motivation *was* to harm Eros in order to profit from the harm they inflicted.

Further, GeoInvesting is incorrect that Eros must allege that GeoInvesting's sole motivation was to harm Eros. The courts in both *Vitro* and *Steiner Sports* were interested in protecting the "normal economic interest[s]" of the respective defendants – a creditor in the former case, a competitor in the latter case – that existed separate and apart from any malicious intent. *See, e.g.*, *Vitro S.A.B. de C.V. v. Aurelius Cap. Mgmt., L.P.*, 99 A.D.3d 564 (1st Dep't 2012) (plaintiff's creditors had clear economic interest in plaintiff's proposed reorganization plan, "separate from any possible malicious motive"); *Steiner Sports Mktg., Inc. v. Weinreb*, 88 A.D.3d 482, 483 (1st Dep't 2011) (former employer had economic interest in interfering with former employee's prospective employment with competitor).

C. Eros Sufficiently Pleads A Claim For False Light (Count IV)

GeoInvesting argues that Pennsylvania law does not apply in this action and thus Eros' claim for false light under Pennsylvania law must be dismissed. Yet, GeoInvesting's challenge

to this claim on choice-of-law grounds is premature given that choice-of-law is a fact-intensive inquiry and thus should not be decided on a motion to dismiss. *See Cont'l Ins. Co. v. Garlock Sealing Tech., LLC*, 23 A.D.3d 287, 288 (1st Dep't 2005) (noting, in deciding motion to dismiss, that "choice of law issues presented by this litigation are not yet ripe for adjudication"); *see also Bristol-Myers Squibb Co. v. Matrix Lab. Ltd.*, 655 F. App'x 9, 13 (2d Cir. 2016) ("choice-of-law determinations . . . would be premature to resolve at the motion-to-dismiss stage"); *Gerffert Co., Inc. v. Fratelli Bonella, SRI*, 2015 WL 6127078, at *6 (N.Y. Sup. Ct. Nassau Cty. Oct. 7, 2015) (citing with approval federal decisions stating it is premature to conduct choice of law analysis on motion to dismiss).

Nevertheless, GeoInvesting is incorrect that Pennsylvania law does not apply merely because Eros is a New Jersey corporation. The task of a choice of law analysis is to determine which jurisdiction has the "most significant relationship" to the conduct being challenged. *Davis v. Costa-Gavras*, 580 F. Supp. 1082, 1091 (S.D.N.Y. 1984) ("Under New York conflict-of-laws rules, the state with the most significant relationship to an alleged tort supplies the governing substantive law."). While one factor in this analysis is the jurisdiction in which a plaintiff is domiciled, it is not on its own determinative as to which jurisdiction's law applies, as other factors, including "where the defendant's main publishing office is located," may dictate applying the law of a jurisdiction other than that of the plaintiff's domicile. *See id.* at 1092; *see also Walker by Walker v. Pearl S. Buck Found., Inc.*, 1996 WL 706714, at *7 (E.D. Pa. Dec. 3, 1996) (minimizing plaintiff's domicile in choice of law analysis for false light and invasion of privacy claims to find that PA law applied instead of NY because PA had more significant relationship to actions giving rise to claims for false light and invasion of privacy).

Further, an examination of the relevant factors indicates Pennsylvania law applies to Eros' claim for false light. In *Costa-Garvas*, for example, the court found that where the tort at issue is based on publishing and disseminating defamatory information, the "justified expectation [of publishers is that their] conduct will be judged by the rules of jurisdictions in which they carry on their activities . . . ." *Costa-Gavras*, 580 F. Supp. at 1092. Here, GeoInvesting LLC and the FG Alpha entities are headquartered in Pennsylvania and their principal officers and decision makers are located in Pennsylvania. ¶¶ 25-30. Further, all of the GeoInvesting Defendants committed wrongdoing in Pennsylvania by, upon information and belief, publishing exclusively from Pennsylvania false reports and numerous false tweets that targeted and were intended to harm Eros. Therefore, as GeoInvesting has substantial contacts with Pennsylvania, the acts giving rise to Eros' false light claim arose in Pennsylvania, Pennsylvania by having a cause of action for false light clearly intends to discourage the conduct that gives rise to such a claim, Pennsylvania has the most significant relationship here.

Separately, even if GeoInvesting is correct and the law of New Jersey applies, Eros' false light claim would still survive GeoInvesting's motion to dismiss. Under New Jersey law, a claim for false light requires a showing that (i) the false light in which the plaintiff was placed would be highly offensive to a reasonable person, and (ii) the defendant knew of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed. *See Torrey v. New Jersey*, 2014 WL 941308, at *21 (D.N.J. Mar. 11, 2014).

GeoInvesting's conduct here – the publishing of false reports and tweets that accused Eros and its executives of securities fraud and money laundering – is the type of conduct that New Jersey courts have found to be "highly offensive to a reasonable person." *See, e.g.*, *Gibbs v. Massey*, 2009 WL 838138, at *12 (D.N.J. Mar. 26, 2009) (holding that statements accusing

plaintiff of criminal conduct "fits neatly into the contours of the tort" of false light). Also, as detailed above, Eros alleges that GeoInvesting published its highly offensive statements with knowledge of or reckless disregard for their falsity and the false light in which those statements would place Eros. See *supra*, at pp. 9-11.

Thus, GeoInvesting's motion to dismiss Eros' false light claim should be denied.

D. Eros Sufficiently Pleads Civil Conspiracy (Count VII)

GeoInvesting contends that Plaintiff's claim for civil conspiracy must be dismissed because (i) conspiracy is not an independent tort in New York and (ii) Eros purportedly fails to plead that GeoInvesting entered into an agreement to damage Eros. In both instances, GeoInvesting misstates the applicable law.

While a claim for civil conspiracy cannot be asserted on its own, New York law permits a plaintiff to plead conspiracy in connection with a separate underlying tort 'in order to connect the actions of the individual defendants." *Litras v. Litras*, 254 A.D.2d 395, 396 (2d Dep't 1998). This is precisely what Eros does here, as it adequately pleads several causes of action against multiple defendants, and also pleads conspiracy based on the coordinated conduct of these defendants to harm Eros through their short and distort campaign.

As to pleading an agreement, it is not necessary for Eros to overtly plead that GeoInvesting entered in agreement with the other defendants to harm Eros. Rather, such an agreement can be inferred from the factual allegations in Eros' Complaint. *See FIA Leveraged Fund Ltd. v. Grant Thornton LLP*, 150 A.D.3d 492, 495 (1st Dep't 2017) (rejecting motion to dismiss conspiracy claim where complaint did not allege an agreement but contained "factual allegations from which such an agreement can be inferred"). Indeed, courts generally afford "great leeway" to plaintiff in pleading that they were victims of a conspiracy. *Maersk, Inc. v.*

Neewra, Inc., 554 F. Supp. 2d 424, 458 (S.D.N.Y. 2008). This "leeway" is intended to counteract "the nature of the conspiracy," which as "often make it impossible to provide details at the pleading stage." *In re Harvard Knitwear, Inc.*, 153 B.R. 617, 628 (E.D.N.Y. 1993). When considering Eros' Complaint in light of these doctrines, Eros' alleges more than sufficient factual allegations from which an agreement to harm Eros can be inferred.

Specifically, Eros' alleges, among other things, that Defendants, including GeoInvesting, acted in coordinated phases, in particular during critical business milestones, such as Eros' first Reg-S bond offering, the extension and re-negotiation of its revolving credit facility and the release of significant financial reports such as the FY 2016 and 2017 annual reports. ¶¶ 16, 271, 294, 306. In addition, Eros alleges that the Defendants each admitted to having short positions in Eros and that there were conspicuous surges in the volume of put options acquired during the months that Defendants attacked, which surges coincided with the timing Defendants' publications. ¶¶ 17, 123, 220. Also, the Complaint also reflects numerous instances in which Defendants parroted and referenced each other's defamatory and disparaging facts. ¶¶ 207, 292, 305, 325. Beyond this, Eros' Complaint highlights the numerous anonymous aliases employed by participants in the short-and-distort scheme, many of which were created solely in connection with the scheme in order to hype and further disseminate the false statements made by Defendants. *See, e.g.*, ¶ 20 ("Alpha Exposure"), ¶ 39 ("Hindenburg"), ¶ 93 ("Spotlight Research," "Orange Peel Investments," "Parke Shall" and "Thom Lachenmann"), ¶ 215 ("Forest Gump"), and ¶ 216 ("Market Farce").

Further, the uncanny synchronization and similarity of Defendants' conduct makes it implausible that they were acting independently of one another; rather they distinctly suggest that Defendants agreed to coordinate their conduct. At the very least, Eros should be allowed an

opportunity to obtain discovery to unearth details related to its conspiracy claim, as the evidence showing collusion likely will be found in non-public communications in Defendants' possession. *See, e.g.*, *In re Harvard Knitwear*, 153 B.R. at 628 (due to the "impossibility" of alleging details of conspiracy, "[a] plaintiff [] should be allowed to resort to the discovery process").

Lastly, and specifically demonstrating that at the very least GeoInvesting was coordinating its conduct with ClaritySpring, ClaritySpring deleted all of the tweets about Eros from the Twitter account in its name after the Complaint was filed but *before* the Complaint was served on it, *before* Eros publicly announced the lawsuit, and within hours *after* GeoInvesting had been served. Ex. A; Dkt. Nos. 10-15.

CONCLUSION

Based on the foregoing, plaintiffs respectfully request that this Court deny GeoInvesting's motions to dismiss in its entirety.[26]

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January 23, 2018

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[26] In the event the Court dismisses any defendant and/or cause of action, Eros respectfully requests leave to amend. *See Lester v. Capo*, 2016 WL 469647, at *16 (Sup. Ct. N.Y. Cty. Feb. 5, 2016) ("Because the Court determines that the defamation claims might possibly be cured through supplemental factual allegations, leave will be granted to replead this portion of the Complaint.") (Bransten, J.).