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. 653096/2017E

Assigned to Hon. Eileen Bransten
IAS Part 3

Motion Sequence # 6

MEMORANDUM OF LAW IN REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS COMPLAINT AS TO CLARITYSPRING INC., CLARITYSPRING SECURITIES LLC AND NATHAN Z. ANDERSON

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Defendants ClaritySpring, Inc., ClaritySpring Securities LLC and Nathan Z. Anderson (collectively, and along with Hindenburg Research ("Hindenburg"), the "ClaritySpring Defendants" or "ClaritySpring") respectfully submit this Reply Memorandum in response to Plaintiff's Opposition to ClaritySpring Defendants' Motion to Dismiss the Complaint.

PRELIMINARY STATEMENT

Plaintiff's Memorandum of Law in Opposition to the ClaritySpring Defendants' Motion to Dismiss the Complaint (NYSCEF 136) ("Opposition") only underscores what was evident from the start: Plaintiff cannot allege any facts establishing a claim for defamation (or any other count) against the ClaritySpring Defendants, and is using litigation to silence meritorious and diligent market criticism and commentary. Given the number of conclusory statements in the Complaint, and the paucity of clear allegations of falsity against the ClaritySpring Defendants, Eros's Complaint utterly fails state any viable cause of action and, instead, violates the core protections of the First Amendment and well-settled case law.

In its Opposition, Plaintiff walks back most of its allegations against the ClaritySpring Defendants, substantially winnowing down the number of purportedly defamatory statements at issue. The ClaritySpring Defendants' Motion to Dismiss closely examined each of the numerous purportedly defamatory tweets alleged in the Complaint, and explained why none rises to the level of defamatory speech. *See* ClaritySpring Mem. at 16-22. In its Opposition, Plaintiff does not even attempt to rebut ClaritySpring's arguments, with the exception of a single string of tweets which is clearly protected opinion (discussed further *infra*) and a context-free discussion of certain statements in the Hindenburg articles. Thus, an allegedly far reaching defamation scheme boils down to no more than a few disputed statements.

But even the more limited focus on a handful of tweets and written statements fails to state a claim under the law. The privilege protecting the expression of an opinion is rooted in the preference that ideas be fully aired. *Jacobus v. Trump*, 55 Misc. 3d 470, 475, 51 N.Y.S.3d 330, 337 (Sup. Ct. N.Y. County), *aff'd*, 156 A.D.3d 452, 64 N.Y.S.3d 889 (1st Dep't 2017). The ClaritySpring Defendants are entitled to this privilege because they expressed opinions—even if highly critical—of a publicly traded corporation based on an assessment of the company's fundamentals drawn from publicly available documents. The ClaritySpring Defendants raised red flags and concerns about Eros's rosy valuation and projections based on inconsistencies found in *Eros's own* public earnings reports, and other publicly available documents. *See* Memorandum of Law in Support of Motion to Dismiss Complaint as to ClaritySpring Defendants (NYSCEF 95) ("ClaritySpring Mem.") at 4, 16-21.[1] Such criticism is necessary for an efficient market and would likely not be published elsewhere—to suppress this type of market commentary would likely have a chilling effect, prompting other commentators to avoid publishing their own insights, or pull punches when doing so, for fear of inviting a lawsuit.

Unable to state a viable claim under the law, Plaintiff tries to divert attention from the merits by launching a gratuitous, *ad hominem* attack, suggesting that ClaritySpring "attempt[ed] to destroy evidence" by removing some tweets from public view on its Twitter feed.[2] Opp. at 2,

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[1] This is fatal to Plaintiff's apparent contention that any of the disputed statements constitutes a "mixed opinion." As discussed, *infra*, the ClaritySpring Defendants relied on documents that others could access, and never once stated or implied that they possessed secret or inside information that others could not see themselves.

[2] It should be noted that the ClaritySpring Defendants had not yet retained counsel in connection with this lawsuit during the time period in question. However, Plaintiff was informed before making its "destruction of evidence" argument that ClaritySpring maintains an archive preserving all tweets, including later deleted tweets. *See* Ryan Aff. ¶ 3, fn 1.

17. Not only does this broadside improperly introduce facts entirely outside the pleadings (and thus should not be considered on this Motion), it is meritless. Since the issue has been introduced by Plaintiff, the Court should know the following: ClaritySpring Securities LLC—in connection with its document preservation obligations as a securities broker—pays an independent third-party data firm to archive *all* tweets from its account, and is aware that every tweet ever sent will be retained.[3] This is evidenced by the very fact that each supposedly "destroyed" tweet referenced by the Plaintiff has been annexed to ClaritySpring's Motion to Dismiss in full. *See* Ryan Aff. (NYSCEF 77) at Exs. 2-7. Finally, Plaintiff erroneously jumps to the conclusion that removal of a public tweet from one's Twitter feed can only be viewed as "destroying" evidence. If the tweets truly harmed Eros, it would not be upset to see them removed. In any event, it is illogical to claim that ClaritySpring was attempting to hide evidence when it: (i) preserved all tweets; and (ii) provided copies of them in their Motion to Dismiss. Further, Eros has *already quoted* the tweets in question in its Complaint, thus clearly demonstrating that Eros had access to them. The bottom line is that all tweets have been archived and preserved, despite Plaintiff's overwrought characterizations.

[3] From the website of Defendants' archival service, Global Relay Archives: "Global Relay Archive allows your organization to benefit from the powerful micro-blogging social network while addressing eDiscovery and regulatory requirements for recordkeeping and supervision. Designed and built in-house, Global Relay Archive for Twitter is easy to deploy and transparently captures your employees' Twitter activity no matter where they are or what device they use. Importantly, we preserve the original formatting and contextual metadata, including photos and links. Archived Twitter content looks exactly as it does online, with a unique 'redline' view that streamlines supervision and review by pinpointing exactly which text was altered, added, or removed." *See* https://www.globalrelay.com/support-training/help-center?#social-media. Indeed, such preservation proved greatly helpful in this case where Plaintiff chose to cherry pick and twist Defendants' statements in its Complaint. *See* ClaritySpring Mem. at 15.

At the end of the day, the Court has before it all material necessary to make a determination upon this Motion to Dismiss. As set forth below, and in the Motion to Dismiss, Plaintiff's Complaint against the ClaritySpring Defendants should be dismissed with prejudice.

ARGUMENT

I. EROS FAILS TO STATE A CLAIM FOR DEFAMATION

A. Eros Ignores the Necessity of Reviewing the Full Allegedly Defamatory Statements at the Motion to Dismiss Stage

Eros's interpretation of the motion to dismiss standard neglects the substantial authority treating defamation cases differently. One of the cases cited by Eros makes clear that "'[i]t is most important to look at the content of the whole communication, its tone and apparent purpose, rather than first examining the challenged statements for express and implied factual assertions, and finding them actionable unless couched in loose, figurative or hyperbolic language in charged circumstances.'" *Int'l Pub'g Concepts, LLC v. Locatelli*, 46 Misc. 3d 1213(A), 9 N.Y.S.3d 593 (Table), 2015 WL 321852, at *6 (Sup. Ct. N.Y. County Jan. 15, 2015) (quoting *Frechtman v. Gutterman*, 115 A.D.3d 102, 106, 979 N.Y.S.2d 58, 62 (1st Dep't 2014)).

Eros alleges that certain writings are defamatory. It thus defies logic to contend that the writings themselves cannot be considered by the Court. This is especially so where, as here, Eros failed to provide the full, unvarnished text of the alleged defamatory statements in its pleadings. *See* ClaritySpring Mem. at 15. This would result in cases moving past the dismissal stage, and engendering significant expense, merely because the court was not free to examine the statement in question in the first instance.

Eros further makes the puzzling argument that ClaritySpring's claim that the Complaint fails to plead facts demonstrating how any of the challenged statements are false somehow

undermines ClaritySpring's claim that its statements are protected opinion. To the contrary, ClaritySpring's position is that Eros has not alleged facts showing falsity, because it *cannot* allege such facts. As noted in the *Biovail* case cited by Eros, a claim "must contain *allegations* concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Treppel v. Biovail Corp.*, No. 03 CIV. 3002 (PKL), 2005 WL 2086339, at *2 (S.D.N.Y. Aug. 30, 2005) (emphasis added) (internal quotation omitted). The ClaritySpring Defendants' criticism and commentary are clearly protected opinion under the First Amendment and well-established case law. *See* ClaritySpring Mem. at 12. The fact that Eros cannot allege facts establishing truth or falsity only underscores that point. Further, for this reason, Eros should not be granted leave to amend, as it cannot allege any facts sufficient to establish defamation against the ClaritySpring Defendants.

B. Eros Does Not Challenge or Attempt to Rebut the Non-Defamatory Nature of the Majority of Statements at Issue

Eros essentially fails to contest the ClaritySpring Defendants' argument that the vast majority of tweets referenced in the Complaint simply do not constitute defamatory speech. The ClaritySpring Defendants directly addressed no fewer than six tweets or tweet-strings attributed to ClaritySpring from the Complaint, and explained why those tweets could not possibly be defamatory. *See* ClaritySpring Mem. at 4-6, 14-18. Eros fails to directly challenge the ClaritySpring Defendants' analysis in all but one instance. Opp. at 4, 8. Further, as to Hindenburg, the ClaritySpring Defendants' Motion to Dismiss addressed the purported defamation in the three Hindenburg Articles, along with multiple additional Hindenburg tweets. *See id*. at 7-10, 18-22. Eros against fails to rebut ClaritySpring Defendants' argument as to most of those statements, with the exception of a few cherry-picked statements from the Hindenburg articles. Thus, the Court

need not further consider any of those tweets or statements as to which Eros has failed to contest ClaritySpring's detailed arguments that they are not defamatory.[4]

C. Eros Fails to Show that the Remaining Statements Constitute Defamation

Eros cites only one "string of tweets" by ClaritySpring that Eros contends are "false," because the tweets "falsely accused Eros of owning a subsidiary, Eros Energy Singapore Pvt. Ltd. […]." Opp. at 8. Yet, a plain reading of the July 21 Tweets makes clear that Eros is simply misreading them. ClaritySpring made clear in its tweets only that Emerging Power Singapore Pvt. Ltd. ("Emerging Power") (which used to go by the name ***Eros*** Energy Singapore Pvt. Ltd. ("Eros Energy")) owns a 99% stake in Eros Television India Private Limited ("Eros TV"). *See* Ryan Aff., Ex. 6; ClaritySpring Mem. at 5-6. An objective examination of these tweets makes clear that ClaritySpring **did not** state that Eros Energy /Emerging Power was a subsidiary of Eros itself—that statement, or even that inference, is nowhere in the text of the July 21 tweets. *See id*.

Thus, Eros's claim rests not on the actual text, but Eros's misreading of the text. Eros's confusion cannot drive liability. Moreover, this begs the question as to what exactly Eros contends is defamatory about pointing out connections between these entities, which all share Eros in their name. It further shows just how far Eros must stretch to make its defamation allegations against the ClaritySpring Defendants.

As to Hindenburg, Eros's primary argument appears to concern the Hindenburg articles, and does not address the Hindenburg tweets at all.[5] Here too, Eros misses the mark. Eros primarily

[4] The effectively abandoned tweets include those referenced at ¶¶ 295, 296, and 330 of the Complaint.

[5] The Complaint does not allege that ClaritySpring published research reports under its own name.

contends that a "reasonable investor" would have understood Hindenburg's reports as defamatory, without providing many examples. Hindenburg's reports were harshly critical of Eros to be sure, but simply because one's rhetoric is one-sided, does not make it defamatory. *See, e.g., Locatelli*, 2015 WL 321852, at *7("[A] letter from an attorney … to a person who the attorney has concluded violated his client's legal rights, would doubtless contain … one-sided, opinionated rhetoric, which would cause the statements contained therein to assume the character of opinion."). Further, as discussed below, the Hindenburg articles clearly state the grounds for their opinions, which are public documents, in most cases filed by Eros itself.

Nor does Eros's effort to grasp at non-controlling bench rulings and out of state precedent aide its cause. For example, the *Overstock.com* decision is not only from a different state, the facts do not help Eros in any meaningful way. Among other things, in *Overstock.com* it was alleged that the publisher of purportedly unbiased and objective analytic reports on public companies had secretly collaborated with short sellers to produce negative reports about targeted companies. *See Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 693, 694-96, 61 Cal. Rptr. 29, 33, 35-36 (2007). By contrast, Hindenburg published its reports online, on the website *Seeking Alpha*, widely known for its opinionated stock market analysis. Further, Hindenburg's disclaimers as to the nature of its commentary—*see, e.g.*, Ryan Aff., Ex. 10 at p.5 ("I am/we are short EROS. I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it. I have no business relationship with any company whose stock is mentioned in this article.")—are far more fulsome and clear-cut than anything presented in the *Overstock.com* case. *See* 151 Cal. App. 4th at 704, 61 Cal. Rptr. 3d at 42 (2007) (in which disputed report contained disclaimer that it "'reflects our judgment at the time of original publication and is subject to change

without notice'").[6] Nor does it appear that the defendant in *Overstock.com* reached out for comment to the entity it wrote about in the at-issue reports.[7]

At the same time, Eros nearly ignores cases from this jurisdiction which are far more closely aligned with the facts at issue. In *Silvercorp Metals Inc. v. Anthion Mgmt. LLC*, 36 Misc. 3d 1231(A), 959 N.Y.S.2d 92 (Table), 2012 WL 3569952, at *11 (Sup. Ct. N.Y. County Aug. 16, 2012) (*cited in* ClaritySpring Mem. at 18-19), the Court dismissed a plaintiff's complaint over internet posts concerning a foreign business that "were anonymously made and posted on a website, and were all supported by sources made accessible by hyperlinks contained in the Posting." Further, the defendant in that case noted its short position, just like Hindenburg, and made clear that it offered an opinion, not facts. *Id.* The Court ruled that "[t]he tone and immediate and social context of this Posting signal to the reasonable reader that the statements are non-actionable opinion." *Id.* In *Nanoviricides, Inc. v. Seeking Alpha, Inc.*, 2014 WL 2930753 (Sup. Ct. N.Y. County June 26, 2014), the Court refused to permit pre-suit discovery of the identity of an anonymous *Seeking Alpha* poster known as "Pump Stopper." The Pump Stopper article, like the Hindenburg articles, was ruled to contain protected pure opinion, based on the broader context which included, among other things, that it was posted on *Seeking Alpha*, it linked to documents

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[6] Eros truly grasps at straws when it claims ClaritySpring "described its allegations as 'the truth'" and using as evidence a single tweet wholly out of context ["the truth stings Eros"]. Opp. at 12. That tweet was nothing more than an off-hand reply to a Twitter spat between an unknown Eros promoter and Quoth the Raven. *See* Ryan Aff., Exs. 4, 4A. The tweet does not even refer to ClaritySpring's or Hindenburg's own prior statements.

[7] Eros's reliance on the unpublished federal court bench ruling in *Amira Nature Foods v. Prescience Point LLC*, No. 15-cv-9655 Dkt. No. 66 (S.D.N.Y. Oct. 7, 2016) is even less persuasive. As discussed in Mangrove's Reply Brief, the Court did not issue a written decision, failed to follow other well-reasoned written opinions of New York state judges, and admitted that plaintiff "barely" survived the motion to dismiss.

upon which it relied, and contained an almost identical disclaimer language to that at issue here. *Id.* at 5-6.

Eros also claims that it pleads sufficient facts about Hindenburg's statements to show falsity. The only specific statements Eros points to are pulled from the July 31 Report. Opp. at 4, 8. The first is Hindenburg's claim that Eros was "rapidly selling shares" in its subsidiary. Eros does not challenge this statement directly, but rather complains about the perceived implication of the statement: that Eros was giving up control of EIML. The full quote of this portion of the July 31 Article provides necessary context, and makes clear that the statements are in no way defamatory:

> Even more telling, the aforementioned equity and refinancing alternatives are being explored despite the company's rapid selling of shares in its key Indian operating subsidiary, Eros International Media Limited (EIML). The most recent sale of EIML shares occurred the very same day of the annual release, July 28th, suggesting a current and ongoing need for liquidity.
>
> Based on Eros's last share disposition filing with the BSE and recent sales reported to the NSE/BSE, Eros owns approximately 45.32% of unencumbered shares in EIML and has pledged but retained voting rights over another 16.20% of the company. This compares to the company's last annual release where they reported a 74.4% unencumbered stake in the operating subsidiary. *It is unclear* whether these sales and share pledges are expected to continue."

Ryan Aff., Ex. 8 at p.2 (emphasis added). Once again, Hindenburg uses Eros's own public filings as the basis for its analysis. Here, Hindenburg compares Eros's latest annual release to its prior annual release, which show Eros's stake in EIML decreased significantly year over year—the reader would thus have context, culled from Eros's very own public filings, with which to review the statement that Eros was rapidly selling EIML shares. Hindenburg does not imply anything—instead, it asserts that "it is unclear" if the share-selling trend will continue. Such statements are hardly defamatory, and the Complaint should be dismissed.

D. Eros Misleadingly Cites the Standard for Determining What Constitutes Protected Opinion

In determining whether a particular communication is actionable, the Court must distinguish "between a statement of opinion that implies a basis in facts which are not disclosed to the reader or listener and a statement of opinion that is accompanied by a recitation of the facts on which it is based or one that does not imply the existence of undisclosed underlying facts." *Gross v. New York Times Co.*, 82 N.Y.2d 146, 153, 603 N.Y.S.2d 813, 818, 623 N.E.2d 1163, 1168 (1993) (internal citations omitted). The burden rests with the plaintiff to establish that in the context of the entire communication a disputed statement is not protected opinion. *Celle v. Filippino Reporter Enters. Inc.*, 209 F.3d 163, 179 (2d Cir. 2000).

Eros is mistaken to the extent it argues that any of the statements constitute mixed opinion. A statement may be actionable as defamation "if it ***implies*** that the speaker's opinion is based on the speaker's knowledge of ***facts that are not disclosed*** to the reader … [and] such statements may be actionable because a reasonable listener or reader would infer that the speaker or writer 'knows certain facts, unknown to the audience, which support the opinion and are detrimental to the person toward whom the communication is directed.'" *Restis v. Am. Coal. Against Nuclear Iran, Inc.*, 53 F. Supp. 3d 705, 723 (S.D.N.Y. 2014) (quoting *Gross*, 82 N.Y.2d at 153, 603 N.Y.S.2d at 818, 623 N.E.2d at 1168) (emphasis added).

ClaritySpring and Hindenburg always made clear that their criticisms were based upon publicly available documents that they linked to their tweets or reports, often including Eros's very own public filings. This is the very definition of a protected opinion. *See Gross,* 82 N.Y.2d at 154, 603 N.Y.S.2d at 818, 623 N.E.2d at 1168. The ClaritySpring Defendants never purported to harbor some hidden or inside knowledge about Eros—just the opposite, they were using Eros's

own statements to frame their criticism. Thus, the reasonable reader would understand perfectly clearly that ClaritySpring and Hindenburg were providing commentary, as opposed to issuing factual statements.[8]

E. Eros Misrepresents the Weight of Authority Concerning Online Commentary

New York courts have consistently protected statements made in online forums as statements of opinion rather than fact. *Jacobus v. Trump*, 55 Misc. 3d at 479, 51 N.Y.S.3d at 339–40 (citing numerous cases). Eros seeks to distinguish its case from the overwhelming weight of authority on this point by claiming that its case is somehow unique. To the contrary, Eros, as a corporate entity, with public relations teams, is—or should be—even more capable of handling and countering negative online commentary with its own use of these same online forums. Or, in the case of the Hindenburg articles, Eros could have simply replied to the emails requesting a comment. Instead, Eros chose to combat legitimate criticism through litigation, in a strategy that runs directly counter to the First Amendment.

F. Eros is a Public Figure

Eros's claim that it somehow is not a public figure for purposes of the defamation analysis is not credible. Eros actively sought a public listing on the New York Stock Exchange and encouraged public investment in its company, allows its shares to be traded on the open market, issues public press releases, files publicly available reports on the Securities and Exchange Commission's EDGAR system, conducts conference calls open to public investors, conducts

[8] To the extent that Eros continues to contend that the July 27 ClaritySpring tweet is defamatory, Defendants reiterate that the entire tweet is bracketed by clear signals of opinion: the tweet begins by noting "FWIW [*i.e.*, for what it's worth]," and ends by stating "Not investment advice. Good luck to all!" *See* Ryan Aff., Ex. 7. Nothing could more clearly connote an opinionated statement.

public interviews on television, advertises publicly, and provides a consumer service to the general public.[9] Indeed, Eros even issued its own press release to alert the world that it had filed the instant lawsuit. *See* Opp. at 5. Eros is a public figure and must show actual malice in order to recover—at set forth in the Motion to Dismiss, it has failed to do so.

II. EROS'S ADDITIONAL CLAIMS ALSO FAIL

Eros's remaining claims generally mirror the defamation claims, and should fail as a result. In addition, Eros's claims for commercial disparagement, tortious interference and civil conspiracy fail for the additional reasons set forth in the ClaritySpring Memorandum, and as further amplified below.

A. Commercial Disparagement

In its Opposition, Eros manages just a single "example" to substantiate its claim for commercial disparagement: "ClaritySpring stated 'Large headline ErosNow user growth but little insight on revenue or cash flow.'" Opp. at 18-19. However, the quoted statement hardly impugns the integrity of Eros's *product*, which is what is required for a claim for commercial disparagement. *See Enigma Software Grp. USA, LLC v. Bleeping Computer LLC*, 194 F. Supp. 3d 263, 291 (SDNY 2016).

ClaritySpring simply stated that the number of users of ErosNow has apparently grown, according to Eros's own filings, but that the reporting provides little information as to the amount of revenue those consumers generated and the current cash flow attributable to ErosNow. Literally nothing about this statement is controversial. Nor have facts been alleged to suggest malice, which

[9] Tellingly, in one of the few cases on which Eros relies, the plaintiff—a public company—did not dispute that it was a public figure. *See Overstock.com*, 151 Cal. App. 4th at 700, 61 Cal. Rptr. 3d at 39.

is also a requirement of this claim. *See id*. Accordingly, the commercial disparagement claim should be dismissed.

B. Tortious Interference with Business Relations and Contract

Eros's tortious interference claims fail for a number of reasons. First, there is no allegation that ClaritySpring (whether through its owner, or operating as Hindenburg), was aware of any specific contracts into which Eros had entered or was prepared to enter. That the defendant possess awareness of the contract in question is required for a claim of tortious interference. *See Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 424, 668 N.E.2d 1370, 1375 (1996).

Moreover, the only specific "contract" or "business relation" pointed to by Eros is a supposed March 2017 U.S. Dollar Reg-S bond offering. Opp. at 19. Yet, Eros has failed to even attempt to rebut the fact that ClaritySpring had issued few tweets prior to March, 2017, and Eros has effectively abandoned claims tied to those early tweets in its Opposition, focusing instead only on later statements. Thus, Eros cannot show any improper or unlawful means were employed, which is required for its tortious interference claims. *See* ClaritySpring Mem. at 23. Accordingly, the ClaritySpring Defendants statements do not—and could not—form the basis for any claim for tortious interference.

C. Plaintiff's Civil Conspiracy Claim Does Not Withstand Scrutiny

Plaintiff's conclusory allegations of a conspiracy are woefully deficient. First, the conspiracy claim rests on purported concerted effort to "create and disseminate false and misleading statements and reports." For the reasons set forth above and in ClaritySpring's opening brief, all claims for defamation fail as a matter of law. As such, the tag-along conspiracy claim should similarly fail.

Further, Eros fails to allege or show how the ClaritySpring Defendants are in any way connected to the other defendants. Eros admits it cannot plead facts concerning the existence of an agreement, and thus purports to argue that conspiracy may be "inferred" from the Complaint. *See* Opp. at 21. Yet, even this is a thin reed for Eros. There are no allegations of actual coordination amongst the parties. Moreover, Eros's Complaint does not allege any facts suggesting that ClaritySpring, a small advisory firm, knew of a conspiracy—which is a required element of its claim. *See Snyder v. Puente De Brooklyn Realty Corp.*, 297 A.D.2d 432, 437, 746 N.Y.S.2d 517, 523 (3d Dep't 2002). Accordingly, the conspiracy count should be dismissed with respect to the ClaritySpring Defendants.

CONCLUSION

For all of the reasons set forth herein, along with those in the ClaritySpring Memorandum, the Plaintiff's Complaint should be dismissed, with prejudice.

Dated: New York, New York
February 7, 2018

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