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. 005

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO THE MANGROVE 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 order to show cause submitted by defendants Mangrove Partners and Nathaniel H. August ("August") (together, "Mangrove" or the "Mangrove 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' reputation and business for their own financial gain. To fraudulently profit from their short positions, Defendants have published hundreds of defamatory statements about Eros between 2015 and present, and have repeatedly sabotaged its share price. As detailed herein, these falsehoods are frequently timed to derail key financial events, and are routinely predicated upon explicit representations that Defendants have "irrefutable proof" that Eros is not only engaged in fraudulent transactions, but is concealing a "liquidity crisis" that may force it into bankruptcy.

Mangrove Partners, an activist hedge fund with over $1 billion of assets under management, led by defendant August, has been at the center of this scheme since its inception. Prior to the filing of this lawsuit, neither Mangrove nor August had publicly acknowledged that Mangrove had a significant short position in Eros. Nor did they publicly acknowledge that Mangrove had any connection to the pseudonymous short seller known as "Alpha Exposure,"

[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, the GeoInvesting Defendants, and the ClaritySpring Defendants. Citations to "MB at __" refer to the page numbers of Mangrove's Memorandum of Law in Support of its Order to Show Cause (Dkt. No. 48).

who had repeatedly attacked Eros in a series of defamatory "research" reports and tweets in 2015 and 2017. Faced with the Complaint's well-pled allegations, however, Mangrove and August had no choice but to admit in their order to show cause that they were, in fact, behind "Alpha Exposure" and published the disputed content about Eros.

As detailed herein, Mangrove's order to show cause confirms that the Complaint states viable claims against the Mangrove Defendants, including defamation *per se* (Count I), which Mangrove elected not to dispute. Further, while Mangrove claims that all of its defamatory statements are mere opinions that enjoy Constitutional protection, they sidestep the glaring fact that their accusations of fraud are predicated upon provably false facts. The clear context of Mangrove's "opinions" – in which Mangrove purports to have "irrefutable proof" and "overwhelming evidence" that Eros is a "complete fraud," books "fake content/rest of world sales," and reports "[f]raudulent revenue" – conveyed to a reasonable investor that Mangrove was asserting provable facts about Eros. Indeed, Eros' share price declined precipitously in response to Mangrove's attacks, falling more than 75% over a 4-week period.

Notwithstanding Mangrove's multi-year attack – and the public and regulatory scrutiny that resulted therefrom – none of Mangrove's accusations of fraud have ever materialized: no write-down of Eros' financial metrics has occurred; no restatement was made; and not a single fact whatsoever remotely suggests that Eros' historic or current financials are fraudulent. And, after a five-month forensic review, Eros' Audit Committee, aided by Skadden, concluded that it did not need to correct any of the disclosures in Eros' historic financial statements.

Accordingly, for the reasons detailed herein, Eros respectfully submits that the Court should deny Mangrove's motion to dismiss and permit this case to proceed to discovery.

FACTUAL ALLEGATIONS

A. Eros Background

Eros, a global entertainment company, has cemented itself as a preeminent co-producer and distributor of Bollywood films. ¶ 2. In 2013, Eros became the first Indian media company listed on the NYSE. *Id.* To further grow its global footprint and establish prominence outside of India, Eros implemented modern, innovative strategies for distributing content to a wider audience, including by establishing its online streaming platform "Eros Now." *Id.*

Since its inception, Eros has continued to cultivate a robust international business. Apart from introducing "Eros Now," Eros has also released annual portfolios of Bollywood films, both in India and worldwide. ¶ 99. Eros' films have consistently appeared atop the box office and are routinely among the highest grossing in India. *Id.* Indeed, Eros reported total revenue of over $252 million for fiscal year 2017 and over $274 million for fiscal year 2016. ¶ 101.

B. Eros Is Targeted By The Mangrove Defendants' Short Attacks

Beginning in October 2015, Eros has been the target of Defendants' short and distort scheme, whereby Defendants amassed short positions in Eros' stock, collectively issued hundreds of false statements about Eros that drove down the price of Eros' stock, and profited from its artificially depressed share price. *E.g.*, ¶¶ 1, 59, 102.

Mangrove Partners, led by defendant August, is a self-proclaimed "activist" hedge fund based in New York, New York that has over $1 billion of assets under management. ¶¶ 20, 61. Mangrove initiated the short-and-distort scheme in October 2015, when Mangrove secretly assumed the anonymous persona "Alpha Exposure" to disperse the first of many false statements against Eros, including four defamatory short reports published on Seeking Alpha between October and November 2015. ¶¶ 61, 62. In response to these false reports, Eros' share price

plummeted over 75%, wiping out hundreds of millions of dollars of market capitalization. ¶ 63.

Using an alias was contrary to Mangrove's typical business practices. Indeed, for other investments in which Mangrove was short or had doubts about an issuer's business practices, defendant August stepped forward with his *bona fide* credentials to provide public interviews on television and in print, in which he openly discussed the reasons for his investment position.[2] Here, however, Mangrove hid behind "Alpha Exposure" to spew a litany of false and malicious facts about Eros. Faced with concrete evidence in the Complaint that Mangrove was secretly operating as Alpha Exposure, however, Mangrove had no choice but to admit in its order to show cause that Mangrove and August were, in fact, masquerading as "Alpha Exposure."[3] MB at 3.

Mangrove's defamatory reports contain language that explicitly claims it uncovered incontrovertible facts that Eros is defrauding its shareholders. For instance, in their November 13, 2015 report, Mangrove proclaimed that "[w]e believe that there is ***irrefutable evidence*** that the company's theatrical revenues are substantially below what it has reported"; "the film list ***definitively proves*** that Eros has been misleading investors"; and "***incontrovertible proof*** now exists that Eros has significant overstated its revenues." (Dkt. No. 52.) Each of these statements were unsubstantiated and never materialized and, as the Complaint alleges, were belied by facts disclosed in Eros' public SEC filings. ¶¶ 103, 106, 112.

For example, while Mangrove claimed in their October 2015 report that Eros had a "non-

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[2] *See, e.g.*, *Hedge fund rising star's best ideas*, CNBC.com (Oct. 21, 2014), *available at* https://www.cnbc.com/video/2014/10/21/hedge-fund-rising-stars-best-ideas-.html (August discusses his bearish case for World Wrestling Entertainment); March 17, 2016 Letter from N. August to RPX Corporation Board of Directors *available at* https://www.sec.gov/Archives/edgar/data/1509432/000101359416000896/rpxex991-031716.pdf (stating Mangrove "will now communicate our concerns to you publicly so that shareholders have the opportunity to compare our common sense ideas to your dismal track record")

[3] As discussed in ¶¶ 66-72 of the Complaint, Eros unmasked Alpha Exposure's true identity during an extensive investigation conducted by Plaintiff's counsel.

existent cash flow," a cursory analysis of Eros' annual reports demonstrates that Eros had a net *increase* in cash and cash equivalents from 2014-2015. ¶ 107. Likewise, Mangrove's claim of "irrefutable evidence" that Eros materially overstated its film portfolio and the scope of its film releases also was debunked by Eros' SEC filings. ¶ 111. These filings consistently disclosed that Eros' film library included films that it co-produced as well as those it acquired distribution rights to after the initial theatrical releases. *Id.* Thus, Mangrove's reliance strictly on theatrical release dates painted a convenient, yet entirely incomplete, picture for their self-serving agenda.

On November 2, 2015, Eros announced that its Audit Committee engaged the global law firm Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") to assist with an independent review of the issues raised by Mangrove and other short sellers. ¶¶ 113-18. The extensive review, which spanned over five months, scrutinized Mangrove's key allegations of fraud, including: (i) UAE sales and revenue recognition; (ii) amortization policy of intangibles; (iii) related party transactions; (iv) Eros Now's registered user count; and (v) Eros' film library. ¶ 116. As Eros reported in a March 2016 press release, the Audit Committee, with Skadden's aid, concluded that it "remains satisfied" with Eros' accounting policies, practices, and disclosures in its financial statements as filed. ¶ 117.

C. The Mangrove Defendants Reemerge

Following their initial attacks against Eros, Mangrove did not publish anything about Eros in its own name or as "Alpha Exposure" for nearly two years. ¶ 64. During this time, and notwithstanding the Audit Committee's definitive conclusions, Eros continued to be targeted by a series of false and defamatory "research" reports published by short sellers, including 15 reports published by the Asensio Defendants, the GeoInvesting Defendants, and the

ClaritySpring Defendants[4] between 2016 and 2017.[5] ¶¶ 124-91, 223-53, 272-87, 319-29.

Mangrove resurfaced in mid-2017 with a series of defamatory tweets and reports. ¶ 303. The reappearance of Mangrove was not a mere coincidence, but was strategically timed to correspond with significant events for Eros. Mangrove's May 2017 attacks were intended to disrupt Eros subsidiary Eros International Media Limited's ("EIML") announcement of its FY 2017 and Q4 results. ¶ 304. Similarly, Mangrove's July 2017 attacks, carried out in tandem with GeoInvesting and ClaritySpring, among others, coincided with Eros releasing its own FY 2017 and Q4 financial results (¶ 306); and with positive press coverage and a surging share price in reaction to rumors that Eros was on the cusp of closing a rumored business transaction with Apple, Netflix or Amazon (¶ 315).

After Eros released its FY 2017 and Q4 results, Mangrove published twenty tweets in less than two hours attacking Eros' viability and spewing baseless accusations such as "***fraudulent revenues***," "***company clearly in liquidity crisis***," and "***Today's $EROS results should prove that the company is a fraud. There's no doubt any longer***." ¶ 306.

Following this stream of false and defamatory tweets, Mangrove, again using the alias "Alpha Exposure," published an incendiary report on Seeking Alpha titled "Eros: Roll the Credits." ¶¶ 311-17. The claims made in this report mirrored closely the same false themes in Mangrove's earlier publications as well as those in GeoInvesting's short reports, including that Eros faced a dire "liquidity crisis." ¶¶ 312, 315, 317. However, Eros' financial statements

[4] As used herein, "GeoInvesting" refers to defendants Geoinvesting, LLC, Christopher Irons, Daniel E. David, FG Alpha Management, LLC, FG Alpha Advisors, and FG Alpha, L.P. "ClaritySpring" refers to defendants ClaritySpring Inc., ClaritySpring Securities LLC, Nathan Z. Anderson, and the previously anonymous "Hindenburg Investment Research."

[5] These defamatory reports continued to recycle many of the discredited accusations lobbed by "Alpha Exposure" in 2015. (*See* GeoInvesting Opp. Br. at 5; ClaritySpring Opp. Br. at 3.)

regularly disclosed millions in cash and cash equivalents, far from any "liquidity crisis" Defendants purport to characterize. ¶ 312.

Mangrove again echoed these false messages on Twitter. For instance, in a string of tweets posted on August 14, Mangrove trumpeted that it had "overwhelming evidence" of a liquidity crisis at Eros: tweeting at 7:56 a.m. that "$EROS hope my new article gets published soon. I give ***evidence*** of ongoing liquidity crisis in it"; again at 10:51 a.m. that its "new article . . . explains the ***overwhelming evidence*** of a liquidity crisis"; and yet again at 11:06 a.m. that its "new article . . . Explains ***overwhelming evidence*** of liquidity crisis." (Dkt. No. 57.)

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, on a motion to dismiss pursuant to CPLR 3211(a)(7), "the Court of Appeals has consistently [held] that evidence in an affidavit used [] 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).[6]

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

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

Mangrove does not dispute that its short reports and tweets – many of which accuse Eros of engaging in accounting fraud, concealing a so-called "liquidity crisis," and overstating the number of users that registered for Eros Now – 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 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, Mangrove instead spends the bulk of their brief arguing that their 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).

Mangrove also incorrectly claims that New York courts have "long favored dismissal of defamation claims." MB at 7. 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 as well 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 Mangrove over a multi-year period – easily satisfy New York's "liberal" pleading requirements for defamation.

A. Mangrove Does Not Dispute That The Complaint Adequately Pleads Falsity

Mangrove does not contest that the Complaint identifies multiple false statements and explains why they are false. Unlike GeoInvesting and ClaritySpring, Mangrove appears to recognize that falsity is presumed on a motion to dismiss. *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 defendants' answer, is "premature" at the motion to dismiss stage).

Furthermore, the Complaint articulates, at length, specific reasons as to why Mangrove's statements are false. For instance, the Complaint specifically explains that Mangrove repeated refrain that Eros is engulfed in a "liquidity crisis" grossly distorted Eros' financials. ¶¶ 306-08, 312. Contrary to their claims, Eros' FY 2017 annual report showed that Eros had over $112 million in cash and cash equivalents as of March 2017 such that there was no liquidity crisis at the company. *Id.* Yet, Mangrove continued to peddle such falsehoods well into August 2017.

Additionally, Mangrove falsely represented that a decrease in Eros' content investments

demonstrated the company's "financial distress." Again, as the Complaint underscores, this defamatory assertion has no basis in fact. ¶ 313. The Company held back its content investments due to both a conscious business decision to re-focus its content strategy from third-party to in-house productions and the Indian government's demonetization of the rupee. *Id.* In a similar vein, Mangrove falsely maligns Eros' payables increase from FY 2015 to 2017 as a "telltale sign of financial distress." ¶ 314. But, as the Complaint makes clear, this was provably false. *Id.* In reality, the spike in payables stemmed from Eros' extraordinary, one-time acquisition of rights to approximately 5,000 titles for Eros Now. *Id.*

Moreover, the Complaint sets forth detailed allegations that Mangrove's Fall 2015 statements were false and, indeed, were *proven* as false. Specifically, the Complaint highlights that Eros' independent Audit Committee, aided by Skadden, conducted a five-month review, and concluded that it "remains satisfied" with Eros' accounting policies, practices and disclosures in its financial statements. ¶ 117. In fact, to this date, no write-down of Eros' financial metrics has occurred; no restatement was made; and not a single fact whatsoever remotely suggests that Eros' historic or current financials are fraudulent. ¶ 119.

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

Mangrove contends that ***all*** of its defamatory statements are mere expressions of opinion that enjoy Constitutional protection, and tout their self-serving use of "opinion" phrases like "we believe" that purportedly insulate such statements from liability. MB at 8-19. As detailed below, the plain context of Mangrove's reports demonstrate, however, that Mangrove's defamatory statements were predicated upon provable facts, as Mangrove repeatedly emphasized that its findings were supported by "overwhelming evidence," "irrefutable evidence," and "incontrovertible proof."

1. Reasonable Investors Understood That Mangrove'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. *Locatelli*, 2015 WL 321852, at *5. In conducting this analysis, "a court must determine whether a 'reasonable reader would understand the statements' to be opinion or fact." *Id.* at *6.[7]

Mangrove does not dispute that its defamatory statements satisfy the first two prongs of this analysis. Instead, contrary to well-settled New York precedent, Mangrove 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 believed 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,

[7] 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).

particularly where, like here, it purports to convey provable facts about a purported fraud.[8] For example, in one recent matter, a hedge fund with a short position in Amira Nature Foods, Ltd. ("Amira") issued two research reports that purported to "prove" that Amira was engaged in fraudulent activity. Almost precisely as Mangrove argues here, the hedge fund defendant in *Amira* – represented by Mangrove's lead defense counsel – urged the court to dismiss Amira's defamation claim because the hedge fund's reports: (i) were couched with opinion language, such as "we believe"; (ii) purportedly "disclosed in detail how [it] arrived at its opinions"; (iii) "contained hyperlinks and backup for everything that led to the ultimate opinion"; and (iv) 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 law, Judge Caproni concluded that "[d]efendants

[8] 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."

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.[9]

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; *see also Enigma Software Grp. USA, LLC v. Bleeping Computer LLC*, 194 F. Supp. 3d 263, 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").[10]

Here, the Complaint plainly identifies numerous examples of statements disseminated by

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[9] *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").

[10] While Mangrove 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.

Mangrove over a multi-year period that conveyed to a reasonable investor that Mangrove had evidence that Eros was committing securities fraud. For example:

- Eros is a "complete fraud" (¶¶ 306, 332);
- Eros states "lies on top of lies" (¶ 306);
- Eros reports "[f]raudulent revenues" (*id.*);
- Eros books "fake content/rest of world sales" (*id.*);
- Eros is "not collecting any cash to pay for films" (*id.*);
- Today's $EROS results should prove that the company is a fraud. There's no doubt any longer." (*id.*); and
- Eros is ensnared in a "liquidity crisis" (¶¶ 304, 307, 312, 315, 317).

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 Mangrove was conveying provable facts about Eros. *Overstock*, 151 Cal. App. 4th at 705.[11]

But Mangrove did not stop there. As in *Amira* and *Overstock*, the tenor and tone of Mangrove's multi-year assault against Eros specifically claimed its assertions of fraud were supported by "irrefutable evidence" and "incontrovertible proof."[12] For instance, in a string of

[11] Even if Mangrove's statements qualify as opinions, they would still be actionable as "mixed" opinions as discussed above. For instance, Mangrove claimed in its August 14 report that Eros' "growing payables balances" signified "financial distress at Eros," "that the company has drastically slowed its pace of paying its suppliers," and Eros' "precarious liquidity situation and its inability to access the debt markets." As the Complaint alleges, Mangrove selectively omits crucial facts from these statements – including that Eros' increase in payables stemmed from Eros' one-time acquisition of rights to approximately 5,000 titles for Eros Now – rendering them grossly inaccurate. *See, e.g.*, *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 . . . , the statement can still imply an actionable statement.").

[12] *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").

tweets posted on August 14, 2017, posing as Alpha Exposure, Mangrove trumpeted that it had "***overwhelming evidence***" of a liquidity crisis at Eros: tweeting at 7:56 a.m. that "$EROS hope my new article gets published soon. I give ***evidence*** of ongoing liquidity crisis in it"; again at 10:51 a.m. that its "new article . . . explains the ***overwhelming evidence*** of a liquidity crisis"; and yet again at 11:06 a.m. that its "new article . . . Explains ***overwhelming evidence*** of liquidity crisis." (Dkt. No. 57.) Moreover, in its August 2017 report, Mangrove touted its purported evidence of Eros' "liquidity crisis," and even claimed that Eros may be forced into bankruptcy. *See, e.g.*, *Restis*, 53 F. Supp. 3d at 718 (denying motion to dismiss as "statements [we]re alleged to have been made as part of a sophisticated and 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").

Mirroring the same tenor and tone as its defamatory statements in 2017, the four reports that Mangrove published in 2015 trumpeted that Mangrove has "proof" that Eros is engaged in fraud.[13] For instance, Mangrove's November 13, 2015 report proclaims:

- "We now believe that there is ***irrefutable evidence*** that the company's theatrical revenues are substantially below what it has reported";
- Eros' "film list ***definitively proves*** that Eros has been misleading investors";
- "***[I]ncontrovertible proof*** now exists that Eros has significantly overstated its revenues"; and
- "Eros has provided us the ***definitive proof*** that the company's financial statements are not what they claim to be." (Dkt. No. 52.)

For all of these reasons, when all of Mangrove's defamatory statements are examined

[13] Because Mangrove presented its "research" on Eros as "installments," and admittedly utilized its Twitter feed to "provide[] links to [its] thoroughly researched Seeking Alpha Reports" (MB at 16), a reasonable investor would have reviewed the earlier reports for additional context.

holistically and in the light most favorable to plaintiffs, a reasonable investor would conclude that they were "objectively verifiable" and "provably false."[14] They are therefore actionable.

2. Mangrove's Additional Arguments Fail

In an effort to downplay the severity of its multi-year attack, Mangrove muses that because its defamatory reports and commentary were published anonymously, and contained purported "disclosures" regarding "Alpha Exposure's" short position, they should have "elicit[ed] caution from the reader." MB at 13-14. This is nonsense.

First, Mangrove contends that its use of an anonymous alias counsels in favor of reading the challenged statements as opinion. Not so. The "Alpha Exposure" persona, despite being anonymous, has maintained a presence on the Internet for over six years, and has published over sixty-three (63) investment reports on *Seeking Alpha* regarding a number of companies. Additionally, Mangrove's reports frequently tout its data, research and investigation. *See, e.g.*, Dkt. No. 51 (purporting to have made an "exhaustive investigation"). *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 reliance on "documents that establish the existence of Plaintiffs' 'scheme' counsel in favor of finding them factual). These facts plainly demonstrate that Alpha Exposure held itself out as a serious, legitimate investor, such that "a typical [reader] would take [its] materials seriously." *See Overstock*, 151

[14] While Mangrove correctly observes that its publication of four defamatory reports in 2015 are outside of the 1-year statute of limitations period for defamation (MB at 10), these reports are obviously relevant to this action. Indeed, Mangrove's reports in 2015 provide important context for the defamatory statements that Mangrove continued to maliciously make about Eros in 2017, including that Mangrove's conclusions were supported by multiple years of "irrefutable evidence" and "definitive proof" that Eros was engaged in fraud.

Cal. App. 4th at 705.[15]

Second, the mere fact that Mangrove'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, Mangrove ignores the fact that many of its online "research" reports about Eros were reported and carried on international news wires, including under Eros' ticker on Bloomberg's real-time news feed. *See, e.g.*, Ex. 1. And any suggestion that Mangrove's defamatory reports were not taken seriously is plainly belied by the precipitous decline of Eros' share price, which plummeted more than 75% over a 4-week period – erasing hundreds of millions of dollars in market capitalization – in response to Mangrove's repeated attacks as "Alpha Exposure" in 2015. ¶¶ 63, 105. And again declined 16% in response to Mangrove's attacks in 2017. ¶¶ 310, 335.[16]

Third, the sheer frequency of Mangrove's defamatory attacks underscores its concerted effort to continually re-enforce its multi-year campaign. *See, e.g.*, *Overstock*, 151 Cal. App. 4th at 704 (factual nature of the statements "strengthened by the sheer flurry of negative reports");

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[15] Mangrove relies upon *Nanoviricides, Inc. v. Seeking Alpha, Inc.*, 2014 N.Y. Slip Op. 31681 (U), *6, for the proposition that an anonymous report published on *Seeking Alpha* "reasonably elicits caution." MB at 13. 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. Likewise, 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. And *LeBlanc v. Skinner*, 103 A.D.3d 202, 206 (2d Dep't 2012), involved two, fleeting remarks made on an Internet forum, claiming that plaintiff, a rival political donor, was a "terrorist" and had "dump[ed] a severed horse head" in a colleague's pool.

[16] Defendants' reliance on *Jacobus v. Trump*, 51 N.Y.S.3d 330 (Sup. Ct. N.Y. Cty. Jan. 9, 2017), is misplaced. MB at 16. 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."

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").

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

Without any explanation or citations to supporting case law, Mangrove claims that Eros is a public figure and must therefore plead factual support that Mangrove acted with actual malice. MB at 19. Mangrove'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). 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 A.D.2d 441 (1st Dep't 1991). Nevertheless, even if the Court indulges Mangrove's self-serving pleading standard (which it should not), the Complaint provides numerous particularized examples of Mangrove's malice.[17]

First, Eros' Complaint is inundated with facts showing that Defendants had a pecuniary motive to harm Eros. *See, e.g.*, *Overstock*, 151 Cal. App. 4th at 711-12 ("malice is in the very business model and practices that preordain [short-seller defendant's] negative reports, and provides probative evidence that [defendant] acted in reckless disregard of the truth in making the false statements and implications that it did"). Eros alleges in detail that Mangrove 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. Mangrove does not dispute its short

[17] 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").

position, nor does it dispute that it profited therefrom.[18]

Second, Eros pleads specific examples of instances where Mangrove (as well as other Defendants) strategically timed their defamatory statements to coincide with critical events. *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 ("alleg[ation] that defendant strategically timed the publication to maximize plaintiff's injury" probative of "intent to injure").

For example, after laying dormant since 2015, Mangrove strategically re-surfaced in 2017 as "Alpha Exposure" when (i) Eros released its FY 2017 and Q4 financial results (¶ 306), (ii) EIML disclosed its FY 2017 and Q4 results (¶ 304), and (iii) days after third-party news sources reported rumors that Eros was in talks to sell Eros Now to Apple, Netflix or Amazon, prompting positive headlines and a spike in Eros' share price (¶ 315). The timing of Mangrove's actions was not merely coincidence, but a direct result of considered efforts to protect their short position from a surging share price, and to maximize the attention that their defamatory statements would receive. ¶ 315.

Third, the Complaint establishes that Mangrove utilized an anonymous alias for its "research" reports and tweets to evade detection over a multi-year period, underscoring its knowledge of the statements' falsity. *E.g.*, ¶¶ 3, 20, 60, 61-72, 304. Tellingly, August has routinely stepped forward with his *bona fide* credentials to challenge other companies for purportedly engaging in corporate misconduct, and built Mangrove's brand as an activist that does not shy away from seeking to influence corporate change. *See supra*, at n.2. Here, the fact that Mangrove and August attacked Eros under a pseudonymous identity over a lengthy,

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

sustained period raises a strong inference that their accusations of fraud were illegitimate, and were designed to harm Eros' share price for their own financial gain.

Fourth, the Complaint provides specific examples of instances where Mangrove continued to recycle its defamatory themes of purported fraud, even after they had been discredited by independent sources, including by Eros' Audit Committee, aided by Skadden. *See supra*, at § B. *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, comfortably meet the threshold for pleading actual malice.

IV. EROS SUFFICIENTLY PLEADS ITS NON-DEFAMATION CLAIMS

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

As an initial matter, to the extent that Mangrove argues that Eros' non-defamation claims are duplicative of defamation, this argument misstates the law. Courts in New York recognize non-defamation claims even where they may be based on the same set of operative facts as the defamation claim, especially where, as here, Eros' non-defamation claims seek redress for specific economic harm. *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).[19]

[19] The cases Defendants rely on for their argument that these claims are duplicative are distinguishable. For example, the court in *Chao v. Mount Sinai Hospital* dismissed non-defamation claims as "duplicative" where the plaintiff sought to recover strictly for damages to

A. Eros Sufficiently Pleads Commercial Disparagement (Count III)

Mangrove raises several tenuous arguments regarding Plaintiff's commercial disparagement claim, all of which gloss over key aspects of the Complaint's particularized allegations and misstate the applicable legal standard.

First, Eros' detailed pleadings evince that Defendants published false statements that impugned the value and viability of Eros' products and services – in particular, its streaming service Eros Now. For instance, Mangrove published false statements that maligned the value and the viability of Eros Now, including that entity's revenues, stating, "$EROS says EROS NOW revenue only $14 million. Complete joke." ¶ 306; *see also* ¶¶ 62, 104, 109-10.

Second, Defendants cannot avoid liability for commercial disparagement based on their claims that Eros has not pled falsity and malice. Just as these same arguments fail as to Eros' defamation claims, so too do they fail here. *See supra*, at § III(C).

Third, Defendants misstate the law on special damages in New York. While a claim for commercial disparagement typically requires special damages, courts have observed that "a plaintiff need not plead specific damages if the nature of the plaintiff's business makes it difficult, if not impossible, to identify which customers have been lost." *Romeo & Juliette Laser Hair Removal, Inc. v. Assara I LLC*, 2014 WL 4723299, at *6 (S.D.N.Y. Sept. 23, 2014) (holding it impossible to determine at pleading stage which customers plaintiff actually lost, because all of defendants' alleged misconduct occurred online). Courts have also reasoned that special damages need not be pled if the statements "impeach[] the integrity or business methods of the [entity] itself." *See Romeo & Juliette Laser Hair Removal, Inc. v. Assara I LLC*, 2016 WL

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reputational harm. 2010 WL 5222118, at *11-12 (S.D.N.Y. 2010). By contrast, the Complaint here alleges, separate from the reputational harm Eros suffered as a result of Mangrove's concerted actions, that Eros suffered specific, identifiable economic harm.

815205, at *10 (S.D.N.Y. Feb. 29, 2016) (special damages need not be pled for disparagement claim where statements impeached integrity of plaintiff's business).

Here, the Complaint's allegations fall squarely under these two exceptions to the special damages rule. For one, the online nature of the disparaged business, Eros Now, makes it "difficult, if not impossible," for Eros to identify the loss of customers and business it has suffered. *Assara*, 2014 WL 4723299, at *6. In addition, because Mangrove's disparaging statements impeach the integrity or business methods of Eros Now, as demonstrated above, Eros need not plead special damages. *See Assara*, 2016 WL 815205, at *10.

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

Mangrove also erroneously asserts that Eros fails to specify sufficient facts to sustain its claims for tortious interference with prospective business relations and tortious interference with contract. Contrary to Mangrove's suggestion that the Complaint fails to specify the business relationships that were threatened, and the contracts that were damaged, the Complaint plainly alleged such detail. For example, as to Eros' claim for tortious interference with prospective business relations, Mangrove responded to national newswire rumors that Eros was in early talks to sell Eros Now's film library to Apple, Netflix or Amazon for approximately $1 billion by claiming that such reports were "not credible." ¶ 315. As Eros has alleged, Mangrove's motivation for doing so is transparent: its disparaging remarks were specifically calculated to thwart the rumored deal that it painted as a sham. *Id.*

Regarding Eros' cause of action for tortious interference with contract, Eros pleads that Mangrove's conduct interfered with Eros' agreement to extend its revolving credit facility. ¶¶ 18, 339, 380. These allegations are sufficient under New York law, which only requires that the complaint make a "particular allegation of interference with a specific contract

or business relationship," not that the complaint name the counterparties to a relationship. *See McGill v. Parker*, 179 A.D.2d 98, 105 (1st Dep't 1992).

Mangrove also argues that, because Eros has failed to allege that Mangrove was motivated by wrongful or "unlawful means" other than "mere self-interest or other economic considerations," Eros cannot claim that Mangrove interfered with Eros' prospective business relations. MB at 23. Yet, this argument misrepresents what Eros has alleged, namely that Mangrove's motivation *was* to harm Eros, and profit as a result.[20] Further, Eros sufficiently pleads claims for defamation and commercial disparagement, as discussed *supra*, which alone is enough to sustain a tortious interference claim. *See, e.g.*, *Amaranth*, 71 A.D. 3d at 48 ("Defamation is a predicate wrongful act for a tortious interference claim.").

C. Eros Sufficiently Pleads Civil Conspiracy (Count VII)

Mangrove 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 Mangrove entered into an agreement to damage Eros and participate in a conspiracy. In both instances, Mangrove 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 has done here, as it adequately pleads several causes of action against

[20] Defendants misstate the law they rely on. MB at 23. For instance, the court in *Fogel v. Metropolitan Life Insurance* noted that a "legitimate business motive" – in *Fogel*, MetLife's decision not to list plaintiff, a medical equipment supply company, as a "preferred provider" – "excuses interference . . . as long as unlawful restraint of trade . . . or wrongful means . . . are not employed by the defendant." 871 F. Supp. 571, 576 (E.D.N.Y. 1994). Tellingly, Mangrove does not specify what "legitimate" motive they have here.

multiple defendants, and also pleads conspiracy based on the coordinated conduct of these defendants to damage Eros through their short and distort campaign.

As to pleading an agreement, it is not necessary for Eros to overtly plead that Mangrove entered into an agreement with the other defendants to harm Eros. Rather, such an agreement can be inferred from the factual allegations that Eros alleges in its 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 plaintiffs 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 "often make[s] it impossible to provide details at the pleading stage." *In re Harvard Knitwear, Inc.*, 153 B.R. 617, 628 (E.D.N.Y. 1993).

Further, while a plaintiff must plead an overt act in furtherance of the agreement as part of a claim for civil conspiracy, *Abacus Federal Savings Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010), Eros need not plead an overt act on the part of each conspirator as Mangrove appears to suggest, *see, e.g.*, *Cresser v. Am. Tobacco Co.*, 662 N.Y.S.2d 374, 379 (Sup. Ct. Kings Cty. July 31, 1997). Regardless, when considering Eros' Complaint in light of these doctrines, Eros' pleadings set forth more than sufficient factual allegations from which an agreement to harm Eros can be inferred and that an overt act was taken by a member of the conspiracy in furtherance of that agreement.

Specifically, Eros alleges, among other things, that Defendants, including Mangrove, acted in coordinated phases, in particular during critical business milestones, such as Eros 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 of Defendants' publications. ¶¶ 17, 123, 220. Also, the Complaint 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," "Parke Shall" and "Thom Lachenmann"), ¶ 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").

CONCLUSION

Based on the foregoing, plaintiffs respectfully request that this Court deny the Mangrove Defendants' motions to dismiss in its entirety.[21]

[21] 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.).

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