

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

PETER DAOU and JAMES BOYCE,

Plaintiffs,

v.

ARIANNA HUFFINGTON, KENNETH LERER,
and THEHUFFINGTONPOST.COM, INC.,

Defendants.

Index No. 651997/2010

(Ramos, J.)

**ANSWER TO PLAINTIFFS'
AMENDED COMPLAINT**

Defendants Arianna Huffington (“Huffington”), Kenneth Lerer (“Lerer”), and TheHuffingtonPost.com, Inc. (“The Huffington Post”) (collectively, “Defendants”), by their attorneys Paul, Weiss, Rifkind, Wharton & Garrison LLP, answer the amended complaint (the “Amended Complaint”) of plaintiffs Peter Daou (“Daou”) and James Boyce (“Boyce”) (collectively, “Plaintiffs”) as follows:

1. Deny the allegations in paragraph 1.
2. No answer is required to the allegations in paragraph 2 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 2.
3. Deny the allegations in paragraph 3.
4. No answer is required to the allegations in paragraph 4 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 4, except admit that The Huffington Post was sold to AOL for \$315 million in 2011.

5. Deny the allegations in paragraph 5, except admit that Defendants claim credit for the creation of The Huffington Post, admit that Defendants disseminated a Business Plan, and respectfully refer the Court to the Business Plan for a complete statement of its contents.

6. No answer is required to the allegations in paragraph 6 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 6.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and respectfully refer the Court to the *New York Times* article for a complete statement of its contents.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Admit the allegations in paragraph 9.

10. Admit the allegations in paragraph 10.

11. Deny the allegations in paragraph 11, except admit that TheHuffingtonPost.com, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business in the County of New York in the State of New York, and that it was caused to be formed by Huffington and Lerer in order to develop The Huffington Post website.

12. Paragraph 12 states legal conclusions to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations in paragraph 12, except admit that Plaintiffs purport to premise personal jurisdiction on

N.Y. C.P.L.R. § 301 and § 302(a), Huffington has a residence in New York, Lerer resides in New York, The Huffington Post has a place of business in New York, Defendants have transacted business in New York, and deny knowledge or information sufficient to form a belief as to what services in question Plaintiffs allege took place in New York.

13. Paragraph 13 states legal conclusions to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations in paragraph 13, except admit that Plaintiffs purport to premise personal jurisdiction over Huffington as alleged, Huffington has a residence in New York, Huffington has transacted business in New York, Huffington has contracted to supply services in New York, Huffington derives substantial revenue from interstate commerce, and Huffington regularly conducts business in New York.

14. Paragraph 14 states legal conclusions to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations in paragraph 14, except admit that Plaintiffs purport to premise personal jurisdiction over Lerer as alleged, Lerer has a residence in New York, Lerer has transacted business in New York, Lerer has contracted to supply services in New York, Lerer derives substantial revenue from interstate commerce, and Lerer regularly conducts business in New York.

15. Paragraph 15 states legal conclusions to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations in paragraph 15, except admit that Plaintiffs purport that personal jurisdiction exists over The Huffington Post as alleged, The Huffington Post's principal place of business is in New York, and The Huffington Post conducts business in New York.

16. Paragraph 16 states legal conclusions to which Defendants need not respond. To the extent a response is required, Defendants deny the allegations in paragraph 15, except admit that Plaintiffs purport to premise venue on N.Y. C.P.L.R. § 503 and § 509 and that The Huffington Post has a place of business in New York County, and deny knowledge or information sufficient to form a belief as to whether Daou resides in New York County, the parties transact business in New York County, which acts and transactions Plaintiffs allege took place in New York County, and which material witnesses are located in New York County.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17.

18. There is no paragraph 18.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, except admit that Boyce sent Huffington a memorandum called “1460,” admit that Boyce sent Huffington a November 19, 2004 e-mail, and respectfully refer the Court to the “1460” memorandum and the November 9, 2004 e-mail for complete statements of their contents.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23, and respectfully refer the Court to the “1460” memorandum for a complete statement of its contents.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, except admit that Huffington was a well-known personality and admit that Plaintiffs shared a memorandum called “1460” with Huffington.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, except admit that Boyce sent Huffington an e-mail on November 14, 2004, and respectfully refer the Court to the November 14, 2004 e-mail for a complete statement of its contents.

26. Deny the allegations in paragraph 26, except admit that Boyce sent Huffington a memorandum entitled “1460,” and respectfully refer the Court to the “1460” memorandum for a complete statement of its contents.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27, except admit that Boyce sent Huffington the “Cutter” memorandum on November 15, 2004, and respectfully refer the Court to the “Cutter” memorandum for a complete statement of its contents.

28. Deny the allegations in paragraph 28, except state that no answer is required to the allegations in the second sentence in paragraph 28 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013, deny knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence in paragraph 28, admit that Boyce sent

Huffington memoranda entitled “1460” on November 14, 2004 and November 15, 2004, and respectfully refer the Court to the “1460” memoranda for complete statements of their contents.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29, except admit upon information and belief that Lerer may have spoken with friends about investment opportunities in September 2004.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30, except admit upon information and belief that Lerer and Daou may have had a telephone conversation.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31, except admit upon information and belief that Lerer and Boyce may have met.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32, except admit that Boyce sent Huffington a memorandum entitled “1460” on November 19, 2004, and respectfully refer the Court to the “1460” memorandum of November 19, 2004 for a complete statement of its contents.

33. No answer is required to the allegations in paragraph 33 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 33.

34. Deny the allegations in paragraph 34, except deny knowledge or information sufficient to form a belief as to the truth of whether the “critical months

between November 2004 and May 2005” were “a period when some of the most successful Internet platforms of the digital era were conceived or launched.”

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35, except admit that Huffington held a gathering at her home on December 3, 2004, which Plaintiffs attended, and respectfully refer the Court to the e-mail from Victoria Hopper for a complete statement of its contents.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36, except admit that Huffington held a gathering at her home on December 3, 2004, during which a variety of topics were discussed, admit that Lerer and Plaintiffs attended that gathering, and admit that Boyce spent the night at Huffington’s home.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37, and respectfully refer the Court to the *Time* and *Inc.* articles for complete statements of their contents.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38, except deny that Boyce and Daou conceived of and presented the idea for The Huffington Post.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39, and respectfully refer the Court to Robert Greenwald’s e-mail for a complete statement of its contents.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41, except admit upon information and belief that Huffington and Lerer had dinner at the residence of Larry and Laurie David on the night of December 3, 2004.

42. Deny the allegations in paragraph 42, except admit that Huffington and Lerer met the morning after the December 3, 2004 meeting and that Plaintiffs also attended the meeting.

43. No answer is required to the allegations in paragraph 43 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 43.

44. No answer is required to the allegations in paragraph 44 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny knowledge or information sufficient to form a belief as to the truth of all other allegations in paragraph 44, except deny that Huffington and Lerer agreed to build a website with one or both Plaintiffs, and respectfully refer the Court to Plaintiffs' communication to David Thorne for a complete statement of its contents.

45. Deny the allegations in paragraph 45.

46. Deny the allegations in paragraph 46, except respectfully refer the Court to Defendants' descriptions of The Huffington Post website and to the *Wired* and *Playboy* articles for complete statements of their contents.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47, except respectfully refer the Court to the “Business Plan” for a complete statement of its contents.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48, except deny that the idea for The Huffington Post was the idea of one or both Plaintiffs, and respectfully refer the Court to the e-mail dated March 10, 2005 for a complete statement of its contents.

49. Deny the allegations in paragraph 49, except respectfully refer the Court to the memo dated March 31, 2005 for a complete statement of its contents.

50. No answer is required to the allegations in paragraph 50 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 50.

51. Deny the allegations in paragraph 51, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiffs’ beliefs.

52. Deny the allegations in paragraph 52, except admit that Boyce sent Lerer an e-mail on December 7, 2004, admit that Huffington sent Sekoff an e-mail on December 7, 2004, and respectfully refer the Court to those documents for complete statements of their contents.

53. Deny the allegations in paragraph 53, except admit that Huffington and Lerer hired Andrew Breitbart.

54. No answer is required to the allegations in paragraph 54 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 54, except admit that Breitbart sent Huffington an e-mail on December 18, 2004, and respectfully refer the court to the December 18, 2004 e-mail for a complete statement of its contents.

55. Deny the allegations in paragraph 55, except admit that Breitbart and Sekoff sent a proposal to Huffington and Lerer on December 28, 2004, and respectfully refer the Court to the December 28, 2004 proposal for a complete statement of its contents.

56. Deny the allegations in paragraph 56, except admit that Breitbart sent an e-mail to Huffington, Lerer, and Sekoff in late December 2004, and respectfully refer the Court to the e-mail for a complete statement of its contents.

57. Deny the allegations in paragraph 57, except admit that Breitbart sent Huffington an e-mail on December 18, 2004, and respectfully refer the Court to the December 18, 2004 e-mail for a complete statement of its contents.

58. Deny the allegations in paragraph 58, except respectfully refer the Court to the *Wired* article for a complete statement of its contents, and admit that Huffington held a gathering at her home on December 3, 2004, during which a variety of topics were discussed, admit that Lerer and Plaintiffs attended that gathering, admit that Plaintiffs, Huffington, and Lerer met on December 4, 2004, and admit that Breitbart did not attend either gathering.

59. Deny the allegations in paragraph 59, except admit that Huffington and Lerer worked with Sekoff and Breitbart to launch what became The Huffington Post, that Huffington and Lerer raised money to launch The Huffington Post, Huffington has made statements about her financing efforts, and that Huffington and Lerer did not credit Plaintiffs with the idea for The Huffington Post website.

60. Deny the allegations in paragraph 60, except admit that Huffington and Lerer worked with Sekoff, Breitbart, and Sterling to launch what became The Huffington Post.

61. Deny the allegations in paragraph 61, except admit that Sterling circulated a document from Breitbart on February 14, 2005, and respectfully refer the Court to the February 14, 2005 document for a complete statement of its contents.

62. Deny the allegations in paragraph 62, except admit that Sterling sent Sekoff a document on February 17, 2005, and respectfully refer the Court to the February 17, 2005 document for a complete statement of its contents.

63. Deny the allegations in paragraph 63, except admit that Huffington sent a letter to potential bloggers, and respectfully refer the Court to the letter for a complete statement of its contents.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64, except deny that Defendants used Plaintiffs' alleged idea.

65. No answer is required to the allegations in paragraph 65 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in

paragraph 65, except admit that Boyce sent Lerer an e-mail on December 7, 2004, and respectfully refer the Court to the December 7, 2004 e-mail for a complete statement of its contents.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66, except respectfully refer the Court to the December 7, 2004 e-mail for a complete statement of its contents.

67. Deny the allegations in paragraph 67.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68, except respectfully refer the Court to Plaintiffs' December 12, 2004 e-mail to David Thorne for a complete statement of its contents.

69. Deny the allegations in paragraph 69, and respectfully refer the Court to Boyce's December 17, 2004 e-mail to Daou for a complete statement of its contents.

70. Deny the allegations in paragraph 70, and respectfully refer the Court to Daou's December 20, 2004 e-mail to Boyce.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71, except admit that, since its launch, The Huffington Post website has included, among other things, articles on politics and entertainment.

72. Deny the allegations in paragraph 72.

73. No answer is required to the allegations in paragraph 73 to the extent they relate to the claim that was dismissed by the Court in its Memorandum

Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 73.

74. Deny the allegations in paragraph 74.

75. Deny the allegations in paragraph 75, and respectfully refer the Court to the “meeting minutes” for a complete statement of its contents.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76, and respectfully refer the Court to the “meeting minutes” for a complete statement of its contents.

77. Deny the allegations in paragraph 77.

78. Deny the allegations in paragraph 78, except admit that The Huffington Post launched on May 9, 2005.

79. Deny the allegations in paragraph 79, except admit that The Huffington Post featured a group blog, an exclusive report, and news aggregation on the day that it launched.

80. Deny the allegations in paragraph 80.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81.

82. No answer is required to the allegations in paragraph 82 to the extent they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013. Defendants deny all other allegations in paragraph 82, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiffs’ beliefs.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 83, except admit that Plaintiffs contributed posts and referred bloggers to The Huffington Post, and respectfully refer the Court to the *Wall Street Journal* article for a complete statement of its contents.

84. Deny the allegations in paragraph 84, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiffs' beliefs, and respectfully refer the Court to the e-mail from Michael Owen for a complete statement of its contents.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85, except deny that Plaintiffs had a role in the creation of The Huffington Post, and respectfully refer the Court to the e-mail from Chris Bowers for a complete statement of its contents.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86, except deny that Plaintiffs had a role in the founding of The Huffington Post, and respectfully refer the Court to the e-mail from Erica Jong for a complete statement of its contents.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87, except deny that Plaintiffs had a role in the creation of The Huffington Post, and respectfully refer the Court to the e-mail to Robert Gibbs for a complete statement of its contents.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88, and respectfully refer the Court to the November 8, 2006 e-mail from Boyce for a complete statement of its contents.

89. Deny knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 89, except admit that Boyce sent Huffington an e-mail in 2008 to which Huffington replied, and respectfully refer the Court to the 2008 e-mail for a complete statement of its contents.

90. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90, except admit that Plaintiffs contacted Huffington regarding certain of the claims in this litigation, and admit that Defendants denied those claims and refused to acknowledge Plaintiffs' purported role in and contribution to the creation of The Huffington Post.

PLAINTIFFS' PURPORTED CAUSES OF ACTION

First Purported Cause of Action

91. With respect to the allegations in paragraph 91, Defendants repeat their answers to paragraphs 1 through 90, as set forth above.

92. With respect to the allegations in paragraph 92, Defendants repeat their answers to paragraphs 70 through 75 of the original Complaint, as set forth in Defendants' Answer to the original Complaint, dated November 16, 2011.

Second Purported Cause of Action

93. With respect to the allegations in paragraph 93, Defendants repeat their answers to paragraphs 1 through 92, as set forth above.

94. Deny the allegations in paragraph 94.

95. Deny the allegations in paragraph 95.

96. Deny the allegations in paragraph 96.

97. Deny the allegations in paragraph 97.

- 98. Deny the allegations in paragraph 98.
- 99. Deny the allegations in paragraph 99.
- 100. Deny the allegations in paragraph 100.

Third Purported Cause of Action

101. No answer is required to the allegations in paragraph 101 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

102. No answer is required to the allegations in paragraph 102 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

103. No answer is required to the allegations in paragraph 103 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

104. No answer is required to the allegations in paragraph 104 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

105. No answer is required to the allegations in paragraph 105 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

106. No answer is required to the allegations in paragraph 106 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

107. No answer is required to the allegations in paragraph 107 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

108. No answer is required to the allegations in paragraph 108 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

109. No answer is required to the allegations in paragraph 109 because they relate to the claim that was dismissed by the Court in its Memorandum Decision and Order dated February 13, 2013.

Fourth Purported Cause of Action

110. With respect to the allegations in paragraph 110, Defendants repeat their answers to paragraphs 1 through 109, as set forth above.

111. Deny the allegations in paragraph 111.

112. Deny the allegations in paragraph 112.

113. Deny the allegations in paragraph 113.

114. Deny the allegations in paragraph 114.

115. Deny the allegations in paragraph 115.

PLAINTIFFS' PURPORTED PRAYER FOR RELIEF

116. Defendants state that no response is required to the "Wherefore" clause at paragraph 116 of the Complaint. To the extent any response is necessary, Defendants deny the statements in the "Wherefore" clause.

117. Defendants state that no response is required to the “Wherefore” clause at paragraph 117 of the Complaint. To the extent any response is necessary, Defendants deny the statements in the “Wherefore” clause.

118. Defendants state that no response is required to the “Wherefore” clause at paragraph 118 of the Complaint. To the extent any response is necessary, Defendants deny the statements in the “Wherefore” clause.

119. Defendants state that no response is required to the “Wherefore” clause at paragraph 119 of the Complaint. To the extent any response is necessary, Defendants deny the statements in the “Wherefore” clause.

120. Defendants state that no response is required to the “Wherefore” clause at paragraph 120 of the Complaint. To the extent any response is necessary, Defendants deny the statements in the “Wherefore” clause.

FIRST AFFIRMATIVE DEFENSE

121. Plaintiffs' third cause of action was dismissed by Memorandum Decision and Order of the Court, dated February 13, 2013.

SECOND AFFIRMATIVE DEFENSE

122. Plaintiffs' first, second, and fourth causes of action are barred in whole or in part because the allegations in the Amended Complaint fail to state a cause of action upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

123. Plaintiffs' first cause of action is barred because Plaintiffs' alleged idea was not novel or concrete.

FOURTH AFFIRMATIVE DEFENSE

124. Plaintiffs' first cause of action is barred because there was no legal, special, confidential, or fiduciary relationship between the parties. *See Daou v. Huffington*, No. 651997/10, slip. op. at 6–8 (N.Y. Sup. Ct. Oct. 7, 2011); *Daou v. Huffington*, No. 651997/10, slip. op. at 10–12 (N.Y. Sup. Ct. Feb. 13, 2013).

FIFTH AFFIRMATIVE DEFENSE

125. Plaintiffs' first cause of action is barred in whole or in part by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

126. Plaintiffs have failed to plead their second cause of action with particularity.

SEVENTH AFFIRMATIVE DEFENSE

127. Plaintiffs' second cause of action is barred because Defendants did not make any misrepresentations or omissions on which Plaintiffs relied.

EIGHTH AFFIRMATIVE DEFENSE

128. Plaintiffs' second cause of action is barred because any reliance by Plaintiffs on statements by Defendants was unreasonable and/or unjustified.

NINTH AFFIRMATIVE DEFENSE

129. Plaintiffs' fourth cause of action is barred because Defendants did not benefit at Plaintiffs' expense, nor do equity and good conscience require restitution.

TENTH AFFIRMATIVE DEFENSE

130. Plaintiffs' first, second, and fourth causes of action are barred in whole or in part by the doctrines of estoppel, waiver, laches, acquiescence and ratification.

ELEVENTH AFFIRMATIVE DEFENSE

131. Plaintiffs' first, second, and fourth causes of action are barred to the extent that Plaintiffs have failed to mitigate their alleged damages.

TWELFTH AFFIRMATIVE DEFENSE

132. Plaintiffs' first, second, and fourth causes of action are barred because Plaintiffs' alleged damages, including their claim for punitive damages, are nonexistent, speculative, not of the nature or to the extent alleged, and not legally cognizable.

THIRTEENTH AFFIRMATIVE DEFENSE

133. Plaintiffs are not entitled to punitive damages because Defendants' alleged wrongful conduct was neither "aimed at the public generally," nor sufficiently egregious.

FOURTEENTH AFFIRMATIVE DEFENSE

134. Plaintiffs are not entitled to recover attorneys' fees and costs or other costs and disbursements.

FIFTEENTH AFFIRMATIVE DEFENSE

135. Defendants hereby give notice that they intend to rely on any additional affirmative defenses that become available or apparent during discovery in this case or otherwise, and thus reserve the right to amend their Answer to assert such additional defenses.

WHEREFORE, Defendants request the entry of a judgment in their favor and against Plaintiffs dismissing the Amended Complaint with prejudice and denying the relief requested in the Amended Complaint; awarding Defendants the costs and expenses incurred in this litigation, including reasonable attorneys' fees; and awarding Defendants such other and further relief as the Court may deem just and proper.

Dated: April 8, 2013

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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