STATE OF NEW YORK ::
DIVISION OF HUMAN RIGHTS

ERIC F. COPPOLINO,

Complainant

- vs -

LUMINARY PUBLISHING d/b/a CHRONOGRAM, JASON STERN, BRIAN MAHONEY, and HILLARY HARVEY

Respondents

STATE OF NEW YORK, COUNTY OF ULSTER:

ERIC F. COPPOLINO duly affirms, deposes and states under penalty of perjury, a crime in the State of New York:

STATUS

Complainant timely files this reply to respondent's April 26, 2019 pleading.

INTRODUCTION

For 22 years starting in March 1996, above named complainant served respondent LUMINARY PUBLISHING, a publisher, as its most visible and well-known author, covering a wide diversity of subjects, frequently among them relationships, sex and gender — as well as writing a widely popular horoscope column.

Complainant developed his columns from his own website and respondent LUMINARY PUBLISHING's magazine *Chronogram.* These became a project published in many countries and approximately 25 different national publications, and dozens of local publications in U.S., Australia, Canada, the U.K. and Europe, including well known titles such as *Harper's Bazaar*, *Marie Claire*, *Canadian Home*, the New York *Daily News* and the London *Daily Mail* and *Daily Mirror*.

Complainant as part of his monthly series of articles submitted the article "Take a Step Back" [**EXHIBIT 1**] for publication in respondent LUMINARY PUBLISHING's magazine, critiquing the "Me Too" movement, in late January 2018. The article was

copiously researched, and Version 5 was submitted and went through the standard vetting process, and was approved for publication by respondent BRIAN MAHONEY in the February *Chronogram*.

In openly admitted retaliation for the viewpoint of this article, respondent LUMINARY PUBLISHING falsely and maliciously accused the complainant of sexual misconduct. These accusations were made personally by employees and former employees of LUMINARY PUBLISHING not personally known to him, orchestrated by respondent HILLARY HARVEY and former employees JULIE NOVAK and LORNA TYCHSOTUP.

This took place via a viral Facebook campaign beginning in April 2018, however, its first development was the April 1, 2018 publication of the Dana Barnett letter challenging "Take a Step Back" published in *Chronogram*.

Most vocal among those spreading false and malicious rumors, and openly calling for the firing of the complainant, was respondent's editor-at-large HILLARY HARVEY, who months earlier had personally founded the local "Me Too Kingston" movement. She did so with a long-planned "*Chronogram* Conversations" event co-sponsored by respondent LUMINARY PUBLISHING in late January 2018.

This event had nothing to do with the complainant; he was not mentioned. Days later, on Feb. 1, 2018, complainant's article "Take a Step Back" appeared in *Chronogram*.

"Take a Step Back" had been previously widely published to an international audience via complainant's own publication *Planet Waves* and its social media accounts on Jan. 25, 2018, where it was received with a spirited but civil discussion. Before that time, complainant had conducted several public discussions of the "Me Too" phenomenon, among other places locally on Radio Kingston, and internationally on the Pacifica Radio Network.

Complainant's coverage of the "Me Too" phenomenon began in October 2017, within weeks of the Harvey Weinstein story breaking, with an op-ed published in the print and online editions of the New York *Daily News* [**EXHIBIT 2**]. Complainant was the first male survivor of workplace sexual abuse to tell his story in the national media.

Throughout this phase, there was no public discussion of the complainant's personal conduct. Such begins in April 2018 with *Chronogram's* publication of a letter to the editor by Seattle resident Dana Barnett, called "'Turn Off the Gaslight," which was re-posted to Facebook in a longer format four days later by respondent's former production editor and longtime associate Julie Novak. This one action ignited a Facebook flame campaign, driven largely by respondent HILLARY HARVEY, that lasted for six months and resulted in complainant's dismissal from three contracts.

A Movement Directed at Individual Men

The "Me Too" movement is a form of activism directed exclusively at individual men. It is hyper-focused on female survivors, *and entirely excludes female perpetrators*. An Oct. 29, 2018 one-year anniversary article in *The New York Times* emphasized the point: the headline was, "#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women." Not a single woman was listed as a potential or alleged perpetrator.

While acknowledging the serious social problems that the "Me Too" movement purported to address, "Take a Step Back" raised the issues of potentially false allegations directed at men, denial of the right to face one's accuser, and how the "Me Too" movement appeared to be biased and non-inclusive of male survivors.

The mere speed of the terminations, the lack of thorough vetting of complaints in publicized cases, and social media as the primary vector of the discussion, all indicated that "Me Too" claims could potentially be used as a forum for false accusations and personal agendas. At the time, a commonplace slogan was, "Believe Women," stopping short of actual proof or verification, and without acknowledging the need for such. As a classically trained feminist, complainant was accustomed to a higher level of integrity, ethics and responsibility from his fellow feminists.

Since "Take a Step Back" was written, false accusations associated with the "Me Too" movement have become a known issue. Many have spoken up about the problematic "accusation equals guilt" equation that characterizes the instant case.

As any student of social history knows, there are times when certain forms of bias are permissible and popular, and times when they go out of fashion. It is now permissible and popular — in some places, *de rigueur* — to express bias against men. This includes men being encouraged to "talk down" themselves and other men, and the pervasive fear of being falsely accused.

Respondent LUMINARY PUBLISHING took advantage of this climate in its efforts to vilify complainant as a "typical toxic male." Yet prejudice, discrimination and bias camouflaged by a prevailing social trend are no less damaging or noxious; no less the things they are.

PROBABLE CAUSE DEFINED

Cornell University's law dictionary states that in criminal situations, probable cause exists when there is a "reasonable basis for believing that a crime may have been committed."

For example, in criminal law, if a police officer sees an opened liquor bottle on a car seat, the officer has probable cause, or a reasonable basis, to conduct a field sobriety

test on the driver. In a civil or administrative situation, per *Black's Law Dictionary*, the standard of "having a cause of action" applies.

Probable cause is not proof, but rather the basis for investigating whether proof exists. In this situation, complainant presents evidence of the *probability of discrimination based on sex*, seeking a finding of probable cause and therefore a public hearing.

SEX DISCRIMINATION DEFINED; MATTERS OF LEGAL STANDING

The federal Equal Opportunity Employment Commission (EEOC) website says of sex discrimination:

> "Title VII prohibits an employer from treating you differently, or less favorably, because of your sex. Title VII also prohibits employment decisions based on stereotypes about the abilities and traits of a particular gender."

Complainant will argue that he was stereotyped based on being a man, evidence of which included the repeated use of slurs and additional statements revealing bias. In the course of his firing, complainant was called a "Harvey Weinstein," referring to the accused serial rapist, a "Matt Lauer," referring to the accused serial rapist, and by respondent BRIAN MAHONEY, "someone perceived as a creep," which language is only applicable to a man in a social context.

Complainant was never accused of a crime or any conduct that could even meekly form the basis of such hyperbolic statements, nor was he accused of workplace misconduct in any form whatsoever. Yet those initiating the campaign set a high standard for themselves in beginning with the comparison to Weinstein — which claim was ultimately discredited by the facts that emerged.

The following points of law clarify that complainant has standing and a cause of action sufficient to sustain a finding of probable cause by the Division:

a. **Men can bring gender discrimination claims**

Arcuri v. Kirkland, 113 A.D.3d 912, 914 (3rd Dep't, 2014) holds that:

> [T]he Human Rights Law protects males from gender discrimination (see Yukoweic v. International Bus. Machs., 228 A.D.2d at 776, 643 N.Y.S.2d 747; see also Oncale v. Sundowner Offshore Servs., 523 U.S. at 79, 118 S.Ct. 998, 140 L.Ed.2d 201).

b. **Job held open for a woman = evidence of discriminatory intent**

Sogg v. American Airlines, Inc., 193 A.D.2d 153, 156–57, 603 N.Y.S.2d 21 (1st Dept 1993):

> To satisfy the first step in this three step process and make out a *prima facie* case, plaintiff was required to establish that she was in a group protected by the statute, that she was qualified for the position in question, that she was denied the position, and that that denial occurred "under circumstances that give rise to an inference of unlawful discrimination" (Texas Dept. of Community Affairs v. Burdine, supra, 450 U.S. at 253, 101 S.Ct. at 1094). **That inference may be drawn from direct evidence, from statistical evidence, or merely from the fact that the position was filled or held open for a person not in the same protected class** (Ashker v. International Business Machines Corp., 168 A.D.2d 724, 725, 563 N.Y.S.2d 572; *157 Ioele v. Alden Press, supra, 145 A.D.2d at 35, 536 N.Y.S.2d 1000; Mayer v. Manton Cork Corp., 126 A.D.2d 526, 510 N.Y.S.2d 649).

See also, Wenping Tu v. Loan Pricing Corp., 21 Misc.3d 1104(A) (NY Sup. Ct. 2008), citing this standard in the context of a termination, rather than a denial of a position.

c. **Evidence of discriminatory intent does not have to be explicit**

300 Gramatan Ave. Associates v. State Division of Human Rights, 45 N.Y.2d 176, 183 (1978):

> [T]hree underlying principles should be borne in mind: the statute is to be "**construed liberally for the accomplishment of the purposes thereof**" (Executive Law, s 300); wide powers have been vested in the commissioner in order that he effectively eliminate specified unlawful discriminatory practices (Batavia Lodge No. 196, Loyal Order of Moose v. New York State Div. of Human Rights, 35 N.Y.2d 143, 146-147, 359 N.Y.S.2d 25, 27, 28, 316 N.E.2d 318, 319-320; Gaynor v. Rockefeller, 15 N.Y.2d 120, 132, 256 N.Y.S.2d 584, 592, 204 N.E.2d 627, 633); and **discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive, it being accomplished usually by devious and subtle means** (State Div. of Human Rights v. Kilian Mfg. Corp., 35 N.Y.2d 201, 209, 360 N.Y.S.2d 603, 608, 318 N.E.2d 770, 773; Matter of Holland v. Edwards, 307 N.Y. 38, 45, 119 N.E.2d 581, 584, Supra).

d. **Employee's sex need not be the *sole* factor for firing decision to be unlawful**

Chadwick v. WellPoint, Inc., 561 F.3d 38, 43–44 (1st Cir. 2009):

> Chadwick's claim can be characterized as a "sex plus" claim. This denomination refers to the situation where "an employer classifies

> employees on the basis of sex *plus* another characteristic." 1 Barbara Lindemann & Paul Grossman, *Employment Discrimination Law* 456 (3d ed.1996) (emphasis in original). The terminology may be a bit misleading, however, because the "plus" does not mean that more than simple sex discrimination must be alleged; rather, it describes the case where "not all members of a disfavored class are discriminated against." Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 118 (2d Cir.2004). In other words, "[i]n such cases the employer does not discriminate against the class of men or women as a whole but rather treats differently a subclass of men or women." Lindemann, 456. Here, Chadwick alleges that the subclass being discriminated against based on sex is women with children, particularly young children. **Ultimately, regardless of the label given to the claim, the simple question posed by sex discrimination suits is whether the employer took an adverse employment action *at least in part* because of an employee's sex.** See *44 42 U.S.C. § 2000e–2(m) ("[A]n unlawful employment practice is established when the complaining party demonstrates that ... sex ... was a motivating factor for any employment practice, even though other factors also motivated the practice.") (emphasis added; italics in original).

"Sex plus" claims are permissible in under federal law and NY Human Rights law. Bailey v. New York State Div. of Human Rights, 38 Misc.3d 756, 762 (NY Sup. Ct., 2012):

> Contrary to Libeco's apparent argument that "sex plus" discrimination is recognized only in Title VII cases, there is legal authority to support its application to claims brought under the NYSHRL. See Doyle v. Buffalo Sidewalk Café, Inc., 70 Misc.2d 212, 214, 333 N.Y.S.2d 534 (Sup. Ct., Erie County 1972); Lifranc v. New York City Dept. of Educ., 2010 WL 1330136, *11, 2010 U.S. Dist. LEXIS 34009, *36 (E.D.N.Y.2010) (recognizing, and dismissing, "gender plus" claim in case brought under Title VI, NYSHRL and NYCHRL), affd. 415 Fed.Appx. 318 (2d Cir.2011); Timothy v. Our Lady of Mercy Med. Ctr., 233 Fed.Appx. 17, 19 (2d Cir.2007) ("gender-plus" claim, involving mother with small children, considered in claim brought under Title VII, NYSHRL and NYCHRL); see also Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 118–119 (2d Cir.2004) (finding that "[a]lthough we have never explicitly said **839 as much, 'sex plus' discrimination is certainly actionable in a § 1983 case").[3] **Moreover, claims under the NYSHRL, which requires that its provisions be "construed liberally" to accomplish the remedial purposes of prohibiting discrimination** (emphasis added) (Executive Law § 300), generally are analyzed under the same standards applicable to claims under Title VII. See Stephenson v. Hotel Employees & Restaurant Employees Union Local 100 of AFL–CIO, 6 N.Y.3d 265, 270, 811 N.Y.S.2d 633, 844 N.E.2d 1155 (2006); Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 305 n. 3, 786 N.Y.S.2d 382, 819 N.E.2d 998 (2004); Ferrante v. American Lung Assn., 90 N.Y.2d 623, 629, 665 N.Y.S.2d

25, 687 N.E.2d 1308 (1997). There is, accordingly, no legal basis for finding that “sex plus” discrimination is not actionable under the NYSHRL.

RESPONDENTS KNEW AND OPENLY ADMITTED THAT THEIR CLAIMS OF SEXUAL MISCONDUCT WERE, IN THEIR OWN WORDS, A "WITCH HUNT"

Bearing in mind the state court's holding that "**discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive, it being accomplished usually by devious and subtle means**" [emphasis added], let's consider the respondent's actions and statements.

As its sole defense against the charge of discrimination, respondent LUMINARY PUBLISHING says that complainant's actual lament is that women came forward and accused him of sexual misconduct.

As its only "evidence" of such, it provides the Division of Human Rights with the complainant's own exhibit from prior cases — a transcript of the interview with attorney Ryan Poscablo on May 10, 2018. Poscablo was respondent LUMINARY's professional investigator, brought in to settle the matter.

To sustain its defense, respondent LUMINARY PUBLISHING would need to prove that sexual misconduct actually occurred. In fact, LUMINARY's publisher JASON STERN is of record saying that Poscablo found that the investigation determined that "there is nothing."

This was predictable. To wit, in a May 10 dialog with respondent STERN, complainant encountered him in a neighborhood parking lot going to his car after work. Complainant said to STERN at [**EXHIBIT 3**]:

"This will all be clear once the facts come out."

Respondent STERN replied, "Eric, you know this isn't about the facts."

Then in a May 20 phone call, four days before complainant's termination, Stern summarized the results of the Poscablo investigation at [**EXHIBIT 4**]:

> ”The result of a very extensive investigation was nothing — was that the attorney said, no, there's nothing here — extensive investigation…that was Ryan's final word.”

In the same conversation, respondent STERN said that the investigation "didn't surface anything. What it - what it did show as that - was that there isn't anything."

Previously, in mid-May 2018, respondent STERN warned the complainant that "**sometimes witch hunts work**." Respondent's chairman DAVID DELL warned complainant the same week that "**sometimes witch hunts work,**" using the same exact words, admitting the specious nature of what they were doing [**EXHIBIT 3**].

In private correspondence in May 2018, respondent STERN described the unfolding events to a mutual friend as a "**#metoo witch hunt**."

The term "witch hunt" evokes not just colonial Salem but more significantly one of the saddest and most embarrassing eras in American history: the "Red Scare," leading to the search for non-existent "card-carrying Communists" that destroyed the lives and careers of so many Americans in the 1950s.

A witch hunt is defined as, "**A campaign directed against a person or group holding unorthodox or unpopular views**." What was occurring was specifically that respondent LUMINARY PUBLISHING and its agents were retaliating against the complainant for his "unorthodox or unpopular views" related to his openly challenging the integrity of the "Me Too" movement's philosophy, thus being accused of being a typical male, and worse, a "Weinstein," meaning an alleged serial rapist.

In September 2018, respondent HILLARY HARVEY wrote in the *Kingston Times*, "[T]he beloved term for MeToo — witch hunt — should provoke especial outrage, considering it was women who were the hunted." It is notable that two of her colleagues used that very term to describe what she and they were doing in an era when it's considered acceptable to only hunt men.

Respondent HARVEY, in a social media post from September 2018, bragged that she had personally instigated complainant's firing from three freelance contracts in their small community by filing what she termed "sexual harassment claims" against the complainant **[EXHIBIT 5]**.

Respondent HARVEY's word "claims" implies legal charges or a civil tort, not merely getting someone fired — which we know she did. How did she bring these claims on behalf of others? Is she an attorney? *Nolo's Plain English Law Dictionary* defines "sexual harassment" as, "Offensive and unwelcome sexual conduct that is so severe or pervasive that it affects the terms and conditions of the victim's employment, either because the victim's submission or failure to submit to the behavior is the basis for job-related decisions (like firing or demotion) or because the victim reasonably finds the workplace abusive or hostile as a result of the harassment."

In fact, respondent HARVEY has personally alleged no such specifics, and no facts of record support her false claim made to the public.

HILLARY HARVEY REPEATEDLY SOLICITED 'VICTIMS' FROM THE PUBLIC

Contrary to respondents LUMINARY PUBLISHING *et al*'s claims, the women who made various statements were solicited by respondent. For example, on April 7, 2018, respondent HILLARY HARVEY identifies herself as a reporter for respondent LUMINARY PUBLISHING and Radio Kingston Corp. and claims complainant is "one of my #metoo stories," *signaling that she was personally a "victim"* [**EXHIBIT 6**].

Her April 7, 2018 post serves a general "call to arms," introducing the complainant to the general public as a "Weinstein," an accused serial rapist, and accused player of "casting couch." She wrote, "So it's ironic to me that the Hudson Valley's [Harvey] Weinstein has a platform at both places. I would love to see a reckoning happen here. I am interested in collecting people's stories about their experiences with Eric Francis. I think that could happen if we put together a narrative of behavior we've individually witnessed. If you're interested in sharing your story, please let me know."

From the outset, respondent HILLARY HARVEY presents herself as a victim, an activist and a journalist. She includes herself in the category of "behavior we've individually witnessed," but is not personally known to the complainant.

May 4, 2018, one week ahead of complainant's interview with respondent's investigator, while claiming to have "dozens" of victims, respondent HILLARY HARVEY took to Facebook with an appeal to the public:

> "Hi all. I met with Chronogram's investigators yesterday. Jason and Amara said they've only heard from a couple of people about all this. Might be a good idea to reach out to them directly with these concerns. They might be making a decision of all of this soon. Their contact info is on their website and printed in the masthead. Hope this helps" [**EXHIBIT 6A**].

By this time, by her own admission, she had already had complainant fired from two other contracts, respondent LUMINARY PUBLISHING has "only heard from a couple of people about all this."

Respondent HARVEY is not personally known to the complainant; she has no personal knowledge of complainant's life, as defined as direct experience or eyewitness account. All of her claims used to get the complainant fired from three positions were collected in a kind of neighborhood dragnet with her digital recorder. Nobody was "coming forward." Respondent knows that actively soliciting complaints is evidence of prejudicial intent.

It is reasonable to ask why respondent HILLARY HARVEY had to make an appeal on Facebook on that late date, one week before the investigative interview, seeking additional "victims," when she claimed to have many only weeks before. One

possibility is that none were willing to have their claims vetted by a professional investigation because they would not stand up to any scrutiny.

That anyone HARVEY may have recruited would be unwilling to speak to a professional investigator is telling. Most citizens, when presented with the opportunity to do the right thing for society, will willingly make statements, speak to the police or investigators, and say what they know or witnessed — unless they are disingenuous and therefore run the risk of being caught lying, or being incriminated personally.

BOOK OF BLUE LLC STUDIO PROVIDED RESPONDENTS' CONTENT

Regarding "thousands of photographs," the reference was to **production and publication of photographic works by a professional photo studio and publishing company**. Each month respondent paid this studio, Book of Blue LLC, for the writing and art package it purchased from complainant.

Respondent writes as if it's the only entity somehow unaware that for a decade after arriving home from Europe in 2007, complainant ran his photo studio twenty paces from its place of business specializing in intimate photography — a business which, though discreetly branded, was visible to all who passed on the street, and was well-known in its small community, written about in the local daily newspaper, and participated in festivals, photo shows, gallery walks, etc.

The studio and its project was a topic in *Chronogram* coverage, on the occasion of complainant being invited to speak about his photos before the American Psychological Association world congress in 2009 **[EXHIBIT 7].**

Everyone who passed through an employee or contractor gave consent to see the photos and the photographic sets and props, including photos of the complainant. All models signed permission to be photographed and commercial model release documents, and were paid for their work. The business was compliant with 18 U.S.C. §§ 2257 federal record keeping requirements.

Respondent writes its filing as if it's possible for people to know one another for 28 years (as complainant has with respondent JASON STERN and co-owner AMARA PROJANSKY), to live with their family (as complainant has, with STERN's mother), to work together and socialize at company events and in the same cafes for 22 years (as complainant has with respondents STERN, his wife PROJANSKY, and editor BRIAN MAHONEY), and to work on the same street of a very small town every day for 11 years — and somehow discover that person's alleged shocking, nefarious past. This is pure sensationalism.

Respondent pretends it did not publish complainant's column that openly encouraged frank sexual speech, an experimental and honest approach to

relationships, and topics such as male personhood and the real meaning of sexual consent. Not everyone liked these articles, but complainant was retained as an author by the respondent for 265 consecutive months to write them.

What respondent LUMINARY PUBLISHING is doing is twisting the facts of complainant's career, mixing them with gossip and anger about his position on the "Me Too" movement, and using its position to conceal or camouflage its own bias against the complainant.

ANALYSIS OF POSCABLO'S INVESTIGATION

In April 2018, respondent LUMINARY PUBLISHING engaged the services of Riley Safer Holmes & Cancila, a Manhattan law firm, to investigate rumors of misconduct circulating about the complainant — rumors that, without exception, were started by people who worked for or who were closely associated with *Chronogram*. The firm assigned to the case Ryan Poscablo, a former Assistant United States Attorney (AUSA) from the Southern District of New York (SDNY). He was assisted by an associate attorney and a paralegal.

Respondents LUMINARY PUBLISHING *et al* present the transcript of the May 10, 2018 investigative interview between Poscablo and complainant (made by the complainant above the objections of the investigator) *as their only material exhibit* in support of their claim of nondiscriminatory firing.

In its reply, respondent **presents the questions asked by its investigator as foregone conclusions of fact, when they were stipulated by the investigator as not even being accusations**. For respondent to use the rumor-based questions as conclusions, and make an employment decision based on them, reveals the presumption of guilt and therefore is evidence of discriminatory intent.

The statements of the investigator and claims made by the respondent do not even rise to the level of hearsay.

Poscablo said into the record that he was there to investigate what he called rumors — a word he used four times. At [**EXHIBIT 8**, page 14], he says:

> "I'm here to assess the allegations that have been made against you, the rumors that have been — that have been flying about."

and

> "So let's talk about them. So tell me about one of the rumors."

Additionally, at page 14, respondent LUMINARY PUBLISHING's investigative counsel stipulates that the questions are not allegations:

> "Let's be clear about something. I'm not — I haven't alleged anything. This isn't — this isn't me alleging anything."

later adding at page 24,

> "I am not accusing you of anything. Neither is Chronogram. Let's be clear about that. What's happening is that there are allegations out there, like I said, supported by unnamed sources, right? Except for one, Dana Barnett…"

Additionally, Poscablo admits that he has never spoken to any purported "accuser," but has heard their stories. This "hearing" was via respondent HILLARY HARVEY's set of anonymous recordings to a digital device, of interviews solicited from the public. The recordings were played by respondent HARVEY for Poscablo at the LUMINARY PUBLISHING office on or about Thursday, May 3, 2018. Respondent's investigative counsel seems to admit his frustration with the process when he says at page 19:

> "I cannot state to you that I've met any of these people. I've heard their stories. And so, you know, I'm in a position of trying to assess their credibility and assess yours with — without the ability to dig down into the specifics of a particular individual's story and get the details, right? So if I'm not sharing details with you it's not because I'm hiding them, it's because I don't know them."

In violation of the confrontation principle, dating to ancient Rome and a foundation of our legal system enshrined federally as an Article VI right — the "accusers" never face cross-examination; they are never even examined. Their identities are unknown. They merely speak into a digital recorder in the hand of a LUMINARY PUBLISHING editor and "Me Too" activist, who is posing as a reporter. They are all assured anonymity, which is why their names are not known to Poscablo.

Respondent had other sources it could check, including a list of references provided to Poscablo on May 10, 2018 [**EXHBIT 9**]. None of the references received phone calls. The investigation sought out information only from those pretending to be accusers and ignored exculpatory witnesses and information. That is evidence of discriminatory intent.

As it did in "Make Choices, Have Reasons," its July 2018 editorial by respondent MAHONEY, respondent LUMINARY PUBLISHING is attempting to reverse the findings of its own investigation, which it characterized to its readers in Mahoney's July 2018 editorial as "confidential" **[EXHIBIT 10]:**

> "While the findings of the investigation are confidential, what I found out led me to sever Chronogram's longstanding relationship with Eric Francis Coppolino."

What exactly had he "found out," how, and from whom? He is implying that he "found out" something from the investigation, but not stating so; he skirts the point of who his source was. His source, however, was the voice recording of respondent HILLARY HARVEY. In a Nov. 9, 2018 phone call, respondent MAHONEY admitted that the Poscablo investigation and the HILLARY HARVEY digital recording "investigation," were "two separate things" [**AUDIO EXHIBIT A**, in digital filing].

The results of Poscablo's work are "confidential" — because they are exculpatory — and the results of the other are what MAHONEY claims to have "found out."

Yet respondent HARVEY is not a disinterested party; she drives the whole scenario from the start, beginning with founding "Me Too Kingston," an activist organization. She recruits her own victims and describes events she was not a witness to as if she was there. In an early Facebook post, she said complainant was one of her "Me Too stories," which claim she removed quickly.

All of respondent HARVEY's supposed "victims" are anonymous; they could be anybody, or one person impersonating many, or actors recruited for the purpose. No valid investigation or conclusion can rely on anonymous, unknown sources or anonymous statements.

Respondent LUMINARY PUBLISHING must produce the document from Poscablo formally stating the results of the investigation. By respondent MAHONEY's admission, the investigation *had a result*, which was characterized by respondent MAHONEY as "confidential." Yet respondents are making characterizations of the investigation but providing no exhibit other than the transcript, which the investigating attorney stipulated on the record was non-accusatory. We know from recent news events that the unsupported characterization of an investigation by another party can differ substantially from its actual findings.

Yet on May 20, 2018, respondent STERN had already admitted in a transcribed telephone call at [**EXHIBIT 4**]:

> "The result of a very extensive investigation was nothing — was that the attorney said, no, there's nothing here — extensive investigation…that was Ryan's final word."

Respondent LUMINARY PUBLISHING has based its defense on an either-or theory: either complainant is correct, and was subjected to discrimination; or the respondent is correct, and the complainant was legitimately dismissed for misconduct.

Respondent STERN openly admits that his claims are baseless; their own investigative counsel calls them rumors four times; STERN uses the term "witch hunt" to describe his own investigation. This is echoed the same week by

respondent's executive DAVID DELL, who in May 2018 also characterizes the LUMINARY PUBLISHING investigation as a "witch hunt."

The questions asked by the investigator were inappropriate, invasive, speculative, and **do not belong in an employment context**. Prying into an employee's private life based on what amounts to bathroom graffiti is better known as sexual harassment.

Obviously, respondent LUMINARY PUBLISHING could not ask these kinds of questions of every employee or contractor. But in the current climate they could do it to a sexually outspoken man who dared to question the "Me Too" movement. That is discrimination.

THE MISSING POEM

When respondent's investigator Poscablo asked about Dana Barnett, the only named party, he was clear he was talking about alleged consensual sex with someone of legal age. Respondent does not provide an affidavit, deposition or even a written statement from Barnett, only the loose paraphrasing and exaggeration of her vague claims initially published as a **solicited** letter in LUMINARY PUBLISHING's *Chronogram*.

Respondent's claim in its pleading, what complainant was asked in the interview, and what Barnett originally claimed, all differ widely in their tone and language, and their characterization of basic events. For example, the investigator asked if the complainant had ever "gone hiking" with Barnett. Respondent in its pleading claims complainant allegedly "lured" her into a wooded area.

Notably, Barnett — the respondent's star witness — claims to possess a poem written by the complainant "proving" her claimed encounter, purportedly having saved it and its accompanying postmarked envelope for 22 years — which poem or dated envelope were never produced. That is not surprising, as the poem, identified by its title published in a local newspaper, was written and dated six months before complainant is alleged by Barnett to have met her.

Barnett's repeated refusal to produce the poem should be marked as a negative inference against her claims, and those of respondent LUMINARY PUBLISHING. It is astonishing that the respondent's investigator Poscablo, aware of the potential existence of a contemporaneous document, failed to even request its production.

Barnett did not "come forward." She was by her own admission recruited into her role by respondent LUMINARY PUBLISHING's longtime production manager Julie Novak, and Barnett's letter was then brokered by Novak to her friend, respondent BRIAN MAHONEY, *Chronogram's* editor. This took place behind the back of the complainant. A longer version of her letter was posted to Facebook by Novak on

Professional investigators have explained to complainant the "squeeze" interview method is used when the investigator has nothing, and is hoping the presumed-guilty subject will break under pressure. This is designed as a self-incrimination trap, in contradiction to one's Article V rights.

No conduct that the complainant was questioned about rises even meekly to the level of "misconduct," "exploitation," "taking advantage of," "a pattern of behavior," being "perceived as a creep," comparison to accused serial rapist "Harvey Weinstein," comparison to accused serial rapist "Matt Lauer," or "unapologetically horny misogynist" — all of them prejudicial terms used by respondent LUMINARY PUBLISHING to falsely impugn the complainant and cast him before the public and the Division of Human Rights as the "typical toxic male."

THE 'TAKE A STEP BACK' CONSPIRACY THEORY

In published comments and those made on Facebook, the respondent focused on a theory that "Take a Step Back" was written as a pre-emptive strike against complainant's presumed future accusers.

This delusional position is obviated by the fact that complainant had persistently covered the "Me Too" movement since its first days, as it fell squarely in the "sex and gender" coverage area of his publication, Planet Waves. He was the first man to come out in the national press as a survivor of workplace sexual harassment, in October 2017, in an op-ed in the New York *Daily News* [at **EXHIBIT 2**].

Complainant's choice to go public with his story of harassment by another man was intended as a response to the "Me Too" movement's total emphasis on female survivors up to that time and to the present.

Between October 2017 and February 2018, complainant had maintained fearless, vocal and moreover balanced discussions of issues surrounding the "Me Too" movement locally on Radio Kingston, nationally on the Pacifica Radio Network and the New York *Daily News*, and his own publication, *Planet Waves*.

His radio guests on the topic twice included Woodstock-based activist Rachel Marco-Havens, and internationally renowned women's empowerment trainer Kasia Urbaniak.

If complainant wanted to conceal his alleged nefarious double life, he would have avoided the issue entirely or written an article praising the "Me Too" movement and feminism rather than conducting a balanced, cool-headed, honest discussion. Quoting something considered a particularly objectionable element of the article:

> Among many other excellent points, [Daphne Merkin of *The New York Times*] asks, "And what exactly are men being accused of? What is the difference

> between harassment and assault and 'inappropriate conduct'? There is a disturbing lack of clarity about the terms being thrown around and a lack of distinction regarding what the spectrum of objectionable behavior really is."
>
> If this is some foreshadowing of the "the future is female," no thanks — I'll stick to patriarchy. At least there, one has a right to face and question one's accuser.

In February 2018, the notion of false "Me Too" accusations was considered unorthodox and tone-deaf, and was avoided by the press because it was dangerous to write about. A year later, it's now a topic of open discussion. Here is a sample of recent headlines from the internet and working press:

> *Morning Consult*, from October 2018: "A Year Into #MeToo, Public Worried About False Allegations; Most Americans equally concerned for men being falsely accused and women facing sexual assault"
>
> *Reason*, from October 2018: "High School Girls Admitted to Making False Sexual Assault Accusations Against a Male Student Because They 'Just Don't Like Him'"
>
> *Toronto Sun*, from October 2018: "Mean Girls face lawsuit over false sex allegations against teen"
>
> *Quillette*, from November 2018: "How the #MeToo Movement Helped Create a Script for False Accusers"
>
> *Albuquerque Journal* from December 2018: "Accusations put a chill on #MeToo"
>
> *Lincoln Journal-Star*, from December 2018: "#MeToo's false claims hurt real victims"
>
> *Philadelphia Tribune* from January 2019: "Could false accusations threaten the #MeToo movement?"
>
> *Psychology Today*, March 9, 2019: "The Threat of False Allegations in the #MeToo Era"

COMPLAINANT'S WRITING STILL APPEARS ON RESPONDENT'S WEBSITES

If respondent is so concerned about its "sterling image" that complainant is allegedly tarnishing, it is noteworthy that as of this filing, all of complainant's writing still appears on the respondent's websites, including "Take a Step Back." Respondent is still profiting from complainant's work.

RESPONDENT ADMITS SEX DISCRIMINATION

When respondent LUMINARY PUBLISHING finally hired another horoscope columnist in July 2018, the announcement came from respondent HILLARY HARVEY, who said, "*Chronogram* has hired a new writer for their horoscopes, and it is a woman" [**EXHIBIT 12**].

She did **not** say, "*Chronogram* hired a more qualified horoscope columnist."

She is suggesting that the job was held open for a woman, which per Sogg v. American Airlines, Inc. is evidence of discriminatory intent per state court holdings cited above. While respondent HARVEY is said to have resigned last May 18, it was her actions and her motive *while working for the respondent* that resulted in complainant's dismissal from three jobs — and she admits her motive in her published statement.

If at the end of the process of firing an African American man for what it characterized as "typical black behavior," someone directly involved in the firing announced, "We hired someone new, and he is white," that would be seen as racial discrimination.

If a group of men had publicly attacked a woman for "typical female behavior," and had her fired, and then had announced, "We hired a man," that would be clearly seen as sex discrimination.

SUMMATION

The courts have held that "discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive, it being accomplished usually by devious and subtle means." In this case, we are talking about discrimination that is at once overt, devious and subtle.

In the case 300 Gramatan Ave. Associates v. State Division of Human Rights, the courts have held that the Human Rights Law must be “construed liberally for the accomplishment of the purposes thereof.”

Per Chadwick v. WellPoint, Inc., the courts have held that, "Ultimately, regardless of the label given to the claim, the simple question posed by sex discrimination suits is whether the employer took an adverse employment action *at least in part* because of an employee's sex."

In their filing, respondents knowingly, falsely present the rumor-based questions of their investigator as findings of fact, in order to cast complainant as a typical toxic male. Respondent denies that interviews with women were solicited, in direct

contradiction of the published record. Two of respondent LUMINARY PUBLISHING top officials, STERN and DELL, have called these events a "witch hunt," which implies they knew it was not about the complainant's conduct but rather who the complainant is.

STERN has admitted "it's not about the facts." He characterized the results of the official investigation as "there is nothing — that was Ryan's final word." LUMINARY PUBLISHING has not produced any evidence in its defense and attempts to deceive the State of New York with its false claims. Respondent's conduct rises well above the threshold of probable cause, revealing bald prejudice and malicious disregard for truth.

Complainant has presented a strong case for the probable cause of sex discrimination as the sole factor or a co-factor in his dismissal, and seeks a public hearing. Complainant asserts that he is additionally seeking back pay, forward pay, an apology and retraction of respondent BRIAN MAHONEY's July 2018 editorial about the complainant, retraction of respondent HILLARY HARVEY's "sexual harassment" public post, and libel training for respondent LUMINARY PUBLISHING and its whole staff.

Affirmed under penalty of perjury this ____ day of May 2019.

s/ electronic filing

_____

ERIC F. COPPOLINO

Original hard copy is notarized

_____

NOTARY PUBLIC OF THE STATE OF NEW YORK

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encl: 12 exhibits