

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PAUL “BARNEY” HALLINGBY,

Plaintiff,

- v. -

ROUSH PUBLICATIONS, INC.,
GERALD L. ROUSH, CAVALLINO,
INC., and JOHN W. BARNES, JR.,

Defendant.

INDEX NO. 09 CIV 2223 (MGC)

**PLAINTIFF’S COUNTER-STATEMENT AND STATEMENT OF ADDITIONAL
FACTS PURSUANT TO LOCAL CIVIL RULE 56.1**

Pursuant to Local Civil Rule 56.1, Plaintiff Paul “Barney” Hallingby hereby submits this Counter Statement and Statement of Additional Facts in support of his Opposition to Defendants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment.

RESPONSE TO DEFENDANTS’ STATEMENT PURSUANT TO RULE 56.1

Plaintiff responds to Defendants’ Rule 56.1 Statement of Material Facts as follows:

1. The following advertisement appeared in the March 22, April 5, and April 19, 2008 issues of the “Ferrari Market Letter” (the “Letter”) (these advertisements in the Letter will be referred to as the “Letter Advertisements”):

STOLEN FERRARI

**Ferrari 250 PF, Cabriolet, Silver Colored, Pinin Farina,
Series 1, 1957/58, Chassis No. 799 GT**

Please be informed that the above-mentioned Ferrari oldtimer car with Chassis No. 0799 GT has been stolen on July 7, 1993 in Marbella, Spain from a Swiss citizen. Please also take notice that this car is on the active list of the police and further legal action will follow. Investigations by Interpol are involved. This Ferrari car has last reported to be in the custody of a Ferrari collector in Sharon 06069, Connecticut, U.S.A.

For further information please contact:

Oliver Weber, Attorney-at-Law

P.O. Box 811

CH-251 Biel

Switzerland

Phone: + 41 77 423 03 20

Fax: + 41 32 323 65 80

Email: stolenferrari@gmail.com

(Affidavit of Gerald L. Roush, dated and filed August 24, 2009 (“Roush Aff.”) ¶ 2 & Exh. 2.)

RESPONSE: Plaintiff disputes the statement in the Letter Advertisements that the Ferrari with Chassis No. 0799 GT (the “Automobile”) is stolen. In fact, the Connecticut Superior Court recently acknowledged that Plaintiff is the “rightful owner” of the Automobile and decreed that the Automobile “is hereby ordered returned” to Plaintiff.

(Affidavit of Deborah Drooz, dated October 28, 2009 (“Drooz Aff.”) ¶ 19 & Exh. A.)

Further, two separate Spanish court proceedings in the 1990s related to the Automobile culminated in judicial rulings that there was no evidence of any crime. (Affidavit of

Thomas V. Daily, dated October 27, 2009 (“Daily Aff.”) ¶¶ 5-7 & Exhs. A-D.) In addition,

multiple independent investigations of the Automobile’s provenance determined that reports that the Automobile was stolen were unfounded and arose from a prior civil

dispute that did not affect the Automobile’s title. (Affidavit of Nicola Soprano, dated

October 28, 2009 (“Soprano Aff.”) ¶¶ 5-6; Affidavit of Scott Rosen, dated October 29, 2009

(“Rosen Aff.”) ¶¶ 4, 7-10.)

Plaintiff admits that the Letter Advertisements were published in the March 22, April 5, and April 19, 2008 issues of the Letter.

2. The following advertisement (the “Magazine Advertisement”) appeared in the April/May 2008 issue of the “Cavallino” magazine (the “Magazine”):

STOLEN FERRARI

**Ferrari 250 PF, Cabriolet, Silver Colored, Pinin Farina,
Series 1, 1957/58, Chassis No. 799 GT**

Please be informed that the above-mentioned Ferrari oldtimer car with Chassis No. 0799 GT has been stolen on July 7, 1993 in Marbella, Spain from a Swiss citizen. Please also take notice that this car is on the active list of the police and further legal action will follow. Investigations by Interpol are involved. This Ferrari car has last reported to be in the custody of a Ferrari collector on the east coast of the USA.

For further information please contact:

Oliver Weber, Attorney-at-Law

P.O. Box 811

CH-251 Biel

Switzerland

Phone: + 41 77 423 03 20

Fax: + 41 32 323 65 80

Email: stolenferrari@gmail.com

(Affidavit of John W. Barnes, Jr., dated August 21, 2009 and filed August 24, 2009 (“Barnes Aff.”) ¶ 2 & Exh. 1.)

RESPONSE: Plaintiff disputes the statement in the Magazine Advertisement that the Automobile is stolen. See Response to ¶ 1, *supra*. Plaintiff admits that the Magazine Advertisement was published in the April/May 2008 issue of the Magazine.

3. The Letter Advertisements and the Magazine Advertisement were placed and paid for by Oliver Weber – who represented himself to Roush and Barnes as a Swiss attorney representing Dr. Andreas Gerber, the owner of the Ferrari with the Vehicle Identification Number 0799 GT (the “Automobile”). (Roush Aff. ¶ 2, Barnes Aff. ¶ 2.)

RESPONSE: Plaintiff disputes that Dr. Andreas Gerber is the owner of the Automobile. See Response to ¶ 1, supra. Because no discovery has occurred, Plaintiff is without sufficient information to admit or deny the remainder of Paragraph 3.

4. In 1995 and 2008, Dr. Andreas Gerber filed criminal complaints in Switzerland reporting that the Automobile was stolen in 1993 in Marbella, Spain. (Roush Aff. ¶¶ 5, 6 & Exhs. 7, 8.)

RESPONSE: Plaintiff disputes Paragraph 4 to the extent that it implies the Automobile was in fact stolen in 1993 in Marbella, Spain. See Response to ¶ 1, supra. Plaintiff does not dispute that Dr. Andreas Gerber filed complaints claiming that the Automobile was stolen in 1993 in Marbella, Spain.

5. Roush heard that the Automobile might be stolen in September 2000 from FBI Special Agent Ken Crook. (Roush Aff. ¶ 3.)

RESPONSE: Plaintiff disputes Paragraph 5. Defendants offer no admissible evidentiary support for Paragraph 5. Plaintiff objects to Paragraph 3 of the Roush Affidavit on the grounds that it lacks foundation and constitutes inadmissible hearsay, in that it purports to describe the contents of a database entry, which itself purports to describe a conversation with a third party, FBI agent Ken Crook. Yet even if the Court were to consider Paragraph 3 of the Roush Affidavit, it does not state that Crook asserted that the Automobile “might be stolen.” Rather, it states that in 2000, an automobile dealer had returned the Automobile to its then-owner based on a “rumor,” and ambiguously appears to attribute that comment to Crook. (Roush Aff. ¶ 3.) In fact, Crook was hired by Plaintiff to investigate the provenance of the Automobile and ultimately determined that

the Automobile was *not* stolen. (Rosen Aff. ¶¶ 8-9; Soprano Aff. ¶¶ 5, 6; Affidavit of Paul “Barney” Hallingby, dated October 29, 2009 (“Hallingby Aff.”) ¶ 6.)

6. Marcel Massini is recognized as a worldwide authority on Ferraris and a leading expert in recordkeeping for rare Ferraris, who told Barnes he keeps detailed records of the history of all of the early Ferraris. (Barnes Aff. ¶ 3.)

RESPONSE: Plaintiff disputes that “Marcel Massini is recognized as a worldwide authority on Ferraris and a leading expert in recordkeeping for rare Ferraris.”

Defendants offer no evidentiary support for this claim, beyond Defendant Barnes’ self-serving, conclusory and unsupported assertion in Paragraph 3 of his own Affidavit.

Plaintiff objects to Paragraph 3 of the Barnes Affidavit on the grounds that it lacks foundation and, to the extent it is offered for the truth of the matter asserted therein, *i.e.*, that Massini in fact “ke[pt] detailed records of the history of all of the early Ferraris,” it consists of inadmissible hearsay.

Plaintiff further objects to Exhibit 3 to the Barnes Affidavit, a purported March 4, 2008 email exchange between Massini and Barnes, on the grounds that it lacks foundation and constitutes hearsay. Even if the Court were to consider it, however, it does not support Defendants’ portrayal of Massini as an unbiased Ferrari expert. In the purported email exchange, Massini stated that he was “DEEPLY INVOLVED” in Oliver Weber’s claim that the Automobile was stolen, thereby demonstrating that he could be neither objective nor reliable with respect to the Automobile. (Barnes Aff., Exh. 3.)

Because no discovery has occurred, Plaintiff is without sufficient information to admit or deny Paragraph 6’s allegations regarding what Massini purportedly told Barnes.

7. On September 28, 2000, Marcel Massini informed Roush by e-mail that the Automobile had been stolen from a warehouse in Spain. (Roush Aff. ¶ 3.)

RESPONSE: Plaintiff disputes Paragraph 7 to the extent it suggests that the Automobile was stolen. See Response to ¶ 1, *supra*. Because no discovery has occurred, Plaintiff is without sufficient information to admit or deny the allegations regarding whether Massini in fact emailed Roush as alleged in Paragraph 7.

Further, to the extent Roush's description of the alleged September 28, 2000 email is offered for the truth of the matter asserted therein, *i.e.*, that the Automobile was stolen, it consists of inadmissible, multiple hearsay, and should not be considered by the Court. Paragraph 3 of the Roush Affidavit consists, in pertinent part, of Roush's description of the contents of a database entry, which in turn purports to describe the contents of a September 28, 2000 email from Massini, which itself apparently purported to relay information Massini learned from third parties.

8. Before the Magazine Advertisement was printed Barnes communicated with Marcel Massini to investigate the status of the title of the Automobile, and Massini told Barnes that the Automobile was stolen. (Barnes Aff. ¶¶ 3, 4, 5 & Exhs. 3, 4.)

RESPONSE: Plaintiff disputes Paragraph 8 to the extent it suggests that the Automobile was in fact stolen. See Response to ¶ 1, *supra*. Because no discovery has occurred, Plaintiff lacks sufficient information to admit or deny that Massini communicated with Barnes prior to publishing the Magazine Advertisement, as alleged in Paragraph 8.

Plaintiff objects to Paragraph 3 of the Barnes Affidavit on the grounds that it lacks foundation and, to the extent it is offered for the truth of the matter asserted therein, it

consists of inadmissible hearsay. Plaintiff objects to Exhibits 3 and 4 to the Barnes Affidavit on the grounds that they lack foundation and constitute hearsay.

9. Marcel Massini sent to Barnes his history of the Automobile, which states that the Automobile was stolen in 1992. (Barnes Aff. ¶ 5 & Exh. 4.)

RESPONSE: Plaintiff disputes that the document attached to the Barnes Affidavit as Exhibit 4 constitutes a history of the Automobile. Contrary to the notations contained in Exhibit 4, the Automobile was not stolen. See Response to ¶ 1, *supra*. Because no discovery has occurred, Plaintiff is without sufficient information to admit or deny the allegation that Massini sent a copy of Exhibit 4 to Barnes.

Further, Plaintiff objects that Exhibit 4 lacks foundation and constitutes hearsay, and therefore cannot be considered for the truth of the matters asserted therein.

10. Oliver Weber represented to Roush that the Automobile was stolen in the text of the Letter Advertisements and in subsequent correspondence. (Roush Aff. ¶¶ 2, 4, 8 & Exhs. 2, 5.)

RESPONSE: Plaintiff does not dispute that the Letter Advertisements represented that the Automobile was stolen. Plaintiff disputes that the text of the Letter Advertisements themselves constituted correspondence between Weber and Roush regarding the veracity of the Letter Advertisements' contents.

Plaintiff does not dispute that the document attached to the Roush Affidavit as Exhibit 5 appears to reflect subsequent correspondence between Roush and Weber regarding the Letter Advertisements. Because no discovery has occurred, however, Plaintiff lacks sufficient information to admit or deny the authenticity of Exhibit 5. More importantly, *subsequent* correspondence is utterly irrelevant to any issue in this case, cannot negate any element of Plaintiff's claims, and is therefore inadmissible.

In addition, Plaintiff objects to Paragraphs 2 and 8 of the Roush Affidavit as hearsay. To the extent it is offered for the truth of the matters asserted therein, Plaintiff also objects to Exhibit 5 as hearsay.

11. Oliver Weber represented to Barnes that the Automobile was stolen in the text of the Magazine Advertisement and in subsequent correspondence. (Barnes Aff. ¶¶ 2, 6 & Exhs. 1, 6.)

RESPONSE: Plaintiff does not dispute that the Magazine Advertisement represented that the Automobile was stolen. Plaintiff disputes that the text of the Magazine Advertisement itself constituted correspondence between Weber and Barnes regarding the veracity of the Magazine Advertisement's contents.

Plaintiff does not dispute that the document attached to the Barnes Affidavit as Exhibit 6 appears to reflect subsequent correspondence between Barnes and Weber regarding the Magazine Advertisement. Because no discovery has occurred, however, Plaintiff lacks sufficient information to admit or deny the authenticity of Exhibit 6. More importantly, *subsequent* correspondence is utterly irrelevant to any issue in this case, cannot negate any element of Plaintiff's claims and is therefore inadmissible.

In addition, Plaintiff objects to Paragraphs 2 and 6 of the Barnes Affidavit as hearsay. To the extent it is offered for the truth of the matters asserted therein, Plaintiff also objects to Exhibit 6 as hearsay.

12. Barnes published the Magazine Advertisement believing, and he continues to believe, that the statements in the Magazine Advertisement are true and that the Magazine Advertisement involved a matter of public concern. He published the Magazine Advertisements believing, and he continues to believe, that publishing the Magazine Advertisement was important for, and in the best interest of, the Ferrari community. (Barnes Aff. ¶ 8.)

RESPONSE: Plaintiff disputes that Barnes believed that the statements in the Magazine Advertisement were true at the time he published it. In 2001, prior to the publication of the Magazine Advertisement, Hallingby entered the Automobile in the Cavallino Classic X Concours car show, which is organized by Defendant Cavallino Magazine (which in turn is published by Defendant Barnes). (Soprano Aff. ¶ 7; Rosen Aff. ¶ 11; Hallingby Aff. ¶ 8.) The entry form for the Cavallino Classic requires the entrant to state that he or she is the owner of the automobile to be shown, and to disclose his or her name, residence, and specific identifying information for the car to be shown. (Soprano Aff. ¶ 7; Hallingby Aff. ¶ 8.) If Barnes believed the Automobile had been stolen, presumably he would not have permitted Plaintiff to enter it in the Cavallino Classic. Further, Hallingby was identified as the Automobile’s owner in Ferrari magazines such as Forza prior to the publication of the Magazine Advertisement. (Soprano Aff. ¶ 8; Rosen Aff. ¶ 11; Hallingby Aff. ¶ 7.)

Plaintiff further disputes that Barnes presently believes that the statements in the Magazine Advertisement are true. After the Magazine Advertisement was published, Soprano and Rosen independently contacted Barnes and informed him that the Automobile was not stolen and that the advertisement disparaged Hallingby. (Soprano Aff. ¶¶ 13, 15; Rosen Aff. ¶¶ 13-16.)

Plaintiff disputes that Barnes believed, and continues to believe, “that publishing the Magazine Advertisement was important for, and in the best interest of, the Ferrari community.” (Soprano Aff. ¶¶ 13, 15; Rosen Aff. ¶¶ 13-16.) In any event, Barnes’ purported belief “that publishing the Magazine Advertisement was important for, and in

the best interest of, the Ferrari community” is irrelevant to any issue in this case and is inadmissible.

13. Since before Roush published the Letter Advertisements until the present, Roush has believed that the statements in the Letter Advertisements are true and that the Letter Advertisements involved a matter of public concern. Also, since before Roush published the Letter Advertisements until the present, Roush has believed that publishing the Letter Advertisements was important for, and in the best interest of, the Ferrari community. (Roush Aff. ¶ 9.)

RESPONSE: Plaintiff disputes that Roush believed that the statements in the Letter Advertisements were true “[s]ince before Roush published the Letter Advertisements until the present.” Prior to the publication of the Letter Advertisements, Hallingby was identified as the Automobile’s owner in Ferrari magazines such as Forza. (Soprano Aff. ¶ 8; Rosen Aff. ¶ 11; Hallingby Aff. ¶ 7.) Further, Hallingby openly entered the Automobile in Ferrari shows, such as the Cavallino Classic X Concours. (Soprano Aff. ¶ 7; Rosen Aff. ¶ 11; Hallingby Aff. ¶ 8.) What is more, after the first of the Letter Advertisements was published, Soprano and Rosen independently contacted Roush and informed him that the Automobile was not stolen and that the advertisement disparaged Hallingby. (Soprano Aff. ¶ 13; Rosen Aff. ¶¶ 13-14.) Nonetheless, Roush went on to publish the advertisement in subsequent editions of the Letter. (Rosen Aff. ¶ 15.)

Plaintiff disputes that, “since before Roush published the Letter Advertisements until the present,” he believed “that publishing the Letter Advertisements was important for, and in the best interest of, the Ferrari community.” (Soprano Aff. ¶ 13; Rosen Aff. ¶¶ 13-14.) In any event, Roush’s purported belief “that publishing the Letter Advertisements

was important for, and in the best interest of, the Ferrari community” is irrelevant to any issue in this case and is inadmissible.

14. Based on, among other things, the fact that the Automobile has been reported stolen, a search and seizure warrant for the Automobile (the “Warrant”) was issued to and executed by the Connecticut state police in September 2008. (Roush Aff. ¶ 7 & Exh. 9.)

RESPONSE: Plaintiff does not dispute that a search and seizure warrant was issued to and executed by the Connecticut state police in September 2008. Plaintiff does dispute Defendants’ implication that the warrant was issued on the basis of a pre-existing police investigation, or that the warrant was unrelated to Defendants’ publication of the Advertisements.

To the extent it is offered for the truth of the matters asserted therein, Plaintiff objects to Exhibit 9 to the Roush Affidavit on the grounds that it lacks foundation and constitutes hearsay. Even if the Court were to consider it, however, Paragraph 4 of the warrant reveals that it was issued on the basis of the Advertisements. (Roush Aff. Exh. 9 ¶ 4 (“The Confidential Source showed Affiant Van Tine an advertisement in ‘Cavallino,’ a magazine that caters to high-end vehicle collectors, stating that the 1958 Ferrari 250PF, with Vehicle Identification Number 0799GT, is stolen.”).)

15. In the course of the execution of the Warrant, police seized the Automobile from Hallingby’s property. (Roush Aff. ¶ 7 & Exh. 9.)

RESPONSE: Plaintiff does not dispute that the police seized the Automobile from his property.

16. Interpol has confirmed that the Automobile was stolen in Spain in 1993 and remained listed by Interpol as stolen during 2008. (Roush Aff. ¶ 7 & Exh. 9 (Warrant ¶ 6).)

RESPONSE: Plaintiff disputes that Interpol has determined that the Automobile was stolen. On the contrary, two separate Spanish court proceedings have determined that the Automobile was not stolen. (Daily Aff. ¶¶ 5-7 & Exhs. A-D.) What is more, the Connecticut Superior Court has acknowledged that Plaintiff is the “rightful owner” of the Automobile. (Drooz Aff. ¶ 19 & Exh. A.)

Plaintiff objects to the document upon which Defendants rely for this purported undisputed fact, Paragraph 6 of Exhibit 9 to the Roush Affidavit, on the grounds that it lacks foundation and consists of multiple levels of hearsay. Specifically, Exhibit 9 is a photocopy of a warrant, Paragraph 6 of which states that a Connecticut police officer was told by Interpol that a third party reported to Interpol that the Automobile was stolen, and that Interpol told the Connecticut police officer that the Automobile “remains listed in Interpol” as stolen.

Further, the purported “undisputed facts” set forth in Paragraph 16, which states the Automobile was stolen in 1993, are contradicted by the “facts” described in Paragraphs 9 and 19 of Defendants’ Statement of Material Facts, which state that the Automobile was stolen in 1992. Plaintiff disputes that the Automobile was ever stolen; nonetheless, the contradiction of Defendants’ “undisputed facts” by other of Defendants’ “undisputed facts” demonstrates the existence of genuine issues of material fact.

17. Multiple news articles were written about the seizure of the stolen Automobile by the authorities. (Declaration of Alexander G. Reisen, dated and filed August 24, 2009 (Reisen Decl.) ¶¶ 3-9 & Exhs. 10-16.)

RESPONSE: Plaintiff disputes that the Automobile is stolen. See Response to ¶ 1, supra. Plaintiff does not dispute that numerous articles were written about the Automobile subsequent to the publication of the Advertisements.

18. A Connecticut Department of Public Safety Posting stated:

[O]n Thursday, 09/04/2008, the Connecticut State Police Motor Vehicle Task Force and the Connecticut State Police auto Theft Task Force conducted a joint investigation to attempt to recover a stolen 1958 Ferrari 250 PF. . . . The criminal investigation revealed that the car was reported stolen in Spain in 1993. The original Police report identified the victim from Switzerland. Interpol assisted in this investigation, as well as the original owner/victim. State Police investigators obtained copies of all Spanish and Swiss documents relating to the stolen Ferrari and they were all translated into English. The theft was confirmed and the true ownership was established to be a subject from Switzerland.

(Reisen Decl. ¶ 3 & Exh. 10.)

RESPONSE: Plaintiff does not dispute that Exhibit 10 to the Reisen Declaration reflects the text of a Connecticut Department of Public Safety Posting (the “Posting”). Plaintiff disputes the truth of the content of the Posting. Contrary to the representations made in the Posting, the Automobile was not stolen. See Response to ¶ 1, supra. Further, Plaintiff objects to the Posting on the grounds that it constitutes inadmissible hearsay. Accordingly, it should not be considered by the Court.

19. Barnes stated in a February 11, 2009 letter to Plaintiff’s counsel:

When we received the enquiry from a Swiss lawyer about placing an ad for the whereabouts of s/n 0799 GT, I contacted Mr. Marcel Massini of Switzerland. He is a recognized worldwide Ferrari Authority and keeps detailed records of the history of all the early Ferraris. I asked him if the car was ever reported stolen and he came back to me in writing that yes, it was reported stolen in Spain in 1992. This is also on his detailed history of the car, which Massini also provided me.

(Barnes Aff. ¶ 7.)

RESPONSE: Plaintiff does not dispute that the text contained in Paragraph 19 was contained in a letter from Barnes to Plaintiff’s counsel. Plaintiff disputes the truth of the contents of the letter, including, *inter alia*, that Marcel Massini is “a recognized worldwide Ferrari authority;” that Massini “keeps detailed records of the history of all the early Ferraris;” and that Massini’s “detailed history of the car” is accurate. See Response to ¶ 6, *supra*. Plaintiff further disputes any suggestion in the letter excerpt that the Automobile was actually stolen in Spain in 1992 (as opposed to merely being reported stolen). See Response to ¶ 1, *supra*. Plaintiff objects to Paragraph 19 on the grounds that it lacks foundation and constitutes hearsay.

PLAINTIFF’S STATEMENT OF ADDITIONAL FACTS PURSUANT TO RULE 56.1

20. Plaintiff Paul “Barney” Hallingby has been a member of the Ferrari community and a collector of rare Ferraris for 15 years. He has owned 10 Ferraris. (Hallingby Aff. ¶ 2.)

21. Prior to the purchase of each of his rare Ferraris, he has conducted a thorough provenance search and title investigation. (Hallingby Aff. ¶ 2.)

22. Conducting a provenance search and title investigation is customary when purchasing rare Ferraris because the value and salability of the vehicles hinges on good title. When title to a rare Ferrari comes into question, the value plummets. (Hallingby Aff. ¶ 3.)

23. The rare Ferrari community is suspicious of, and is reluctant to do business with, anyone who purchases a vehicle with a cloud on its title. (Hallingby Aff. ¶ 3.)

24. In 2000, Hallingby became interested in purchasing a rare, silver colored Ferrari 250 GT Cabriolet, Pinin Farina Series 1, 1957/58 (the Automobile). The Automobile is extremely rare. Only 36 (plus four prototypes) of its model were ever made. At the time, the Ferrari was owned by Scott Rosen. (Hallingby Aff. ¶ 4.)

25. Thomas Daily is an attorney who represented Hallingby with respect to the Connecticut State Police's seizure of the Automobile and the Connecticut State Police's investigation of Hallingby for possession of stolen property. (Affidavit of Thomas V. Daily, dated October 27, 2009 ("Daily Aff.") ¶ 3.)

26. During his representation of Hallingby, Daily retained a Spanish attorney on Hallingby's behalf, who obtained copies of Spanish court documents related to two Spanish court proceedings in the 1990s related to the Automobile. (Daily Aff. ¶ 4.)

27. The first Spanish court ruling, dated March 20, 1993, stayed the court proceeding at the express request of the prosecutor "[s]ince no sufficient elements arose during the legal proceedings to duly justify the perpetration of the alleged crime" (Daily Aff. ¶ 6 & Exhs. A, B.)

28. The second Spanish court ruling, dated November 2, 1995, stated "that the records on file failed to show that any criminal offense has been committed. . . ." (Daily Aff. ¶ 7 & Exhs. C, D.)

29. Daily submitted the two Spanish court rulings with translations to Connecticut State Detective Richard Van Tine and Connecticut State's Attorney David Shepack. (Daily Aff. ¶ 5.)

30. After reviewing these two documents, among others, Connecticut's State Attorney Shepack declined to prosecute Hallingby and the Automobile was returned to Hallingby. (Daily Aff. ¶ 8.)

31. By way of an October 2009 Order, the Connecticut Superior Court acknowledged Hallingby as the "rightful owner" of the Automobile, and decreed that the vehicle "is hereby ordered returned" to Hallingby. (Affidavit of Deborah Drooz, dated October 28, 2009 ("Drooz Aff.") ¶ 19 & Exh. A.)

32. On October 14, 2009, the State of Connecticut returned the Automobile to Hallingby. (Drooz Aff. ¶ 19 & Exh. A at p. 4; Daily Aff. ¶ 8.)

33. Scott Rosen is a Ferrari enthusiast who has been collecting rare Ferraris for 25 year, and owned the Automobile prior to Hallingby. (Rosen Aff. ¶ 2.)

34. Rosen purchased the Automobile in 1994 from a person known in the collector community to be a reputable seller after conducting a thorough title and provenance investigation. Rosen later sold the car and then re-purchased it without encountering any claims or title problems. (Rosen Aff. ¶ 4.)

35. In late 2000, Rosen sold the Automobile to Hallingby. The broker for the sale was Nick Soprano, a well-established and well-respected Ferrari dealer with whom Rosen had done business for roughly twenty years without incident. Prior to purchase, Hallingby, Rosen and Soprano investigated the vehicle's provenance and searched its title. (Rosen Aff. ¶¶ 6, 7; Soprano Aff. ¶¶ 4, 5; Hallingby Aff. ¶ 4.)

36. In the course of the provenance investigation, it came to light that one Andreas Gerber once co-owned the vehicle in the early 1990s and, in 1992, had claimed that it was stolen. Despite the age of the claim and despite the fact that the vehicle had subsequently been purchased without incident by several reputable owners, Hallingby investigated the claim thoroughly. Among other things, Hallingby and Rosen contacted FBI agent, Ken Crook, who specialized in provenance searches to determine whether the claim had any factual basis. (Rosen Aff. ¶ 8; Soprano Aff. ¶¶ 5, 6; Hallingby Aff. ¶¶ 5, 6.)

37. The FBI agent conducted interviews with Ferrari brokers and owners, contacting police agencies abroad and reviewing ownership documents. At the end of the investigation process, the agent informed Rosen that Gerber never registered the vehicle, had no documents to establish ownership and had never obtained a judicial declaration that he was the rightful owner. He also stated that the claim arose out of a civil dispute between Gerber and the vehicle's former co-owner. (Rosen Aff. ¶ 9; Hallingby Aff. ¶ 6.)

38. On the basis of the agent's information, and because no one had ever come forward to challenge Rosen's ownership, Rosen and Hallingby concluded that title in the vehicle was sound and could be legitimately conveyed to Hallingby. They then finalized the sale. (Rosen Aff. ¶ 10; Soprano Aff. ¶ 6; Hallingby Aff. ¶ 6.)

39. After purchasing the Automobile, Hallingby registered it and acquired Connecticut license plates for it. He thereafter owned and exhibited the Automobile openly for roughly 8 years. On at least one occasion a picture of the Automobile appeared in a Ferrari enthusiast's magazine which attributed ownership to him. (Rosen Aff. ¶ 11; Soprano Aff. ¶ 8; Hallingby Aff. ¶ 7.)

40. In 2001, Hallingby entered the Automobile in the Cavallino Classic X Concours show in Florida, which is sponsored by Defendant Cavallino Magazine. In order to enter the Cavallino show, Hallingby had to supply his name (as owner), address in Sharon Connecticut, the Automobile's make, model and serial number (also known as chassis number). The Automobile was accepted into the show. (Rosen Aff. ¶ 11; Soprano Aff. ¶ 7; Hallingby Aff. ¶ 8.)

41. None of Defendants contacted Hallingby prior to publishing the Advertisements to ask him about the Automobile. (Hallingby Aff. ¶ 9.)

42. None of the defendants contacted Rosen, the Automobile's prior owner, before publishing the Advertisements to ask him about the Automobile. (Rosen Aff. ¶ 17.)

43. After Roush and the Letter published the first of the Letter Advertisements, Rosen contacted Roush. Rosen told Roush that the Advertisement could be read to accuse Rosen of selling, and Hallingby of buying, a stolen vehicle -- charges that could seriously damage their reputations in the Ferrari community. Rosen explained that Gerber's theft claim had been investigated, was unsubstantiated and arose from an unrelated civil dispute. Rosen explained that he had purchased the vehicle from a reputable dealer and that Hallingby and Rosen had both done extensive title investigations and had uncovered no evidence to suggest that the vehicle was "stolen." Rosen told Roush that Hallingby had hired a former FBI investigator -- a rare car specialist -- to research the vehicle's provenance and that the investigator concluded that Rosen had good title. (Rosen Aff. ¶ 14.)

44. Roush nonetheless published the Advertisement two more times, in the April 5 and April 19 issues of the Letter. (Roush Aff. ¶ 2 & Exh. 2; Rosen Aff. ¶ 15.)

45. After Barnes and Cavallino published the Magazine Advertisement, Rosen contacted Barnes, and imparted much the same information to Barnes as he had to Roush. (Rosen Aff. ¶ 16.)

46. After Barnes and Cavallino published the Magazine Advertisement, Soprano contacted Barnes and had a similar conversation with Barnes. Soprano questioned why Barnes published the Magazine Advertisement and told him that publishing the Magazine Advertisement hurt the Automobile's owner and the Automobile. (Soprano Aff. ¶¶ 13, 14.)

47. Thereafter, Barnes and Cavallino did not publish the Advertisement again. (Barnes Aff. ¶ 2; Rosen Aff. ¶ 16.)

48. Tom Toldrian is the publisher of Forza, a monthly magazine for Ferrari enthusiasts. (Affidavit of Tom Toldrian, dated October 28, 2009 ("Toldrian Aff.") ¶ 2.)

49. Toldrian declined to publish the Advertisements in Forza after questioning the motives of the persons behind the Advertisements and failing to receive satisfactory answers as to the reasons for placing the Advertisements. Accordingly, Toldrian "made the judgment that the ad was inappropriate for Forza and [its] readers and refused to publish it." (Toldrian Aff. ¶ 3 & Exh. A.)

50. Plaintiff's expert, Edward Finegan, holds a Ph.D. from Ohio University and has been a faculty member at the University of Southern California ("USC") since 1968. He has been a tenured professor of linguistics since 1983 and, since 1996, also teaches in USC's School of Law, where he lectures to first-year students and their instructors on the application of linguistic principles to legal writing. He has written extensively on linguistics and the English language, including book chapters, articles, and books; some of those books are used as standard textbooks in North America, Europe, and Asia. He has served as a referee for numerous scholarly journals

and book publishers, including Oxford University Press, Cambridge University Press, the University of Chicago Press, and the University of Michigan Press. He has served on the editorial boards of university press book series and of scholarly and professional journals, including English Language and Linguistics, American Speech, and Discourse Processes. He is a member of the Linguistic Society of America and the American Dialect Society. He currently serves as a member of the executive board of the Dictionary Society of North America and on standing committees of the Linguistic Society of America. (Affidavit of Edward Finegan, dated October 28, 2009 (“Finegan Aff.”) ¶ 4 & Appendix A.)

51. In the present matter, Professor Finegan opined that readers of the Letter Advertisements would understand that they concerned a “STOLEN FERRARI” and were intended to capture the readers’ attention. (Finegan Aff. ¶ 7.)

52. According to Professor Finegan, the Letter Advertisements make clear that the Ferrari theft is a matter of ongoing police investigation, and provides sufficient identifying information that at least some readers of the Letter Advertisements would likely know exactly which Ferrari was referenced (the Automobile) and the identity of the Ferrari’s owner (Hallingby). (Finegan Aff. ¶ 8.)

53. Professor Finegan opined that readers of the Letter Advertisements would understand that the purpose of the Letter Advertisements was to inform readers that the Automobile’s owner was knowingly in possession of a stolen car or bought a car he knew was stolen. (Finegan Aff. ¶ 12.)

54. Professor Finegan further elucidated that readers could plausibly take the purpose of the Letter Advertisements to be to inform them that the collector in Sharon was knowingly in possession of stolen property. To the extent that readers knew the identity of the

custodian/collector of the “Ferrari 250 GT, Cabriolet, Silver Colored, Pinin Farina, Series 1, 1957/58, Chassis No 0799 GT,” the Letter Advertisements could be interpreted as an attempt to embarrass him publicly. Without expressly naming Hallingby, the Letter Advertisements point to him and seem to presume that at least some readers would know the stolen Ferrari to be in his collection. Given customary due diligence in buying rare cars, a reader who assumed Hallingby bought the Ferrari unknowingly would likely deem him to have bought it foolishly.

Alternatively, a reader assuming Hallingby had undertaken customary due diligence would likely deem him to have bought it feloniously. (Finegan Aff. ¶ 14.)

55. In the summer of 2008, after the Magazine Advertisement and the Letter Advertisements were published, Hallingby attended a number of popular car events. During that period, he saw many friends and acquaintances. Among them were Mike Allesandro, Ron Hein, Joe Hayes, Ron Yagoda, Bill Noon, Miles Morris, Steve Serio, Marc Tauber and others. They told him that they had seen the Advertisements in Cavallino and the Letter. The words they spoke to Hallingby varied, but their comments can be fairly summarized as follows: "Isn't that your car?," "I hope there's no problem," "I was sorry to read about [you/your car]." (Hallingby Aff. ¶ 9.)

56. Hallingby understood from the comments of his friends and acquaintances that those individuals recognized that he was the "Ferrari collector" referred to in the Advertisements and that some readers believed that there was a problem with the Automobile's title. Since everyone in the rare Ferrari community is familiar with the rigorous provenance checks that precede the sale of such vehicles, Hallingby also understood that he was under suspicion for having purchased the Automobile. Those individuals made such comments to Hallingby before the

Connecticut State Police approached him about the Automobile in September of 2008.

(Hallingby Aff. ¶ 10.)

57. When Rosen read the Magazine Advertisement and the Letter Advertisements, there was no doubt in his mind that the “collector” in question was Hallingby. (Rosen Aff. ¶ 12.)

58. When Soprano read the Magazine Advertisement and the Letter Advertisements, he immediately recognized the “stolen Ferrari” as the Automobile, and also recognized the “Ferrari collector in Sharon Connecticut” as Hallingby. (Soprano Aff. ¶¶ 10, 11.)

59. Soprano understood that the Advertisements not only cast doubt on the legitimacy of Hallingby’s rights in the Automobile but also impugned his integrity and honesty by implying that he knowingly purchased a stolen Ferrari. Soprano noted that the Advertisements did not say that the Automobile was “claimed” to be stolen or “reported” stolen. They said the vehicle was in fact stolen. (Soprano Aff. ¶ 12.)

60. Prior to the publication of the Advertisements, no one ever questioned Hallingby’s ownership of the Ferrari. After the Advertisements ran, Hallingby was investigated by the Connecticut State Police. His car was seized. At one point, a detective from the Connecticut State police submitted a warrant for his arrest. He was not arrested and, ultimately, no criminal charges were filed against him. However, for approximately 14 months, he was embroiled in the criminal proceedings surrounding the seizure of the Automobile. He was forced to hire counsel to represent him. As of this date, he has expended approximately \$219,000 in legal fees and costs in connection with those proceedings. (Hallingby Aff. ¶ 11.)

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Respectfully submitted,

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