

**United States Bankruptcy Court, Southern District of New York**

Please select applicable Debtor (select only one Debtor per claim form):

- Gawker Media, LLC (Case No. 16-11700)
- Kinja, Kft. (Case No. 16-11718)
- Gawker Media Group, Inc. (Case No. 16-11719)

**Official Form 410  
Proof of Claim**

4/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor? Mail Media, Inc. d/b/a Mail Online  
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?  No  
 Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	Contact phone <u>(202) 628-7405</u> Contact email <u>joe@clarelocke.com</u>	Contact phone <u>(202) 628-7405</u> Contact email <u>joe@clarelocke.com</u>

4. Does this claim amend one already filed?  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_  
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 1000000. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
  
Litigation Claim (Tort - Defamation)

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.

**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_

**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_

**Amount of the claim that is secured:** \$ \_\_\_\_\_

**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

**Amount entitled to priority:**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

**13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?**

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

**Signature:** Joseph R. Oliveri  
Joseph R. Oliveri (Sep 15, 2016)

**Email:** joe@clarelocke.com

Signature

**Print the name of the person who is completing and signing this claim:**

Name Joseph Ronald Oliveri  
First name Middle name Last name

Title Attorney

Company Clare Locke LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 902 Prince Street  
Number Street

Alexandria VA 22314  
City State ZIP Code

Contact phone (202) 628-7405 Email joe@clarelocke.com

Attach Supporting Documentation (limited to a single PDF attachment that is less than 5 megabytes in size and under 100 pages):

I have supporting documentation.  
(attach below)

I do not have supporting documentation.



PLEASE REVIEW YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTS AND REDACT ACCORDINGLY PRIOR TO UPLOADING THEM. PROOFS OF CLAIM AND ATTACHMENTS ARE PUBLIC DOCUMENTS THAT WILL BE AVAILABLE FOR ANYONE TO VIEW ONLINE.

IMPORTANT NOTE REGARDING REDACTING YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTATION When you submit a proof of claim and any supporting documentation you must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. The responsibility for redacting personal data identifiers (as defined in Federal Rule of Bankruptcy Procedure 9037) rests solely with the party submitting the documentation and their counsel. Prime Clerk and the Clerk of the Court will not review any document for redaction or compliance with this Rule and you hereby release and agree to hold harmless Prime Clerk and the Clerk of the Court from the disclosure of any personal data identifiers included in your submission. In the event Prime Clerk or the Clerk of the Court discover that personal identifier data or information concerning a minor individual has been included in a pleading, Prime Clerk and the Clerk of the Court are authorized, in their sole discretion, to redact all such information from the text of the filing and make an entry indicating the correction.

# Instructions for Proof of Claim

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.  
18 U.S.C. §§ 152, 157 and 3571.

## How to fill out this form

- Fill in all of the information about the claim as of the date the case was filed.
- Fill in the caption at the top of the form.
- If the claim has been acquired from someone else, then state the identity of the last party who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.
- Attach any supporting documents to this form.  
Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)  
Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added. Federal Rule of Bankruptcy Procedure (called “Bankruptcy Rule”) 3001(c) and (d).
- Do not attach original documents because attachments may be destroyed after scanning.
- If the claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.

- A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual’s tax identification number, or financial account number, and only the year of any person’s date of birth. See Bankruptcy Rule 9037.
- For a minor child, fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. See Bankruptcy Rule 9037.

## Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, enclose a stamped self-addressed envelope and a copy of this form. You may view a list of filed claims in this case by visiting the Claims and Noticing Agent’s website at <http://cases.primeclerk.com/gawker>.

## Understand the terms used in this form

**Administrative expense:** Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing the bankruptcy estate.  
11 U.S.C. § 503.

**Claim:** A creditor’s right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy.  
11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Claim Pursuant to 11 U.S.C. §503(b)(9):** A claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim.

**Creditor:** A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy. 11 U.S.C. §101 (10).

**Debtor:** A person, corporation, or other entity who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received. 11 U.S.C. § 101 (13).

**Evidence of perfection:** Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

**Information that is entitled to privacy:** A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

**Priority claim:** A claim within a category of unsecured claims that is entitled to priority under 11 U.S.C. §507(a). These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages.

**Proof of claim:** A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

**Redaction of information:** Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

**Secured claim under 11 U.S.C. §506(a):** A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a).

Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

**Setoff:** Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

**Unsecured claim:** A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

### Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

### Please send completed Proof(s) of Claim to:

Gawker Media, LLC Claims Processing Center  
c/o Prime Clerk LLC  
830 3rd Avenue, 3rd Floor  
New York, NY 10022

**Do not file these instructions with your form**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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**MAIL MEDIA INC. d/b/a MAIL ONLINE,**

**Index No.**

**Plaintiff,**

**VERIFIED COMPLAINT**

**-against-**

**GAWKER MEDIA, LLC and JAMES KING,**

**Defendants.**

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Plaintiff Mail Media Inc. d/b/a *Mail Online*, by and through its attorneys, Nesenoff & Miltenberg, LLP, by way of Verified Complaint against Defendants Gawker Media, LLC and James King alleges as follows:

**NATURE OF THE CASE**

1. This is an action brought by Plaintiff Mail Media Inc. d/b/a *Mail Online* (“The Mail”) against Defendants Gawker Media, LLC (“Defendant Gawker”) and James King (“Defendant King”)(collectively, “Defendants”) for defamation arising out of false and defamatory statements of fact concerning The Mail that Defendants published in two articles headlined “My Year Ripping Off the Web With the Daily Mail Online” on March 4, 2015 (the “March 4 Article”) and March 6, 2015 (the “March 6 Article”) (collectively, the “Articles”).

2. In the Articles, Defendant King purports to describe his experience as a freelance, independent contractor who worked shifts in The Mail’s New York newsroom from May 2013 to July 2014. The Articles, however, are replete with blatant, defamatory falsehoods intended to disparage The Mail and harm its reputation by falsely claiming that The Mail’s business model is

based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information.

3. Specifically, among other false and defamatory statements in the March 4 Article, Defendant King states that “[T]he Mail’s editorial model depends on little more than dishonesty, theft of copyrighted material and sensationalism so absurd that it crosses into fabrication,” that he “saw other publications’ work lifted wholesale” at The Mail, that he “saw basic journalism standards and ethics casually and routinely ignored” at The Mail, that The Mail “ripp[ed] off content from” other publications, that The Mail published “plagiarized” articles and engaged in “dishonest practices,” and that The Mail takes a “buccaneering approach to accuracy and intellectual property.” Defendant King further falsely accuses The Mail of creating an institutional culture of dishonesty and improper attribution by training its employees to deceptively cite sources or to not cite them at all, stating that “[a]s part of [his] initial training session, [he] was told that any link or attribution in an aggregated piece should be placed no higher than the first set of images in the post—which were typically three or four paragraphs in, where a reader might overlook the fact that the information in the preceding paragraphs had no attribution,” and that “[i]f the original report was an article in the *New York Daily News*, a direct competitor of the Mail’s, [he] was sometimes instructed not to give attribution at all.”

4. Defendant King and Defendant Gawker doubled-down on these defamatory falsehoods in the subsequent March 6 Article, repeating them verbatim and making additional false statements that Defendant King was “specifically told ... that [The Mail’s publisher] did not want to see links or attribution any higher than the first three paragraphs” and that Defendant King “was told by the editor who assigned [him] a story not to link to [a source for the aggregated story] because it was a *New York Daily News* article.”



5. Defendants' defamatory statements about The Mail are demonstrably false. Neither The Mail nor its editors condone or encourage—nor have they ever condoned or encouraged—dishonesty, theft of copyrighted material, fabrication, or plagiarism in the reporting, writing, or publishing of articles, and neither The Mail nor its editors train employees or freelance independent contractors to avoid or disguise attributions to source materials. To the contrary, editors and other managerial employees of The Mail trained employees and independent contractors on, among other topics, proper sourcing and attribution, and provide additional instruction to employees and independent contractors—and, when warranted, discipline, including firing—for failure to follow journalistic best practices, including those relating to truthful, accurate reporting and proper attribution and sourcing. Indeed, and ironically, editors at The Mail had to repeatedly remind Defendant King of the need for proper attribution and to add hyperlinks to articles on which he worked during his time performing work for The Mail. In fact, The Mail limited Defendant King's responsibilities after discovering that he plagiarized a draft of an article that he submitted to The Mail. (The Mail editors discovered the plagiarism, addressed the issue, and the plagiarized article was not published.)

6. Defendant King knew full well, including from his first-hand experiences, that his defamatory statements were false when he authored the Articles or, at the very least, he recklessly disregarded the truth of those statements. He made those false statements in order to create and sell an article or articles to a publisher and to earn profits for himself by sensationalizing and fictionalizing events, and to harm The Mail, for which he previously worked in the capacity of an independent contractor. In addition, Defendant King knew about, but purposely avoided, information that he knew would have confirmed the falsity of his statements regarding The Mail before writing the Articles. For example, Erik Wemple, a media

reporter for the Washington Post, shared with Defendant King a letter from The Mail detailing the falsehoods about The Mail that Defendants ultimately published in the Articles, but Defendant King purposefully avoided and/or consciously disregarded the information provided by The Mail in that letter. (Defendant King, before approaching Defendant Gawker, tried to sell his story to the Washington Post, which refused to publish it after contacting The Mail for comment on Defendant King's allegations and receiving The Mail's responses to those allegations.)

7. For its part, Defendant Gawker also knew that those statements were false when it published the Articles or, at the very least, recklessly disregarded the truth of those statements in order to publish a sensational article that would drive traffic to its website and thereby increase its readership and profit (through, *inter alia*, increased ad revenues generated by increased traffic to its website) and to disparage a competitor in the news industry. In addition, Defendant Gawker knew that Defendant King was not a reliable, dependable, or reputable source, Defendant Gawker purposefully avoided and consciously disregarded information that would have confirmed the falsity of its statements regarding The Mail before publishing the Articles to a global audience, and Defendant Gawker has steadfastly refused to retract or correct the false and defamatory statements regarding The Mail despite numerous requests that it do so.

8. The Mail brings this action to vindicate its rights and reputation. As a result of Defendants' defamatory statements, The Mail's reputation, goodwill, and business have been damaged. The Mail has been further damaged by having to expend substantial resources to respond to the false statements, and by having its reputation for lawful and proper business conduct and integrity unfairly impugned to a nationwide (and global) audience, including to its readers, prospective readers, investors, advertisers, business partners, and competitors. Because

of these and other injuries sustained as a result of Defendants' conduct, The Mail is entitled to compensatory, reputational, presumed, and punitive damages in an amount to be determined at trial.

### **THE PARTIES**

9. Plaintiff Mail Media Inc. d/b/a *Mail Online* is a Delaware corporation with its headquarters and principal place of business in New York City, New York County, New York. Mail Media Inc. d/b/a *Mail Online* is an affiliate of DMG Media Limited, a leading global consumer media company, and is the publisher of Mail Online. Since its launch, *Mail Online* has won numerous awards and has grown to become the world's largest news website, with more than 90.8 million unique monthly visitors worldwide and U.S. web traffic of nearly 2 million visitors each day.

10. Defendant Gawker Media, LLC is a limited liability company that is a citizen of, transacts business in, and has its principal place of business in New York City, New York County, New York. The sole member of Defendant Gawker Media, LLC is Defendant Gawker Media Group, Inc., a Cayman Islands corporation that has its principal place of business in New York. Defendant Gawker Media, LLC owns and publishes numerous online weblogs ("blogs"), including Gawker.com, that have a collective audience of tens of millions of readers in the United States. Gawker.com touts itself as a "one-stop guide to media and pop culture," and cavalierly boasts that "Gawker is not ... boring [or] [i]nterested in respectability." Defendant Gawker Media, LLC published two articles headlined "My Year Ripping Off the Web With the Daily Mail Online" on Gawker.com, the first on March 4, 2015, and the second on March 6, 2015.

11. Defendant James King is a natural person, citizen of the United States and resident of the State of New York. Defendant King authored and published two articles headlined “My Year Ripping Off the Web With the Daily Mail Online” on Gawker.com, the first on March 4, 2015, and the second on March 6, 2015.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this suit pursuant to N.Y. Const. Art. VI §§ 7, 11 and N.Y. Jud. Law § 190(3) because Plaintiff’s claims for damages are in excess of \$25,000.

13. This Court has personal jurisdiction over Defendants Gawker Media, LLC. and James King under N.Y. CPLR §§ 301, 302, because Defendants transact business in New York County, because Defendants committed tortious acts in New York County, and because Defendant King is a resident of New York County and Defendant Gawker is domiciled in and has its principal place of business in New York County.

14. Venue is proper in New York County pursuant to N.Y. CPLR § 503 in that Defendant Gawker is located in and has its principal place of business in New York County and Defendant James King is a resident of New York County.

### **FACTUAL ALLEGATIONS**

#### **Defendant King Briefly Works As A Freelance Independent Contractor For The Mail, And Performs Poorly**

15. In May 2013, The Mail and Defendant King entered into an Independent Contractor Agreement whereby The Mail engaged the services of Defendant King on a project-by-project basis, under terms provided in the Independent Contractor Agreement between the parties.

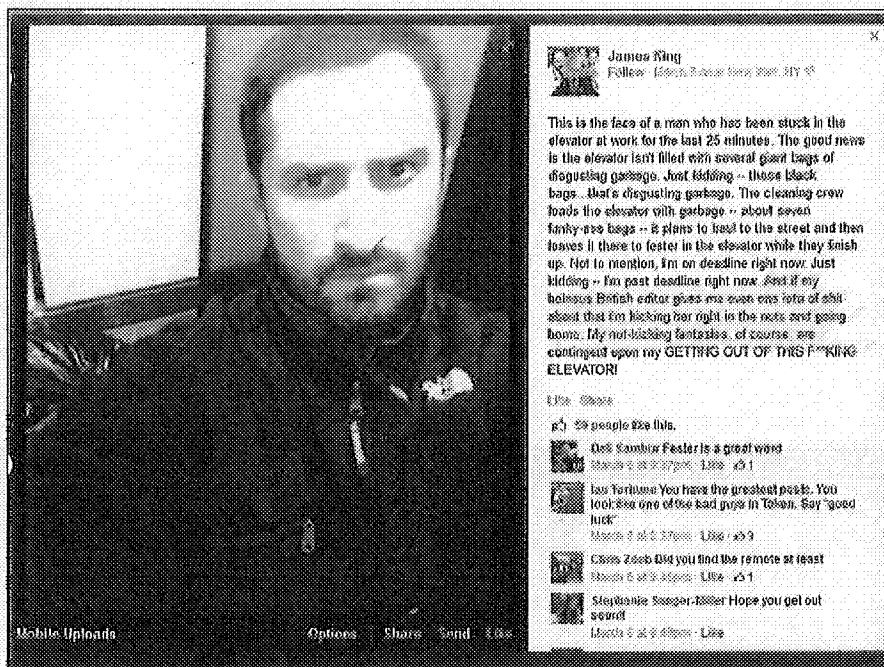
16. Approximately four months after the parties entered the Independent Contractor Agreement, at which time The Mail viewed Defendant King's performance under the Agreement as reasonable, The Mail offered Defendant King a position as a Mail employee, but Defendant King declined the offer. The Mail did not subsequently offer Defendant King a position as a Mail employee. Because Defendant King was a freelance, independent contractor and not a Mail employee, he had no access to staff emails or news lists, and he operated using a freelance account for his copy.

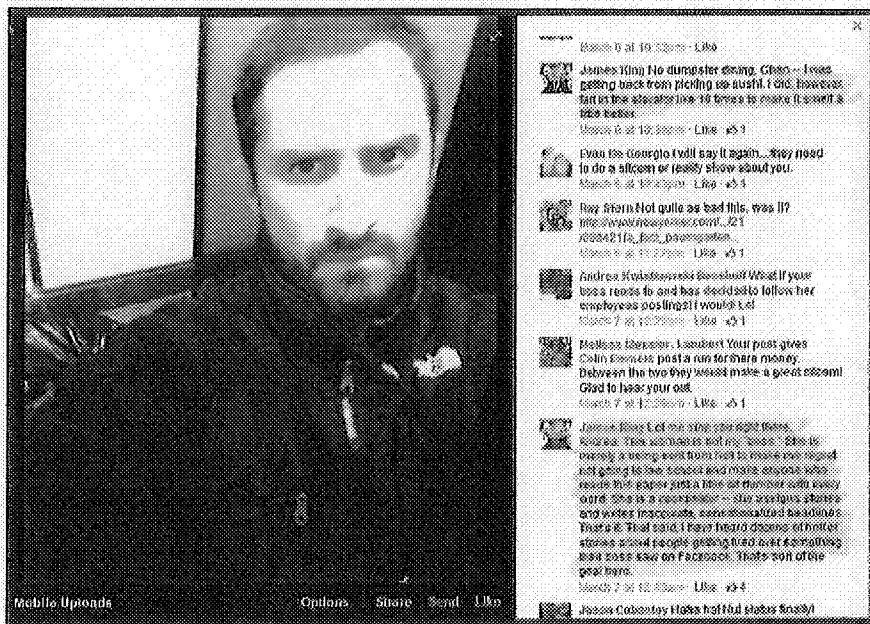
17. After Defendant King declined The Mail's employment offer, his performance significantly deteriorated. Defendant King worked sporadic shifts, primarily on nights and weekends, for The Mail in its New York newsroom. His shift pattern each month was irregular, and some months Defendant King worked as few as four, six, or seven shifts. In addition, Defendant King forgot about and/or did not show up for numerous shifts, and he canceled multiple other shifts on very short notice. For example, within a ten-month span, Defendant King failed to show up for shifts no fewer than fourteen times—including two weekend shifts that he missed after being arrested and detained by police on a bench warrant for traffic-related offenses—and showed up late for multiple other shifts.

18. Notably, Defendant King consistently failed to understand and/or implement proper attribution in his work and lacked the ability to create original work during his time as an independent contractor performing work for The Mail. As such, he had to be repeatedly reminded by Mail editors about the need for proper attribution and the need to add hyperlinks to online articles—errors that other Mail staff needed to, and did, correct. For example, Defendant King plagiarized an article about a U.S. armed unit in Iraq that had been published by the New York Post. (Mail editors caught the plagiarism and addressed the issue, and the plagiarized

article was not published.) Following that incident, The Mail limited Defendant King to primarily processing wire copy to which The Mail had access as a subscriber.

19. Toward the end of his tenure as an independent contractor performing work for The Mail, Defendant King further developed a hostile attitude toward Mail editors. In one instance, he disparaged one of his editors on his public Facebook page and wrote on that page about his “fantasies” of “kicking her right in the nuts and going home” and expressed his desire to be fired:





20. The parties' relationship under the Independent Contractor Agreement ended when Defendant King resigned and terminated the Agreement (without providing the fifteen days' notice required by the Agreement) on July 27, 2014.

**Defendant King Embarks On A Campaign To Defame And Damage The Mail  
By Shopping A False And Defamatory Article To The Washington Post,  
But The Washington Post Refuses To Publish It**

21. Shortly after the termination of the Independent Contractor Agreement between The Mail and Defendant King, Defendant King authored an article purporting to describe his experience as a freelance, independent contractor performing work for The Mail. That article contained many of the same false and defamatory statements about The Mail that the Articles ultimately published by Defendant Gawker and Defendant King contained, including accusations that The Mail, in order to lure readers, commits intellectual property violations, engages in sleazy tactics, routinely publishes inaccurate headlines, has policies against proper attribution and hyperlinking of sources, and condones plagiarism.



22. In August and September 2014, Defendant King approached Erik Wemple, a media reporter for the Washington Post, and shopped the article he had written about his time at The Mail to Mr. Wemple, in an effort to have it published by The Washington Post.

23. On September 10, 2014, Mr. Wemple emailed editors at The Mail to seek comment before deciding whether to publish Defendant King's article. Mr. Wemple explained: "In recent weeks, I've been approached by James King ... about a piece about his tenure at your workplace. Though the piece would appear under his byline, my goal is to publish a fair and accurate story, so I have made clear that everything that he alleges about the MailOnline must be placed before you folks so that you have the opportunity to comment on/rebut the piece."

24. On September 12, 2014, Liz Hartley, the Head of Editorial Legal Services for The Mail, responded to Mr. Wemple's email. Ms. Hartley explained in detail how the accusations in Defendant King's article—which were largely the same as those in the Articles ultimately published by Defendant Gawker and Defendant King—were patently false (and defamatory), and further provided information regarding Defendant King's time as an independent contractor working with The Mail and explained that Defendant King was not a reliable or dependable source. Mr. Wemple shared Ms. Hartley's response to his inquiry with Defendant King.

25. After receiving and reviewing The Mail's response to Defendant King's accusations, Mr. Wemple and The Washington Post decided not to publish Defendant King's article about The Mail.

**Defendants Publish The Articles And  
Thereby Publish False And Defamatory Statements Of Fact About The Mail**

26. Upon information and belief, following the Washington Post's decision not to publish Defendant King's article about The Mail, Defendant King approached Defendant Gawker about publishing his article.



27. On March 4, 2015, Defendant Gawker and Defendant King published an article headlined “My Year Ripping Off the Web With the Daily Mail Online,” causing the false and defamatory statements about The Mail in that article to be published worldwide and recirculated and republished in various media outlets.

28. Two days later, on March 6, 2015, Defendant Gawker and Defendant King published a second article bearing the same headline that reprinted the March 4 Article in its entirety (thereby republishing it to a new audience) and added to it a partial statement from The Mail and a “response” to that statement from Defendant King that doubled-down on his false and defamatory statements about The Mail and made additional false and defamatory statements about it.

29. In the March 4 Article, Defendant King purports to describe his experience as a freelance, independent contractor who worked shifts in The Mail’s New York newsroom, and falsely claims to have observed an institution where plagiarism, dishonesty, and fabrication were not only condoned but systematically encouraged. In so doing, Defendant King makes a number of false and defamatory statements regarding The Mail, including the following statements:

- “[T]he Mail’s editorial model depends on little more than dishonesty, theft of copyrighted material and sensationalism so absurd that it crosses into fabrication.”
- “In a little more than a year of working in the Mail’s New York newsroom, I saw basic journalism standards and ethic casually and routinely ignored. I saw other publications’ work lifted wholesale. I watched editors at the most highly trafficked English-language online newspaper in the world publish information they knew to be inaccurate.”
- “Unlike at other publications for which I’ve worked, writers weren’t tasked with finding their own stories or calling sources. We were simply given stories written by other publications and essentially told to rewrite them. And unlike at other publications where aggregation writers are encouraged to find a unique angle or to add some information missing from an original report, the

way to make a story your own at the Mail is to pass off someone else's work as your own."

- "I figured that with the Mail's growing popularity it must now be holding itself to a higher journalistic standard. ... That excitement quickly faded when it became clear that the only thing about the Mail's ethics that had changed was that it now attempted to disguise its plagiarism as aggregation. It was the same Mail, just bigger."
- "As part of my initial training session, I was told that any link or attribution in an aggregated piece should be placed no higher than the first set of images in the post—which were typically three or four paragraphs in, where a reader might overlook the fact that the information provided in the preceding paragraphs had no attribution. If the original report was an article in the New York Daily News, a direct competitor of the Mail's, I was sometimes instructed to not give attribution at all."
- "Often enough, the only original information the Mail would contribute to the story would be an error or some sensationalized misrepresentation of facts."
- "The Mail, for its part, was busy ripping off content from the old models."
- "Its [The Mail's] buccaneering approach to accuracy and intellectual property has gotten a significant amount of media attention over the years. In fact, the Mail had plagiarized an article I had written while working at another publication."

30. These statements were designed to defame, and had the effect of defaming, The Mail by falsely stating and implying that The Mail's business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information.

31. Defendant King then repeated and republished these false statements in the March 6 Article, and, in the guise of a supposed "response" to The Mail's explanations of how Defendant King's statements about it were false, doubled-down on his statements about The Mail and added to his false narrative by further falsely stating that he was "specifically told ... that [The Mail's publisher] did not want to see links or attribution any higher than the first three paragraphs," that "the general rule is to keep links below the first set of images," and that he

“was told by the editor who assigned [him] a story not to link to it [a source] because it was a New York Daily News article.”

32. Through these false statements in the March 4 and March 6 Articles, Defendants knowingly and intentionally created the false and misleading impression that The Mail, systematically and with the encouragement of its management and editors, illegally and improperly misappropriates intellectual property, intentionally publishes false and inaccurate information, condones and encourages plagiarism, and is otherwise not a competent member of its industry.

33. Those statements, which identify The Mail by name, are of and concerning The Mail, and Defendants published them knowing that they referred to The Mail.

34. The reading public would have understood, and did understand, the statements to be of and concerning The Mail.

**Defendants’ Statements In The Articles  
Are False and Defamatory *Per Se***

35. Defendants’ defamatory statements about The Mail are demonstrably false. Contrary to Defendants’ statements and implications, The Mail’s business model is *not* based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information, and neither The Mail, nor its management or editors condone or encourage dishonesty, theft of copyrighted material, fabrication, or plagiarism in the reporting, writing, or publishing of articles. Rather, The Mail requires strict adheres to journalistic best practices, including those relating to truthful, accurate reporting and proper attribution and sourcing.

36. Similarly, Defendant King’s claims that The Mail, through training sessions, instructs employees and independent contractors performing work for The Mail to hide links and

attributions “where a reader might overlook the fact that the information provided in the preceding paragraphs had no attribution” and instructs them that “[i]f [an] original report was an article in the New York Daily News ... to not give attribution at all” are likewise patently false. Rather, Mail editors and employees who conduct training sessions for employees of and independent contractors performing work for The Mail, repeatedly emphasize the need to accurately report information, properly attribute materials to their sources, to respect copyrights, and to include hyperlinks to online sources throughout articles, including in the opening paragraphs of articles where appropriate.

37. Indeed, Defendant King is well aware of The Mail’s policies and training regarding these topics, including proper attribution, as Defendant King attended such trainings and was reminded on multiple occasions by multiple persons of the need to properly attribute sources, following his failures to do so.

38. Defendants’ statements regarding The Mail in the Articles are defamatory *per se* because they accuse The Mail of “theft” and thereby falsely impute criminal conduct to The Mail.

39. Defendants’ statements regarding The Mail in the Articles are also defamatory *per se* because their statements would tend to expose, and indeed have exposed, The Mail to public contempt, ridicule, aversion, or disgrace.

40. Defendants’ statements regarding The Mail in the Articles are also defamatory *per se* because their statements would tend to harm, and indeed have harmed, The Mail in its trade, business, and profession, and would tend to assail, and indeed have assailed, The Mail’s integrity and business methods.

**Defendant King Made His False And Defamatory Statements  
Regarding The Mail With Actual Malice**

41. In publishing his false and defamatory statements about The Mail, Defendant King acted with actual malice. Defendant King knew that his statements about The Mail in the Articles were false and he published them knowing that they were false or, at the very least, Defendant King acted in reckless disregard of the truth or falsity of those statements when he published them in the Articles because he recklessly disregarded, or at minimum purposefully avoided, truthful information and written warnings rebutting his false statements.

42. Defendant King knew from his first-hand experience working with The Mail as an independent contractor that his statements in the Articles—and his implications that The Mail’s business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information—are false.

43. In addition, Mr. Wemple shared with Defendant King an email letter from The Mail (*see supra* Paragraphs 5, 21-23) detailing the falsehoods about The Mail in the draft article that Defendant King had submitted to him, but Defendant King consciously ignored and deliberately disregarded the information provided by The Mail in that letter and stood by and repeated those false and defamatory statements in the Articles.

44. Upon information and belief, Defendant Gawker also shared with Defendant King a March 4, 2015 letter from The Mail detailing the falsehoods about The Mail in what would become the March 4 Article (before Defendants published that article), but Defendant King consciously ignored and deliberately disregarded the information provided by The Mail in that letter and stood by his false and defamatory statements.

45. Defendant Gawker further shared with Defendant King a March 5, 2015 letter from The Mail detailing falsehoods about The Mail in the March 4 Article, but Defendant King

consciously ignored and deliberately disregarded the information provided by The Mail in that letter, stood by his false and defamatory statements, and doubled down on them, repeating and defending them—and making additional false and defamatory statements—in the March 6 Article.

46. Upon information and belief, Defendant Gawker shared with Defendant King numerous letters from The Mail (*see infra* Paragraphs 50-53) detailing falsehoods about The Mail in the Articles (and requesting retraction or correction of those falsehoods), but Defendant King consciously ignored and deliberately disregarded the information provided by The Mail in those letters and stood by his false and defamatory statements.

47. Defendant King knew his statements about The Mail were false—or he published them with reckless disregard for their truth or falsity—in order to create and sell an article or articles to a publisher and earn profits for himself by sensationalizing and fictionalizing events and to harm The Mail, for which he previously worked in the capacity of an independent contractor.

**Defendant Gawker Made Its False And Defamatory Statements  
Regarding The Mail With Actual Malice**

48. In publishing its false and defamatory statements about The Mail, Defendant Gawker acted with actual malice. Defendant Gawker knew that the statements about The Mail in the Articles were false and it published them knowing that they were false, or, at the very least, Defendant Gawker acted in reckless disregard of the truth or falsity of those statements when it published those statements in the Articles because it recklessly disregarded, or at minimum purposefully avoided, truthful information and written warnings rebutting its false statements.

49. Upon information and belief, Defendant King shared with Defendant Gawker the email letter from The Mail to Mr. Wemple (which Mr. Wemple had shared with Defendant

King) detailing the falsehoods about The Mail in the draft article that Defendant King had submitted to Mr. Wemple—many of which were repeated in the articles that Defendant Gawker published—but Defendant Gawker consciously ignored and deliberately disregarded the information provided by The Mail in that letter and stood by and published those false and defamatory statements in the Articles.

50. The Mail also sent multiple letters to Defendant Gawker identifying the statements about The Mail in the Articles as false and defamatory and explaining why they are false and defamatory—both before and after Defendant Gawker published the Articles—but Defendant Gawker consciously ignored and deliberately disregarded the information provided by The Mail in those letters.

51. For example, The Mail sent a letter to Defendant Gawker on March 4, 2015—*before* Defendant Gawker published what would become the March 4 Article—detailing the falsehoods about The Mail in the article and explaining that Defendant King is not a reliable, dependable, or reputable source (and requesting that the article not be published), but Defendant Gawker consciously ignored and deliberately disregarded the information provided by The Mail in that letter—and deliberately chose not to respond to that letter before publishing the article.

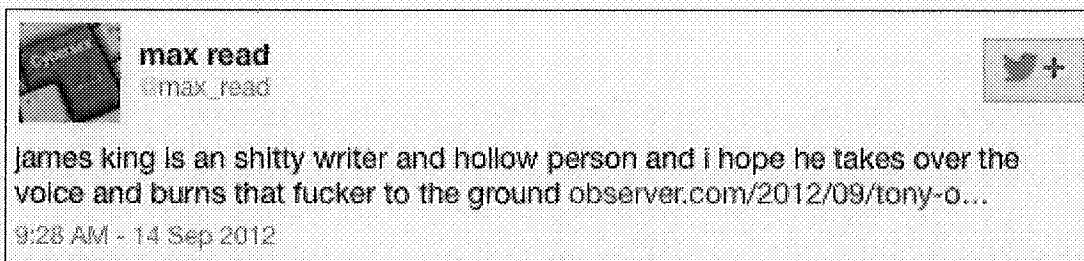
52. The next day, on March 5, 2015, The Mail sent no fewer than three letters to Defendant Gawker—to Defendant Gawker’s in-house and outside counsel, its then-editor-in-chief, and its founder and managing editor—detailing, again, the falsehoods about The Mail in the Articles (and requesting retraction or correction of those falsehoods) and explaining, again, that Defendant King is not a reliable, dependable, or reputable source, but Defendant Gawker, again, consciously ignored and deliberately disregarded the information provided by The Mail in those letters. And, further demonstrating that Defendant Gawker acted with actual malice in

publishing the articles, rather than taking corrective action by retracting or correcting the false and defamatory statements in the March 4 Article, Defendant Gawker reacted by doubling-down on those defamatory statements, repeating and republishing them to a new audience in the March 6 article and supplementing them with additional false and defamatory statements about The Mail.

53. Yet again, on March 6, 2015, after Defendant Gawker published the March 6 Article, The Mail sent no fewer than three letters to Defendant Gawker—to Defendant Gawker’s in-house counsel, its then-editor-in-chief, and its founder and managing editor—explaining, yet again that the Articles contained numerous false and defamatory statements about The Mail and that Defendant King is not a reliable, dependable, or reputable source (and asking, yet again, for Defendant Gawker to retract or correct its false and defamatory statements about The Mail). However, Defendant Gawker again refused to retract or correct those statements, thereby demonstrating that Defendant Gawker published those statements with actual malice.

54. Defendant Gawker also knew that Defendant King was not a reliable, dependable, or reputable source or author and had reason to question the accuracy of his Articles about The Mail but consciously chose not to investigate Defendant King’s accusations about The Mail in those Articles. That Defendant Gawker knew that Defendant King was not a reliable, dependable, or reputable source or author and that it had reason to question the accuracy of his Articles is demonstrated by, *inter alia*, the fact that Max Read, Defendant Gawker’s Editor-in-Chief at the time Defendant Gawker published the Articles, had previously stated in a Twitter post that “[J]ames [K]ing is an shitty writer and hollow person”:





55. Defendant Gawker knew that its statements about The Mail were false—or it published them with reckless disregard for their truth or falsity—in order to publish a sensational article that would drive traffic to its website and thereby increase its readership and profit (through, *inter alia*, increased ad revenues generated by increased traffic to its website) and to disparage a competitor in the news industry. Indeed, and further evidencing Defendant Gawker’s actual malice and common law malice, Defendant Gawker has published numerous articles disparaging The Mail.

56. Moreover, because of the explosive and sensational nature of the allegations against The Mail in the Articles—allegations of which Defendant Gawker was aware through its work with Defendant King—and because The Mail informed Defendant Gawker, through multiple letters, that statements about it were false, Defendant Gawker had an obligation to conduct additional research to confirm the truth of those statements. Notwithstanding that obligation, Defendant Gawker purposefully avoided the very information that demonstrated the falsity of its statements. Defendant Gawker purposefully avoided contacting The Mail for comment, for an interview, to fact-check its statements about The Mail, or to confirm any of the statements made in the Articles because it knew doing so would provide information rebutting its false narrative that The Mail’s business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information. Defendant Gawker’s inaction was deliberate—it purposefully avoided taking these

steps to avoid acquiring facts that it knew would confirm the falsity of Defendants' claims concerning The Mail.

57. Indeed, and further demonstrating Defendant Gawker's systematic, conscious disregard for the truth and conscious awareness of the high likelihood that it would report false and defamatory information—including in the Articles—Nick Denton, Defendant Gawker's founder and managing editor of Gawker.com has expressly (and candidly) admitted that Gawker.com “has been out of control of editorial management” and “need[s] a codification of editorial standards.” Moreover, and yet further demonstrating Defendant Gawker's conscious disregard for the truth, despite Mr. Denton's admissions, Defendant Gawker has not addressed either issue he identified.

58. Defendant Gawker thus published the Articles knowing that the statements concerning The Mail were false or, at the very least, with reckless disregard for their falsity. Defendant Gawker continues to refuse to correct or retract its defamatory statements about The Mail.

**The Articles' False and Defamatory Statements Were  
Republished By Various Media Outlets**

59. The false and defamatory statements contained in the Articles were republished by various media outlets online, magnifying the harm to The Mail.

60. This republication was reasonably foreseeable to Defendants, and in fact, Defendants intended this result. Defendants hoped that the more press the Articles received, the more viewers they could drive to Defendant Gawker's website (thereby increasing Defendant Gawker's profits, the value of Defendant King's article, and Defendant King's prospects for publishing additional articles in the future) and the more damage they could do to The Mail.

61. For example, a March 5, 2015 article published by The Guardian repeated Defendants' false and defamatory statements that "The Mail's editorial model depends on little more than dishonesty, theft of copyrighted material and sensationalism so absurd that it crosses into fabrication," that The Mail "casually and routinely ignored" "basic journalism standards," that The Mail "lifted wholesale" "other publications' work," that the editors of The Mail "publish[ed] information they knew to be inaccurate," that The Mail takes a "buccaneering approach to accuracy and intellectual property," that The Mail "disguis[ed] plagiarism as aggregation" and "was guilty of inaccuracies," and that The Mail was "beyond shameless."

62. A post published on The Click on March 5, 2015 similarly repeated Defendants' false and defamatory statement that "[T]he Mail's editorial model depends on little more than dishonesty, theft of copyrighted material and sensationalism so absurd that it crosses into fabrication," and linked to Defendants' March 4 Article.

63. Similarly, on March 6, 2015, the Ethical Journalism Network repeated in its Newsletter Defendants' false and defamatory claim that The Mail engages in "plagiarising and sensationalising news stories from other publications," and linked to Defendants' March 6 Article.

64. And, as evidence that persons who read the Articles believed the defamatory statements about The Mail to be true, on March 5, 2015, The Mail's Wikipedia page was edited to include the following statement, citing the March 4 Article: "In 2015, James King, who left the MailOnline after a year as a reporter, said that the editorial model of the Mail depends on 'dishonesty, theft of copyrighted material, and sensationalism so absurd that it crosses into fabrication.' King worked as a contractor, and declined a full-time job because he did not want to put his byline on his stories."

**AS AND FOR A FIRST CAUSE OF ACTION-DEFAMATION**  
**FOR PUBLICATION OF THE MARCH 4 ARTICLE**  
**(AGAINST BOTH DEFENDANTS)**

65. Plaintiff repeats and re-alleges each of the foregoing paragraphs as if set forth fully herein.

66. Defendants authored and published false and defamatory statements about The Mail in the March 4 Article.

67. The statements in the March 4 Article defamed and disparaged The Mail by falsely accusing The Mail of engaging in criminal conduct—namely, “theft”—and by falsely claiming that The Mail’s business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information.

68. The March 4 Article, which was published on March 4, 2015 to a nationwide (and global) audience—and is still available on Gawker.com—contains the following defamatory statements:

- “[T]he Mail’s editorial model depends on little more than dishonesty, theft of copyrighted material and sensationalism so absurd that it crosses into fabrication.”
- “In a little more than a year of working in the Mail’s New York newsroom, I saw basic journalism standards and ethics casually and routinely ignored. I saw other publications’ work lifted wholesale. I watched editors at the most highly trafficked English-language online newspaper in the world publish information they knew to be inaccurate.”
- “Unlike at other publications for which I’ve worked, writers weren’t tasked with finding their own stories or calling sources. We were simply given stories written by other publications and essentially told to rewrite them. And unlike at other publications where aggregation writers are encouraged to find a unique angle or to add some information missing from an original report, the way to make a story your own at the Mail is to pass off someone else’s work as your own.”

- “I figured that with the Mail’s growing popularity it must now be holding itself to a higher journalistic standard. ... That excitement quickly faded when it became clear that the only thing about the Mail’s ethics that had changed was that it now attempted to disguise its plagiarism as aggregation. It was the same Mail, just bigger.”
- “As part of my initial training session, I was told that any link or attribution in an aggregated piece should be placed no higher than the first set of images in the post—which were typically three or four paragraphs in, where a reader might overlook the fact that the information provided in the preceding paragraphs had no attribution. If the original report was an article in the New York Daily News, a direct competitor of the Mail’s, I was sometimes instructed to not give attribution at all.”
- “Often enough, the only original information the Mail would contribute to the story would be an error or some sensationalized misrepresentation of facts.”
- “The Mail, for its part, was busy ripping off content from the old models.”
- “Its [The Mail’s] buccaneering approach to accuracy and intellectual property has gotten a significant amount of media attention over the years. In fact, the Mail had plagiarized an article I had written while working at another publication.”

69. These statements were meant to, and in fact did, create the false and misleading impression that The Mail engages in illegal acts of “theft” and that The Mail’s business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information.

70. These statements are reasonably understood to be statements of fact regarding The Mail and were reasonably understood by those reading them to be statements of fact regarding The Mail.

71. These statements are false.

72. These statements are of and concerning The Mail. Indeed, The Mail is repeatedly mentioned in the statements by name.

73. The reading public would have understood, and did understand, the statements to be of and concerning The Mail.

74. Defendants had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

75. The statements are defamatory *per se* because they falsely impute criminal conduct to The Mail and falsely accuse The Mail of committing the crime of theft.

76. The statements are defamatory *per se* because they would tend to expose, and indeed have exposed, The Mail to public contempt, ridicule, aversion, or disgrace.

77. The statements are defamatory *per se* because they would tend to harm, and indeed have harmed, The Mail in its trade, business, and profession, and would tend to assail, and indeed have assailed, The Mail's integrity and business methods.

78. Defendants published these statements with actual malice in that they had knowledge that these statements were false, or they published the statements with reckless disregard for their truth or falsity. Defendants did so in order to publish a sensational article from which Defendant King would profit, that would drive traffic to Defendant Gawker's website and thereby increase Defendant Gawker's readership and profit (through, *inter alia*, increased ad revenues generated by increased traffic to its website), and that would disparage The Mail, a competitor of Defendant Gawker in the news industry and the company for which Defendant King previously worked as an independent contractor.

79. Defendants published these statements with actual malice in that they purposefully avoided and recklessly disregarded information provided by The Mail on multiple occasions demonstrating the falsity of those statements.

80. Defendants published these statements with actual malice in that they have continued to make and keep them available to a worldwide audience on Gawker.com even after receiving multiple written warnings from The Mail that the statements are false. As a result of these multiple written warnings, Defendants entertained serious doubts as to the truth of their statements or had a high degree of awareness of their probable falsity. Defendants recklessly disregarded the multiple written warnings it received from The Mail that their statements are false.

81. Defendants failed and refused to retract or correct their false and defamatory statements after The Mail informed them of the falsity of those statements, thereby further demonstrating that they published those statements with actual malice.

82. Defendant Gawker also knew that Defendant King was not a reliable, dependable, or reputable source or author and had reason to question the accuracy of the March 4 Article about The Mail but consciously chose not to investigate Defendant King's accusations about The Mail in that Article, and thereby acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible publishers.

83. Defendant Gawker also knew at the time it published the March 4 Article that Gawker.com was and "ha[d] been out of control of editorial management" and "need[ed] a codification of editorial standards," and that, as such, there was a high likelihood that it would report false and defamatory information—including in the March 4 Article. Defendant Gawker consciously ignored and deliberately disregarded that high likelihood that it would report false and defamatory information—including in the March 4 Article.

84. Defendants published the false and defamatory statements in the March 4 Article with common law malice toward The Mail and with the specific intent to cause damage to The Mail. Defendants' malice and intent are evident from, among other things, their refusal to correct or retract their false statements despite being informed of their falsity by The Mail multiple times, both before and after Defendants' publication of the statements.

85. As a result of the false and defamatory statements published by Defendants, The Mail's reputation as an ethical, upstanding, and law-abiding company has been impugned.

86. As a result of the false and defamatory statements published by Defendants, The Mail's relationship with current and potential readers, investors, advertisers, and business partners have been undermined and adversely affected.

87. As a result of the false and defamatory statements published by Defendants, confidence in The Mail's business has been undermined and The Mail has suffered a loss of goodwill.

88. As a result of the false and defamatory statements published by Defendants, The Mail has been forced to make an expenditure of money to remedy the defamation.

89. As a result of the false and defamatory statements published by Defendants, The Mail has been exposed to public hatred, ridicule, and contempt.

90. As a result of the false and defamatory statements published by Defendants, The Mail has suffered economic damage.

91. In view of the foregoing, The Mail is entitled to compensatory, punitive, and other damages in an amount to be specifically determined at trial.



**AS AND FOR A SECOND CAUSE OF ACTION – DEFAMATION**  
**FOR PUBLICATION OF THE MARCH 6 ARTICLE**  
**(AGAINST BOTH DEFENDANTS)**

92. Plaintiff repeats and re-alleges each of the foregoing paragraphs as if set forth fully herein.

93. Defendants authored and published false and defamatory statements about The Mail in the March 6 Article.

94. The statements in the March 6 Article defamed and disparaged The Mail by falsely accusing The Mail of engaging in criminal conduct—namely, “theft”—and by falsely claiming that The Mail’s business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information.

95. The March 6 Article, which was published on March 6, 2015 to a nationwide (and global) audience—and is still available on Gawker.com—contains the following defamatory statements:

- “[T]he Mail’s editorial model depends on little more than dishonesty, theft of copyrighted material and sensationalism so absurd that it crosses into fabrication.”
- “In a little more than a year of working in the Mail’s New York newsroom, I saw basic journalism standards and ethics casually and routinely ignored. I saw other publications’ work lifted wholesale. I watched editors at the most highly trafficked English-language online newspaper in the world publish information they knew to be inaccurate.
- “Unlike at other publications for which I’ve worked, writers weren’t tasked with finding their own stories or calling sources. We were simply given stories written by other publications and essentially told to rewrite them. And unlike at other publications where aggregation writers are encouraged to find a unique angle or to add some information missing from an original report, the way to make a story your own at the Mail is to pass off someone else’s work as your own.”

- “I figured that with the Mail’s growing popularity it must now be holding itself to a higher journalistic standard. ... That excitement quickly faded when it became clear that the only thing about the Mail’s ethics that had changed was that it now attempted to disguise its plagiarism as aggregation. It was the same Mail, just bigger.”
- “As part of my initial training session, I was told that any link or attribution in an aggregated piece should be placed no higher than the first set of images in the post—which were typically three or four paragraphs in, where a reader might overlook the fact that the information provided in the preceding paragraphs had no attribution. If the original report was an article in the New York Daily News, a direct competitor of the Mail’s, I was sometimes instructed to not give attribution at all.”
- “Often enough, the only original information the Mail would contribute to the story would be an error or some sensationalized misrepresentation of facts.”
- “The Mail, for its part, was busy ripping off content from the old models.”
- “Its [The Mail’s] buccaneering approach to accuracy and intellectual property has gotten a significant amount of media attention over the years. In fact, the Mail had plagiarized an article I had written while working at another publication.”
- “Finally, my training. I was trained by Louise Boyle, who specifically told me that Martin Clarke did not want to see links or attribution any higher than the first three paragraphs. This is, obviously, not universal—sometimes links appear higher, and sometimes lower. But the general rule is to keep links below the first set of images.”
- “On two occasions I remember specifically, I was told by the editor who assigned me a story not to link to it because it was a New York Daily News article. The rumor is that Clarke has a deep-seated hatred of the Daily News for poaching some of his employees. I can’t verify that, but that’s the rumor.

96. These statements were meant to, and in fact did, create the false and misleading impression that The Mail engaged in illegal acts of “theft” and that The Mail’s business model is based on the systematic misappropriation of intellectual property, plagiarism of other news outlets, and publication of false and inaccurate information.

97. These statements are reasonably understood to be statements of fact regarding The Mail and were reasonably understood by those reading them to be statements of fact regarding The Mail .

98. These statements are false.

99. These statements are of and concerning The Mail. Indeed, The Mail is repeatedly mentioned in the statements by name.

100. The reading public would have understood, and did understand, the statements to be of and concerning The Mail.

101. Defendants had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

102. The statements are defamatory *per se* because they falsely impute criminal conduct to The Mail and falsely accuse The Mail of committing the crime of theft.

103. The statements are defamatory *per se* because they would tend to expose, and indeed have exposed, The Mail to public contempt, ridicule, aversion, or disgrace.

104. The statements are defamatory *per se* because they would tend to harm, and indeed have harmed, The Mail in its trade, business, and profession, and would tend to assail, and indeed have assailed, The Mail's integrity and business methods.

105. Defendants published these statements with actual malice in that they had knowledge that these statements were false or they published the statements with reckless disregard for their truth or falsity. Defendants did so in order to publish a sensational article from which Defendant King would profit, that would drive traffic to Defendant Gawker's website and thereby increase Defendant Gawker's readership and profit (through, *inter alia*, increased ad revenues generated by increased traffic to its website), and that would disparage

The Mail, a competitor of Defendant Gawker in the news industry and the company for which Defendant King previously worked as an independent contractor.

106. Defendants published these statements with actual malice in that they purposefully avoided and recklessly disregarded information provided by The Mail on multiple occasions demonstrating the falsity of those statements.

107. Defendants published these statements with actual malice in that they have continued to make and keep them available to a worldwide audience on Gawker.com even after receiving multiple written warnings from The Mail that the statements are false. As a result of these multiple written warnings, Defendants entertained serious doubts as to the truth of their statements or had a high degree of awareness of their probable falsity. Defendants recklessly disregarded the multiple written warnings it received from The Mail that their statements are false.

108. Defendants failed and refused to retract or correct their false and defamatory statements after The Mail informed them of the falsity of those statements, thereby further demonstrating that they published those statements with actual malice.

109. Defendant Gawker also knew that Defendant King was not a reliable, dependable, or reputable source or author and had reason to question the accuracy of the March 6 Article about The Mail but consciously chose not to investigate Defendant King's accusations about The Mail in that Article, and thereby acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible publishers.

110. Defendant Gawker also knew at the time it published the March 6 Article that Gawker.com was and "ha[d] been out of control of editorial management" and "need[ed] a

codification of editorial standards,” and that, as such, there was a high likelihood that it would report false and defamatory information—including in the March 6 Article. Defendant Gawker consciously ignored and deliberately disregarded that high likelihood that it would report false and defamatory information—including in the March 6 Article.

111. Defendants published the false and defamatory statements in the March 6 Article with common law malice toward The Mail and with the specific intent to cause damage to The Mail. Defendants’ malice and intent are evident from, among other things, their refusal to correct or retract their false statements despite being informed of their falsity by The Mail multiple times, both before and after Defendants’ publication of the statements.

112. As a result of the false and defamatory statements published by Defendants, The Mail’s reputation as an ethical, upstanding, and law-abiding company has been impugned.

113. As a result of the false and defamatory statements published by Defendants, The Mail’s relationship with current and potential readers, investors, advertisers, and business partners have been undermined and adversely affected.

114. As a result of the false and defamatory statements published by Defendants, confidence in The Mail’s business has been undermined and The Mail has suffered a loss of goodwill.

115. As a result of the false and defamatory statements published by Defendants, The Mail has been forced to make an expenditure of money to remedy the defamation.

116. As a result of the false and defamatory statements published by Defendants, The Mail has been exposed to public hatred, ridicule, and contempt.

117. As a result of the false and defamatory statements published by Defendants, The Mail has suffered economic damage.

118. In view of the foregoing, The Mail is entitled to compensatory, punitive, and other damages in an amount to be specifically determined at trial.

119. Defendants' conduct warrants the imposition of punitive damages. The factors justifying punitive damages include, at a minimum, the following:

- Defendant King knowingly made false and defamatory statements about The Mail;
- Defendant King knew that these false and defamatory statements about The Mail would damage its business, goodwill, and reputation;
- Defendant King published the statements despite this knowledge in an effort to sell an article or articles to a publisher and enrich himself, and to disparage a company for which he previously worked as an independent contractor;
- Defendant King acted with a high degree of moral turpitude and wanton dishonesty in publishing these statements about The Mail;
- Defendant Gawker intentionally ignored, purposefully avoided, and recklessly disregarded information available to it that rebutted the false statements about The Mail;
- Defendant Gawker acted with knowledge that its statements were false, or with reckless disregard for the statements' truth or falsity;
- Defendant Gawker published the defamatory statements about The Mail in an effort to publish a sensational article that would drive traffic to its website and thereby increase its readership and profit (through, *inter alia*, increased ad revenues generated by increased traffic to its website) and to disparage a competitor in the news industry.
- Defendant Gawker acted with a high degree of moral turpitude and wanton dishonesty in publishing these statements about The Mail;
- Defendant Gawker knew that publishing these statements about The Mail would have damaging impact on its business, goodwill, and reputation; and
- Despite learning, even prior to publication of the Articles that the statements about The Mail were and are false and defamatory, Defendants have refused to retract or correct these false statements and have instead continued to make them available to a worldwide audience online on Gawker.com.

120. In view of the foregoing, The Mail is entitled to compensatory, punitive, and other damages in an amount to be specifically determined at trial.

**PRAYER FOR RELIEF**


**WHEREFORE**, for the foregoing reasons, Plaintiff demands judgment against Defendants as follows:

- (i) On the first cause of action against Defendants, compensatory and punitive damages in an amount to be determined at trial plus interest, attorneys' fees, expenses, costs and disbursements; and
- (ii) On the second cause of action against Defendants, compensatory and punitive damages in an amount to be determined at trial plus interest, attorneys' fees, expenses, costs and disbursements; and
- (iii) Awarding Plaintiff such other and further relief as the Court may deem just and proper.

**Dated: New York, New York  
September 2, 2015**

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**-and-**

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