

sells in Shelby County, Tennessee, and in other communities and locations worldwide.

7. This cause of action arises in Shelby County, Tennessee.

8. Jurisdiction of this cause of action lies in this court under 28 U.S. C. § 1332.

9. Venue of this cause of action is laid in this court pursuant to 28 U. S. C. § 1391.

Allegations of Fact

10. In 2003, Malmquist resided in the Los Angeles area. He was a pilot employed by Federal Express Corporation (“FedEx”). He met Danielle Nicolosi in January, 2003, and began a relationship with her which resulted in their marriage.

11. Malmquist and Danielle Malmquist moved to the Memphis, Tennessee area, where the world headquarters of FedEx is located, because Malmquist received a transfer in connection with his employment.

12. Two children were born to Malmquist and Danielle Malmquist, the first while they resided in California and the second after they moved to Tennessee.

13. In March, 2005, Malmquist filed for divorce against Danielle Malmquist in Shelby County, Tennessee, alleging that she had engaged in inappropriate marital conduct, based upon incidents of physical violence and abuse against him and bizarre conduct toward him and the children.

14. Malmquist was granted a divorce in July, 2007. Both before and after the divorce was granted, Danielle Malmquist brought criminal charges against Malmquist on more than twelve occasions, alleging facts which, upon investigation, proved to be false. None of her criminal charges against Malmquist, some of which were very serious, resulted in any arrest or prosecution of Malmquist.

15. In the divorce proceedings, the court ruled that Danielle Malmquist could have only supervised visitation with the children of the parties, in part because of bizarre events involving the

safety and well being of the children which Danielle Malmquist orchestrated in attempting to discredit Malmquist as the custodial parent.

16. Malmquist initiated further litigation against Danielle Malmquist enjoining her from committing violations of the rules of procedure and from initiating further false charges against him. He also sought damages for the numerous false criminal charges she brought against him in the past. This suit was filed in the Circuit Court of Shelby County, Tennessee, and is still pending.

17. In 2008, Danielle Malmquist was cited for contempt of court and jailed for violating the injunctions in the Circuit Court lawsuit and in the divorce proceeding.

18. Since the divorce between her and Malmquist, Danielle Malmquist has launched a campaign to discredit Malmquist and the court system in Shelby County, Tennessee, by using internet websites, news media, and legislative channels, portraying herself as a victim of injustice.

19. In October, 2008, Hearst and Hearst Communications caused an article to be published in *Redbook* magazine entitled “ Invisible Violence” (the “*Redbook* Article“). The subject matter of the *Redbook* Article was domestic abuse by means of verbal assault and emotional battery.

20. The *Redbook* Article refers to Danielle Malmquist by name.

21. The *Redbook* Article refers to one of the children of the parties by name.

22. The only attempt at protection of the identity of Malmquist in the *Redbook* Article was by referring to him as “John” instead of using his actual given name.

23. Malmquist is, further, identifiable in the *Redbook* Article because of the references to his employment as a FedEx pilot, his previous residence in the Los Angeles area, and his marriage to Danielle Malmquist.

24. Several individuals who read the *Redbook* Article readily identified Malmquist as the person referred to in the *Redbook* Article as “John“ and brought it to Malmquist’s attention.

25. Any reader who performed a cursory search on the name “Malmquist” via the internet could readily make the connection between Malmquist and the person referred to in the *Redbook* Article as “John.”

26. The *Redbook* Article falsely portrays Malmquist as an emotionally abusive spouse.

27. The *Redbook* Article falsely portrays Danielle Malmquist as a victim of emotional abuse inflicted on her by Malmquist.

28. The *Redbook* Article contains the following specific factual misstatements:

(a) It contains a reference to a person identified as “Alan” who was a friend of Danielle Malmquist before Malmquist became acquainted with her and states falsely that “after a few months into their relationship” Malmquist was jealous and became furious because she went to a play with Alan, made repeated phone calls to her because of this, and later sent her flowers and sought her forgiveness of his supposed misconduct. None of this was true and no one from Hearst or Hearst Communications contacted Malmquist or the individual identified as Alan to verify this part of the content of the *Redbook* Article.

(b) It states falsely that Danielle Malmquist became pregnant by Malmquist five (5) months after the incident referred to in subparagraph (a) above, which was said to have happened “a few months into the relationship.” The truth is that she told Malmquist in February 2003, a month after they met, that she was pregnant by him, and three months later she told him she had gotten an abortion. A week or two after this, in May 2003, she again told Malmquist she was pregnant. Their son Avin was born January 22, 2004, after a full term pregnancy. No one from Hearst or Hearst Communication contacted Malmquist to check the accuracy of the information provided by Danielle Malmquist for the *Redbook* Article.

(c) The article falsely states that Malmquist proposed marriage to Danielle Malmquist when she

told him she was pregnant and that Danielle Malmquist “certain she wanted to have the baby” married him. The truth is that the child was born January 22, 2004, ten months before Malmquist and Danielle Malmquist were married. No one from Hearst or Hearst Communications contacted Malmquist or researched the public record to determine whether the information provided by Danielle Malmquist for the *Redbook* Article was true.

(d) It contains a false statement that Malmquist forced Danielle Malmquist to quit her job to stay home with the baby, when in fact she quit working voluntarily after she found out she was pregnant, over her employer’s objections, and afterward sued her employer claiming wrongful termination because she was pregnant. Danielle Malmquist took another job two weeks after Avin was born and left the baby in the care of a nanny. She quit her job voluntarily after a month and went on unemployment claiming fear and stress because she had allegedly been mugged on the job. No one from Hearst or Hearst Communications investigated the accuracy of such information provided by Danielle Malmquist for the *Redbook* Article.

(e) It contains statements that Malmquist found fault with Danielle Malmquist for gaining weight, failing to prepare dinner, and being a poor housekeeper, and it states that he “rolled his eyes” and belittled her at comments she made in social situations, none of which is true. No one from Hearst or Hearst Communications checked the accuracy of this information with Malmquist or anyone else who knew the couple at the time.

(f) It falsely refers to “rage filled explosions” by Malmquist. The truth is that Danielle Malmquist became so enraged and violent toward Malmquist that in December 2003, Malmquist had to call the police, who came and took Malmquist to a hotel to extract him from the situation. Further, Danielle Malmquist became so enraged and violent toward Malmquist in August 2004 that he had to withdraw from his residence with their baby Avin and spend a night elsewhere. No one from Hearst or

Hearst Communications checked the information provided by Danielle Malmquist for the *Redbook* Article to determine if it was true.

(g) It falsely states that Danielle Malmquist “wished she could get an outside perspective, but she’d stopped calling her sisters and her friends” when in fact she communicated frequently by e-mail, had on her person and used frequently a cellular phone provided by Malmquist to communicate with family and friends, and the parties consulted a relationship counselor when Malmquist told her he wanted to end their relationship after Avin was born. Further, she voluntarily relocated from California to the Memphis, Tennessee area in June 2004, and established her residence there with Malmquist. No one from Hearst or Hearst Communications investigated the truth or falsity of information provided by Danielle Malmquist for the *Redbook* Article.

(h) It states that Malmquist and Danielle Malmquist had a four year marriage when, in fact, the marriage took place in October 2004, the divorce was filed in March of 2005, and the divorce decree was granted in 2007. No one from Hearst or Hearst Communications investigated the public record to check the accuracy of the facts and information provided by Danielle Malmquist for the *Redbook* Article.

(i) It contains an entirely false statement that Danielle Malmquist caught Malmquist in an affair and filed for divorce. This never happened. The truth is that it was Malmquist who filed for divorce against Danielle Malmquist following an attack by her upon him and physical violence by her against him which resulted in her arrest. The counterclaim for divorce filed by Danielle Malmquist did not allege an affair, and this document was available in the public record had Hearst or Hearst Communications checked the accuracy of the *Redbook* Article before publication.

(j) It contains a reference to a “legal advocate” named Rosa whom Danielle Malmquist supposedly consulted, stating she told Rosa “...but he didn’t abuse me,” leading “Rosa” to explain

emotional abuse to her, when in fact Rosa is totally fictitious and in reality Danielle Malmquist claimed in the divorce that she had been physically (not emotionally) abused, an assertion for which she offered no proof. Neither Hearst nor Hearst Communications checked the public record to ascertain if the information contained in the *Redbook* Article was true.

(k) It contains assertions to the effect that Danielle Malmquist coped by “walking on egg shells” and endured emotional abuse for years after the birth of their second child, who was born on February 24, 2005, when in fact Malmquist filed the divorce two weeks after his birth due to the violent and abusive conduct of Danielle Malmquist and they ceased residing together as husband and wife. Neither Hearst nor Hearst Communications investigated the public record to determine if this information provided by Danielle Malmquist for the *Redbook* Article was true.

(l) It states that Danielle Malmquist founded an organization called “In Defense of the Family” to raise public awareness regarding emotionally abusive spouses, but a search of the internet and public records discloses that the organization having this name is a conservative Christian group organized against gay marriage.

29. The *Redbook* Article has caused Malmquist to suffer pain, discomfort, and embarrassment, as numerous persons, including members of his community, coworkers, and others have brought it to his attention and he has had to explain the actual facts and circumstances regarding his private life.

30. Malmquist is not a politician, public figure, celebrity, or prominent personality, and he had a right to expect that Hearst and Hearst Communications would exercise due care toward him as a private citizen and subject the *Redbook* Article to scrutiny as to the truthfulness of its content.

31. Hearst and Hearst Communications could have easily checked the accuracy of the information given by Danielle Malmquist for the *Redbook* Article by a name search on the internet, which would have disclosed the existence of the court cases involving her which were pending or

concluded in Shelby County, Tennessee, all of which contain information which would have shown that Danielle Malmquist had given false information for the *Redbook* Article.

32. Hearst and Hearst Communications could have prevented the harm it has caused to Malmquist by changing all the names in the Article and by deleting references to his employment and other personally identifiable facts.

33. By failing to check the accuracy of information provided by Danielle Mamlquist for the *Redbook* Article and by failing to preserve the privacy and protect the identity of Malmquist, Hearst and Hearst Communications were negligent and, further, acted willfully and with such reckless disregard of the truth as to constitute malice when it published the *Redbook* Article.

34. Malmquist is fearful that he may became the target of hostility or harm from a person or persons unknown as a result of anger against him engendered by the *Redbook* Article.

35. The *Redbook* Article falsely impugns Malmquist's character and maligns him for conduct he never committed.

36. Malmquist has been frustrated and distressed by the *Redbook* Article, which portrays him as an abusive person when in truth he, not Danielle Malmquist, has been the victim of both physical and emotional abuse, and the patently false statements that he was caught in an affair and was emotionally abusive have caused him to suffer severe embarrassment, humiliation, mental anguish, and emotional distress and strain, injury to his reputation, exposure to public contempt, lessened standing in his community, and doubt as to his personal character.

37. Hearst and Hearst Communications have caused or allowed the *Redbook* Article to be posted on the internet and reprinted in other publications, and Danielle Malmquist has had it available to use with other media outlets and in legislative contacts to lend credibility to her campaign of disparagement and falsehood against Malmquist.

38. The publication of the falsehoods contained in the *Redbooks* Article has caused Malmquist to become agitated, to lose sleep, and to worry about its consequences.

39. On September 16, 2008, as soon as the publication of the *Redbook* Article was brought to the attention of Malmquist, he served notice in writing on Hearst and Hearst Communications, specifying the article and the statements therein which were false and defamatory. Hearst and Hearst Communications gave an automatic form response to the notice which failed to acknowledge the false content of the *Redbook* Article. Malmquist on September 17, 2008, served notice in writing on Hearst and Hearst Communications, specifying the article and the statements therein which were false and defamatory by correspondence addressed to the Editor-in-Chief of *Redbook*. He received no response to this letter. Further, Hearst and Hearst Communications failed or refused to publish a full and fair correction, apology, or retraction in compliance with the provisions of Section 29-25-103 of the Tennessee Code Annotated.

Causes of Action

Libel

39. Hearst and Hearst Communications have libeled Malmquist by publishing the *Redbook* Article as alleged hereinabove, for which they are liable to Malmquist for compensatory and punitive damages, and the false statements published by the Defendants constitute libel per se under the provisions of T.C.A. §29-24-101 *et seq.*

Defamation

40. The publication of the *Redbook* Article by Hearst and Hearst Communications, as alleged hereinabove was made by these Defendants negligently and resulted in defamation of Malmquist in violation of T.C.A. §29-24-101 *et seq.* and the common law, for which they are liable to him for compensatory damages, and their willful disregard of the truth constitutes malice, entitling Malmquist

to punitive damages.

Negligent Infliction of Mental and Emotional Distress

41. By publishing the *Redbook* Article as alleged hereinabove, Hearst and Hearst Communications have negligently and willfully inflicted mental and emotional distress upon Malmquist, for which they are liable to him for compensatory and punitive damages.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS;

1. That, upon issuance and service of or consent to process upon the Defendants, the Defendants be required to appear and answer or otherwise defend this cause of action;

2. That, upon trial of this cause, judgment be entered for the Plaintiff against the Defendants, jointly and severally, for compensatory damages in the amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) and the costs of this cause;

3. That, upon trial of this cause, judgment be entered for the Plaintiff against the Defendants jointly and severally for punitive damages in the amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00); and

4. That the Plaintiff have and receive such other and further relief as may appear to the Court to be just and proper in the premises.

PLAINTIFF DEMANDS TRIAL BY JURY OF THE ISSUES JOINED IN THIS CAUSE.

_____/S/_____
Shem Malmquist

RUTLEDGE & RUTLEDGE, P.C.
Attorneys for Plaintiff
1083 W. Rex Road, Suite 102
Memphis, Tennessee, 38119
(901) 682-0667

By: ____/S/_____
Roger K. Rutledge (5758)

STATE OF TENNESSEE)
)ss
COUNTY OF SHELBY)

I, the undersigned, Shem Malmquist, being first duly sworn, make oath that the statements and allegations contained in the foregoing Complaint for Libel and Defamation and For Negligent Infliction of Mental and Emotional Distress are true and correct to the best of my knowledge, information and belief.

Shem Malmquist

SWORN TO AND SUBSCRIBED before me this ____ day of June, 2009.

Notary Public

My Commission Expires:
