

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

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CAMERON WINKLEVOSS, an individual,	:	Index No.
TYLER WINKLEVOSS, an individual,	:	
WINKLEVOSS CAPITAL FUND, LLC,	:	
a Delaware limited liability company,	:	COMPLAINT
	:	
Plaintiff,	:	
	:	
vs.	:	DEMAND FOR JURY TRIAL
	:	
TODD STEINBERG, an individual,	:	
	:	
Defendant.	:	
	:	

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PRELIMINARY STATEMENT

1. This is an action by Plaintiffs Cameron and Tyler Winklevoss against Defendant Todd Steinberg (“Steinberg” or “Defendant”), seeking redress for the harm done to them as the result of several false and defamatory statements about them, and by Plaintiff Winklevoss Capital Fund, LLC (“WCF”) against Steinberg for malicious prosecution as a result of a related frivolous lawsuit that he filed against WCF.

2. WCF entered into a tentative agreement with Steinberg to buy certain shares in a company named Eaze Solutions, Inc. (“Eaze”). The parties expressly agreed that there was no deal unless (i) Eaze agreed that the shares, if purchased by WCF, would be subject to a “side letter” previously negotiated between WCF and Eaze and (ii) Eaze needed to give formal approval of the stock transfer. When these things did not occur, through no fault of WCF, Steinberg concocted a scheme against Plaintiffs to try to force Plaintiffs to pay him, even though the conditions required for the tentative agreement to become effective never occurred, and to harm Plaintiffs if they did not submit to his demands.

3. Steinberg began his scheme by filing a sham complaint in the Delaware Chancery Court. Even though Steinberg knew that Eaze had not approved the stock transfer, and an Eaze director stated he was “unable to get approval on the additional shares to be aligned with [the] original side letter,” Steinberg filed the lawsuit anyway, in an effort to bully WCF into paying him even though the conditions required for the tentative agreement to become effective never occurred.

4. In furtherance of his scheme to harm Plaintiffs, Steinberg used the Delaware lawsuit as a mechanism to defame Plaintiffs, and as a platform to promote himself as the “good guy” in the court of public opinion, all at the expense of Plaintiffs. While Steinberg was fashioning himself as the victim, he was, instead, the aggressor. Steinberg repeatedly told third parties, including news reporters, that Plaintiffs had “defaulted” on the agreement. Those false, defamatory and damaging statements then were published in numerous publications. For example, in a story published by the *New York Post*, Steinberg is quoted as saying, “Just because you are rich and famous doesn’t mean you can default. It’s the difference between right and wrong. . . . I believe in honoring my commitments. Unfortunately, I have had the opposite experience with Cameron and Tyler Winklevoss . . . I believe it is time that somebody stands up to them.”

5. Steinberg had no basis to make these false, defamatory and damaging statements about Plaintiffs. Steinberg knew that Eaze’s formal approval of the stock transfer and side letter was a required condition for the agreement to become effective, but Eaze never gave its approval.

6. Notwithstanding the lack of any reliable factual support for his claims, Steinberg made the conscious decision to defame Plaintiffs anyway.

7. Tellingly, before the publication of articles containing Steinberg's defamatory statements about Plaintiffs, Steinberg threatened Plaintiffs that, if Plaintiffs did not pay Steinberg the money he claimed was owed, his Delaware lawsuit would get to the press, and the news coverage would be "worse for you [Plaintiffs]." Unbeknownst to Plaintiffs at the time, Steinberg's scheme all along was that, if Plaintiffs did not pay him, then Steinberg would use the Delaware lawsuit, and the press, as a means to defame Plaintiffs and bully them into submitting to his demand to pay him, even though the conditions required for the tentative agreement to become effective never occurred. Steinberg has subsequently confirmed his scheme, including by making statements that if Plaintiffs did not settle with him then he would "update the press" and claiming that the "court of public opinion" is "on my side."

8. The publication of the defamatory statements by Steinberg about Plaintiffs reached millions of readers of the various publications and also caused a foreseeable chain-reaction of republication of the defamatory statements in many other news outlets, websites, blogs, and social media, which reached millions more readers throughout the world.

9. Steinberg's scheme temporarily worked: Plaintiffs were defamed by Steinberg in numerous publications; Steinberg had used the lawsuit as a platform to promote himself as the "good guy" in the court of public opinion at the expense of Plaintiffs; and Steinberg had begun the process of leveraging the media to bully Plaintiffs into capitulating to his demands. Steinberg had very little to lose for his gambit: a court filing fee and moderate attorneys' fees to prepare the Complaint.

10. Yet perhaps what Steinberg did not anticipate when he set about this wrongful scheme is that Plaintiffs would refuse to give in to Steinberg's wrongful demands. They called

his bluff, and when the scheme did not succeed, Steinberg tellingly withdrew (voluntarily dismissed) his Delaware lawsuit.

11. But by then, the damage had already been done: Steinberg's false and defamatory statements about Plaintiffs have the effect of causing Plaintiffs damages, including to their business interests and prospective economic opportunities.

12. Plaintiffs bring this lawsuit to recover for the damage done by Steinberg's scheme, including his defamation of Plaintiffs, and his malicious prosecution, and to have the Court determine--definitively--that Plaintiffs owe nothing to Steinberg.

PARTIES

13. Plaintiff Cameron Winklevoss is an individual domiciled in New York, New York.

14. Plaintiff Cameron Winklevoss is an individual domiciled in New York, New York.

15. Plaintiff Winklevoss Capital Fund, LLC is a limited liability company organized in and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

16. On information and belief, Defendant Steinberg is an individual domiciled in New York, New York.

JURISDICTION AND VENUE

17. This Court has jurisdiction over Steinberg under CPLR § 301 because Steinberg resides in New York City, and the causes of action alleged arise out of Steinberg's activities in New York City.

18. Venue is proper in this county under CPLR § 503 because Plaintiffs and Steinberg are domiciled there.

FACTS

19. Plaintiffs Cameron and Tyler Winklevoss are successful investors and entrepreneurs.

20. Through their investment firm, WFC, Plaintiffs Cameron and Tyler Winklevoss have invested in numerous technology startup companies, including Caviar (acquired by Square, Inc.), Authy (acquired by Twilio Inc.), and Chariot (acquired by The Ford Motor Company), among others.

21. On information and belief, Steinberg is and at all relevant times has been a professional investor.

22. In 2016, Steinberg engaged a broker, David Weisburd, to find a potential buyer for his 64,343 shares of Series A Preferred Stock in Eaze. That broker identified WCF as a potential buyer.

23. From the outset, WCF made clear that WCF would not purchase Steinberg's shares unless Eaze agreed that, if purchased by WCF, the parties would be subject to a "side letter" previously negotiated between Eaze and WCF. This side letter was signed in connection with an earlier purchase of Eaze shares by WCF.

24. Plaintiffs and Steinberg fully understood, from numerous communications, that the contemplated transaction could not be consummated unless approved by Eaze.

25. WCF and Steinberg executed a Notice of Intent to Transfer Shares ("Term Sheet") on November 23, 2016.

26. Following the Term Sheet, the parties again had numerous communications making clear that that the contemplated transaction could not be consummated unless approved by Eaze.

27. But Eaze never agreed to extend the side letter. On November 27, 2016, Kevin McCarty, President and CEO of Eaze, announced, “I’m unable to get approval on the additional shares to be aligned with your original side letter.”

28. At some point, counsel for Eaze drafted a Stock Transfer Agreement based on the Term Sheet. The draft Stock Transfer Agreement describes the transaction as “by and among” (1) Steinberg, (2) WCF, and (3) Eaze. The draft Stock Transfer Agreement includes a line for Eaze, as well as a clause indicating that Eaze consents to the transfer. The unsigned, draft Stock Transfer Agreement also included many terms that were not included in the Term Sheet.

29. On December 1, 2016, Weisburd represented to Plaintiffs that Eaze had approved of the transaction. He also pushed WCF to close the transaction notwithstanding the fact that Eaze had not yet agreed to extend the side letter to the new shares, writing the following to Sterling Witzke of WCF: “Let’s go ahead and get this transfer of shares signed and submitted to the company. Todd had an interest in selling before the year and that was part of the consideration we made an agreement on for the steep discount. The amendment to the side letter will be part of the process, but this way if the amendment is not eventually approved Todd is still able to sell before year close.”

30. WCF declined to close without Eaze’s agreement on the side letter issue. On December 10, 2016, Witzke inquired again about Eaze’s consent on this issue, writing to Eaze’s counsel (and Steinberg and Weisburd): “Hi Jim - Do you have any updates regarding the

transfer agreement for Todd's Eaze shares?" WCF never received confirmation that Eaze had approved the extension of the side letter, let alone the transaction itself.

31. On December 14, 2016, Jim Patterson, Eaze's then-Chief Product and Technology Officer, sent an email to Steinberg and WCF, asking the parties to temporarily hold off on closing their transaction (the Term Sheet/draft Stock Transfer Agreement) because Eaze would soon publicly announce that it was replacing its CEO with Mr. Patterson.

32. Eaze never signed the Stock Transfer Agreement, or otherwise grant its approval of the stock transfer. WCF also never signed the Stock Transfer Agreement.

33. Steinberg nevertheless demanded that WCF pay him the purchase price, even though Eaze did not and would not approve the transaction, and even though Eaze was about to publicly announce that the CEO of Eaze was being replaced. WCF refused to comply with Steinberg's preposterous demand. Steinberg then set out to retaliate against Plaintiffs, in an effort to bully them into paying him, even though the terms of the conditions of the tentative agreement were never satisfied.

34. On or about February 6, 2017, Steinberg filed a complaint in Delaware Chancery Court against WCF, asserting claims for declaratory judgment and specific performance, asking the court to order WCF to pay Steinberg the purchase price for the shares as contemplated in the Term Sheet.

35. Steinberg then told Plaintiffs in an email that they needed to pay him, otherwise the Delaware lawsuit would get to the press, and the coverage would be "worse for you [Plaintiffs]." Plaintiffs refused to capitulate to Steinberg's extortionate tactics (and in reality, Plaintiffs could not even if they wanted to because Eaze still needed to give its approval of any

stock transfer, and it was not inclined to do so). Because of Plaintiffs' refusal to give in, Steinberg began the next phase of his scheme by going to the press to defame Plaintiffs.

36. Steinberg repeatedly told people, including reporters, that Plaintiffs had improperly "defaulted" on the agreement. Those false, defamatory, and damaging statements then became published in numerous publications.

37. For example, in a story run in part of the *New York Post* (Page Six – "Winklevoss pot deal goes up in smoke" By Mara Siegler (June 19, 2017)), Steinberg is quoted as saying, "Just because you are rich and famous doesn't mean you can default. It's the difference between right and wrong. . . . I believe in honoring my commitments. Unfortunately, I have had the opposite experience with Cameron and Tyler Winklevoss . . . I believe it is time that somebody stands up to them."

38. The statements of fact made by Steinberg about Plaintiffs are false, and Steinberg had no basis to make these false, defamatory and damaging statements. Steinberg knew that Eaze was required to give approval of the stock transfer in order for the parties' stock purchase agreement to be valid, and that Eaze never gave its approval.

39. Notwithstanding the lack of any reliable factual support for his claims, and Steinberg's knowledge of the same, Steinberg made the conscious decision to defame Plaintiffs anyway.

40. Steinberg knew that, in making the defamatory statements about Plaintiffs to the news reporters, they would be published by those reporters and their respective publications. Steinberg also was aware that the publication of his defamatory statements about Plaintiffs would cause a chain-reaction of republication of the statements in many other news outlets,

websites, blogs, and social media, and as a result, millions of readers throughout the world would read Steinberg's defamatory statements about Plaintiffs.

41. Steinberg's defamatory statements about Plaintiffs to news reporters had this very effect, namely, statements were published and republished, and millions of readers throughout the world read them.

42. Steinberg's false and defamatory statements about Plaintiffs have caused harm to Plaintiffs' professional reputation and prospective economic opportunities.

43. On or about August 31, 2017, after Steinberg was successful in defaming Plaintiffs and causing them substantial harm, and without the parties reaching any settlement, Steinberg voluntarily dismissed his complaint in Delaware Chancery Court against WCF.

FIRST CAUSE OF ACTION

(Defamation)

44. Plaintiffs reallege and incorporate by this reference Paragraphs 1 through 43 of this Complaint as though fully set forth therein.

45. Defendant Steinberg made defamatory statements of and concerning Plaintiffs and caused those statements to be published in various articles.

46. The defamatory statements made by Steinberg about Plaintiffs were false.

47. Steinberg made the defamatory statements knowing they were false and/or with reckless disregard for the truth.

48. The defamatory statements constitute defamation *per se* because they falsely tend to injure Plaintiffs in their trade, business, or profession.

49. The defamatory statements have caused Plaintiffs damages, including to their business interests and prospective economic opportunities.

50. The republication of the defamatory statements in other publications, which was both a foreseeable and an intended result of Steinberg's conduct, caused Plaintiffs additional damages.

51. Steinberg's conduct was knowing, malicious, willful, and wonton, entitling Plaintiffs to an award of punitive damages.

52. As a result of Steinberg's conduct, Plaintiffs are entitled to an award of compensatory and punitive damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Malicious Prosecution)

53. Plaintiffs reallege and incorporate by this reference Paragraphs 1 through 43 of this Complaint as though fully set forth therein.

54. On or about February 6, 2017, Steinberg filed a complaint in Delaware Chancery Court against WCF, with claims for declaratory judgment and specific performance, asking the court to order WCF pay Steinberg pursuant to the Term Sheet.

55. Steinberg filed the complaint in Delaware Chancery Court with malice and without probable cause to believe it could succeed. For example, it was objectively clear that the Term Sheet was superseded by the Stock Transfer Agreement. Further, it was objectively clear that Eaze was required to be a party to the lawsuit because Eaze was required to confirm its approval to the transfer of stock from Steinberg to WCF, but Steinberg did not name Eaze as a party in that lawsuit. And as yet a further example, Steinberg had no basis to seek specific performance because it was clear that there were others interested in purchasing the shares at issue, meaning there was a market for these shares for which Steinberg did not require specific performance for WCF to buy the shares. For these, and other reasons, it was objectively clear

that the Delaware Chancery Court lawsuit was the beginning of Steinberg's scheme to either attempt to extort and/ or to defame Plaintiffs.

56. The complaint in Delaware Chancery Court was terminated in Plaintiffs' favor.

57. The filing and prosecution of the complaint in Delaware Chancery Court has caused Plaintiffs damages, including to their business interests and prospective economic opportunities. Plaintiffs suffered additional damage from having to defend against the sham case in the Delaware Chancery Court, including at least \$36,443.90 in attorneys' fees and costs plus the value of their time in an amount to be proven at trial.

58. Steinberg's conduct was knowing, malicious, willful, and wonton, entitling Plaintiffs to an award of punitive damages.

59. As a result of Steinberg's conduct, Plaintiffs are entitled to an award of compensatory and punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Declaratory Relief)

60. Plaintiffs reallege and incorporate by this reference Paragraphs 1 through 43 of this Complaint as though fully set forth therein.

61. An actual, justiciable controversy exists between Plaintiffs and Defendants. Most significantly, Steinberg has asserted that WCF must pay Steinberg pursuant to the Term Sheet. Plaintiffs have asserted that they owe Steinberg no money and have no legal obligations to Steinberg.

62. Accordingly, Plaintiffs require a judicial determination that they have no obligations to Steinberg.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant Steinberg as follows:

- i. Awarding compensatory and punitive damages in appropriate amounts to be determined at trial;
- ii. Enjoining Steinberg from publishing or republishing the defamatory statements;
- iii. Awarding Plaintiffs the recovery of their costs associated with this action, including but not limited to WCF's reasonable attorneys' fees and expenses of defending the Delaware lawsuit;
- iv. A judicial determination declaring Plaintiffs owe no money and have no legal obligations to Steinberg; and
- v. For such other and further relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial.

Dated: Beverly Hills, California
October 11, 2017

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