

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

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GARY LABARBERA,

Index No.

Plaintiff,

SUMMONS

-against-

Plaintiff designates New York County as the place of trial. The basis of venue is the Plaintiff's cause of action arose in NY County and the Defendant transacts business in NY County.

THE CENTER FOR UNION FACTS,

Defendant.

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TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer upon plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the date of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
May 9, 2018

COZEN O'CONNOR

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TO:

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The Center for Union Facts
1090 Vermont Ave NW, Suite 800,
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

GARY LABARBERA,)
Plaintiff,)
)
-against-)
)
THE CENTER FOR)
UNION FACTS,)
Defendant.)

Index No. _____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

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Plaintiff, Gary LaBarbera, for his complaint against Defendant, The Center for Union Facts (“**Defendant**”), alleges as follows:

INTRODUCTION

1. Defendant, the Center for Union *Facts*, has instituted a multimedia smear campaign to hold one individual—Plaintiff Gary LaBarbera—solely accountable for what it characterizes as New York City’s “dirty, delayed, and dangerous” subway system. But despite projecting itself as a presenter of “facts,” the Center for Union Facts’ attacks on Mr. LaBarbera are false, defamatory and wholly unsupported by any actual facts.

2. Indeed, LaBarbera is not a politician. Nor is he a member of the Metropolitan Transportation Authority (“**MTA**”), the municipal agency that runs the New York City subways. Instead, he is the president of the Building and Construction Trades Council of Greater New York (“**BCTC**”), an organization comprised of local affiliates of 15 national and international unions. His only connection to the subway system—other than riding the subway—is that some of the unions affiliated with the BCTC have worked on recent subway expansion projects.

3. A December 2017 New York Times investigative report attributed the high cost of recent subway work to a “*host* of factors”—construction companies driving up costs, MTA

inefficiencies, political pandering, and the negotiations of certain trade unions. The Center for Union Facts relies heavily on this New York Times report in its smear on the labor unions. But notably, neither Mr. LaBarbera nor any of the unions affiliated with the BCTC were mentioned as a source of the increased costs.

4. But the Center for Union Facts doesn't seem to care about the facts.

5. Instead, and without any factual support, the Center for Union Facts has—through full-page ads in the New York Post, New York Daily News, and amNY; billboards in midtown Manhattan that direct New Yorkers to a website replete with articles dedicated to blaming the “subway scam” on Mr. LaBarbera; and a YouTube video with an oversized, blinking image of Mr. LaBarbera’s face juxtaposed with the words “the unions stuff their bank\$”—tried to blame all the ills of the New York City subway system on one person.

6. Mr. LaBarbera brings this action to hold Defendant accountable for its defamatory actions and invasion of his privacy under New York Civil Rights Law §§ 50 and 51.

PARTIES

7. Mr. LaBarbera is an individual residing in Nassau County, New York.

8. Mr. LaBarbera is the President of the Building and Construction Trades Council of Greater New York.

9. Defendant, the Center for Union Facts, is, upon information and belief, a 501(c)(3) nonprofit organization with its headquarters located at 1090 Vermont Ave NW, Suite 800, Washington D.C., 20005.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to Section 140-b of the New York Judiciary Law, which provides that the Supreme Court of New York has general jurisdiction.

11. This Court has personal jurisdiction over Defendant pursuant to CPLR § 302(a)(1) because Defendant has contracted to do business within the state of New York, and Plaintiff's claims arise from the transaction of that business.

12. Venue is appropriate because Plaintiff's cause of action arose in this county and the Defendant transacts business in this county.

FACTS

I. Background

13. BCTC is an organization comprising local affiliates of 15 national and international building and construction trade unions that are affiliated with the AFL-CIO and the North American Building Trades Unions (NABTU). The BCTC represents approximately 100,000 construction workers in New York City.

14. The BCTC is an umbrella organization comprised of local building and construction trade unions, engaged primarily in legislative, political and community activity in advocacy for its affiliated unions and their members.

15. In addition to this advocacy role, the BCTC negotiates on behalf of the affiliated local unions with owner/developers, construction managers and general contractors for project labor agreements ("PLAs") that cover all trades on particular projects or programs of work. Where particular adjustments are sought from particular trades, the BCTC may facilitate contact directly

between the affiliated trades and an owner/developer, construction manager or general contractor. All PLAs are subject to approval and the authority of the BCTC's governing Executive Board.

16. Notably, the BCTC does not have the authority to negotiate, amend or modify individual collective bargaining agreements between the trade and their collective bargaining partners, which are generally employer associations designated by industry trade contractors as their collective bargaining representative.

17. Thus, neither Mr. LaBarbera nor the BCTC has a direct relationship with the MTA or its contractor agreements.

18. Indeed, BCTC does not have an agreement with the MTA.

19. Moreover, the trade unions negotiate directly with their contractor or employer associations on issues such as wage increases or terms of employment.

20. As a result, Mr. LaBarbera has no control over the terms and conditions of employment or wage raises for MTA workers or construction workers staffing MTA projects.

II. The New York Times Article

21. On December 28, 2017, the New York Times published an article titled "The Most Expensive Mile of Subway Track on Earth." Brian M. Rosenthal, *The Most Expensive Mile of Subway Track on Earth*, N.Y. TIMES, Dec. 28, 2017, <https://www.nytimes.com/2017/12/28/nyregion/new-york-subway-construction-costs.html> (hereinafter the "Times Article," attached hereto as **Exhibit A**).

22. The Times Article purports to present the findings of an investigation into why the costs of several recent transportation construction projects by the MTA are so high compared to similar projects in other cities and countries around the world. According to the Times Article,

this excessive spending by the MTA has resulted in less available funds for subway maintenance, leading to mass transit breakdowns and delays.

23. According to the Times Article, “*a host of factors* have contributed to the transit authority’s exorbitant capital costs.” (emphasis added)

24. Construction companies are one target of the Times Article. According to the article, such companies “have given millions of dollars in campaign donations in recent years [and] have increased their projected costs by up to 50 percent when bidding for work from the M.T.A.” According to the article, “construction companies actually have an incentive to maximize costs”—but “[the MTA chairman] said he did not know what could be done about it.” Moreover, the relatively low amount of bidders on construction projects means that bids are not driven lower by competition.

25. The Times Article also blames “consulting firms, which have hired away scores of M.T.A. employees [and] have persuaded the [MTA] to spend an unusual amount on design and management.” According to the article, “soft costs”—including consulting fees—account for one-third of some recent MTA projects, significantly higher than in other jurisdictions. The article found that contractors were influential with local politicians and the MTA through donations and gifts; indeed, “of the 25 M.T.A. agency presidents who have left over the past two decades, [] at least 18 of them became consultants or went to work for authority contractors, including many who have worked on [the projects at issue in the article].” The article cites one particular engineering firm that “has donated hundreds of thousands to politicians in recent years, and has hired so many transit officials that some in the system refer to it as ‘the M.T.A. retirement home.’”

26. Third, the Times Article points the finger at “[P]ublic officials, mired in bureaucracy, [who] have not acted to curb the costs.” Specifically, “[t]he M.T.A. has not adopted

best practices nor worked to increase competition in contracting, and it almost never punishes vendors for spending too much or taking too long.” The article also claims that MTA officials “tak[e] a long time to approve plans, insist[] on extravagant station designs and chang[e] their minds midway through projects.”

27. Alongside these other factors, the Times Article addresses the role of “[t]rade unions, which have closely aligned themselves with [New York’s governor] and other politicians [and] have secured deals requiring underground construction work to be staffed by as many as four times more laborers than elsewhere in the world.” According to the article, the trade unions put too many workers on the jobs, driving up costs. The Times Article does not specifically mention BCTC or any of the unions represented by the BCTC.

28. In particular, the Time Articles does not state that any of the unions affiliated with the BCTC were part of the “host” of reasons for the high cost of the recent tunnel projects. Indeed, the BCTC does not have a PLA with the MTA or its construction manager, or with its general or trade contractors. Moreover, the BCTC does not negotiate the terms and conditions of any labor agreements applicable to MTA work.

29. As to Mr. LaBarbera, the Times Article mentions him only once, and only with regard to his core mission—improving the quality of life for New York’s laborers:

“Construction workers deserve every penny they make, and more,” said Gary LaBarbera, president of [BCTC]. “We live in New York. It’s very expensive to live here. We take great pride in the work that we do. And the work rules are there to make sure we stay alive.”

30. Indeed, only one union was specifically mentioned and targeted in the Times Article—Local 147, “the union for the famed ‘sandhogs’ who dig the tunnels.”

31. Local 147 is not an affiliate of the BCTC.

32. In concluding that certain trade unions contributed, as one of many additional factors, to subway issues, the Times Article discusses specifics surrounding Local 147's agreement with the construction companies, including a pay rate of \$111 per hour in salary and benefits, the pay doubles for overtime and Sunday work, and quadruples for weekend overtime.

33. Mr. LaBarbera has no role with respect to the sandhogs union or its wage or benefit rates. Nothing in the Times Article, or elsewhere, supports Defendant's bald allegation that Mr. LaBarbera is responsible for the sandhogs union at all—let alone its collective bargaining agreement or its wage and benefit rates.

34. Notably, the Times Article does not discuss the practices or agreements negotiated by BCTC's affiliate unions or accuse any of those unions of driving up costs.

III. The Smear Campaign

35. On the heels of the Times Article, and beginning on or about March 14, 2018, Defendant began a smear campaign against Mr. LaBarbera, utilizing various mediums across New York City and over the Internet.

36. At the outset of this smear campaign, Defendant published a release on its website announcing the “official[] launch[of] ‘Subway Scam,’ highlighting the trade unions that have made New York’s subway system dirty, delayed, and dangerous.” See “CUF Launches New ‘Subway Scam’ Campaign,” <http://laborpains.org/2018/03/22/cuf-launches-new-subway-scam-campaign>, attached hereto as **Exhibit B**.

37. In this release, Defendant concedes that the “new campaign *focuses specifically* on the [BCTC]—namely BCTC President Gary LaBarbera.” (emphasis added) The release also falsely states that, “[a]ccording to [the Times Article], BCTC member unions’ contracts have plagued the MTA with ‘excessive staffing, little competition, generous contracts, and archaic

rules.” But the Times Article attributed none of these concerns to Mr. LaBarbera, the BCTC, or any of the BCTC affiliate unions.

38. Defendant knew that the Times Article did not support its accusations against Mr. LaBarbera but nevertheless pursued its crusade to spread false and defamatory statements about Mr. LaBarbera.

39. These statements have taken the form of print ads, billboards, a YouTube video, and a dedicated website with article links—all of which Defendant acknowledges in its website release that it authored and created, and all of which attributed New York City’s “dirty, delayed, and dangerous” subway to Mr. LaBarbera, without any factual support. Moreover, Defendant’s publications as part of this smear campaign strongly imply that Mr. LaBarbera is corrupt.

40. Yet despite trying to tie the smear campaign to the Times Article, Defendant’s defamatory statements about Mr. LaBarbera find absolutely no support in the Times Article—or elsewhere.

A. The Print Ads

41. On March 22, 2018, Defendant took out a full-page print advertisement in three local, New York daily newspapers: The New York Post, the New York Daily News, and amNY (collectively, the “**Print Ads**,” attached hereto as **Exhibit C**).

42. The Print Ads were identical and featured only one image—a magnified portrait of Mr. LaBarbera yelling into a microphone, occupying about a quarter of the full newspaper page. The image is labeled with his name and the (deliberately pejorative) title “Union Boss.” In large letters, the Print Ad features the following heading: “Know Why NYC’s Subway Is Dirty, Delayed and Dangerous?”

43. Beneath the headline, the Print Ads include the following text:

Over 70% of subway riders believe the system is dirty, delayed, or dangerous.

Thanks to construction union boss Gary LaBarbera, expensive work rules and cost overruns take valuable resources away from repairs and upgrades.

(emphasis added)

44. The Print Ads then direct readers to “Subwayscam.com” for more information. Neither the Print Ads nor “Subwayscam.com” substantiate the Defendants’ statement of fact that Mr. LaBarbera himself is to blame for “expensive work rules and cost overruns.”

45. The Times Article, which is hyperlinked in the www.subwayscam.com website, provides absolutely no factual support for the smear on LaBarbera. The Times Article placed no blame on Mr. LaBarbera, the BCTC, nor any of the BCTC’s affiliate unions, for “expensive work rules and cost overruns.” Instead, the Times Article attributes the high cost of construction to the MTA, politicians, construction companies, vendors, and one named union that has no connection to Mr. LaBarbera.

46. The Print Ads note, in small text at the bottom, that they were “Paid for by the Center for Union Facts.”

47. On April 5, 2018, Defendant ran another full-page advertisement in the New York Post (the “**April 5 Print Ad**,” attached hereto as **Exhibit D**). The April 5 Print Ad shows rats on a subway platform with the heading, “Union Payoffs Mean You Get to Ride With the Rats.” The text underneath reads:

Governor Cuomo is best buddies with union boss Gary LaBarbera. Instead of properly funding the New York subway so it’s not dirty, delayed, and dangerous, Cuomo supports outrageously expensive construction union contracts with taxpayer money.

48. As with the other Print Ads, the April 5 Print Ad directs readers to “Subwayscam.com” for more information and notes, in small text at the bottom, that it was “Paid for by the Center for Union Facts.”

49. The Times Article, which is hyperlinked in the www.subwayscam.com website, provides no factual support for the implication in the April 5 Print Ad that Mr. LaBarbera is corrupt. The Times Article did not discuss Mr. LaBarbera or the BCTC specifically and in no way supported the statement that Mr. LaBarbera receives “union payoffs.” Instead the Times Article discussed only the MTA’s contracts with one particular union not affiliated with Mr. LaBarbera.

50. Moreover, the “construction union contracts” referenced in the April 5 Print Ad are a result of collective bargaining between the unions and their contractors or employer associations. As such, neither Mr. LaBarbera nor the BCTC has a relationship with the referenced contractor agreements.

B. The Billboards

51. Defendant’s smear campaign against Mr. LaBarbera also includes two prominently-displayed billboards located in Midtown, Manhattan.

52. The first billboard is located at 727 7th Avenue between 48th and 49th Streets (hereinafter the “**7th Avenue Billboard**”)—strategically located for maximum impact, as thousands of commuters and tourists heading to Times Square would pass the billboard daily. A picture of the 7th Avenue Billboard is attached hereto as **Exhibit E**.

53. The 7th Avenue Billboard features a graphic representing a map of the subway system, with dots representing “stops” labeled as “Dirty,” “Delayed,” “Dangerous.” The heading reads: “Construction Unions are screwing with your commute.” The Billboard also directs

viewers to SubwayScam.com for more information. In small text at the bottom, the billboard notes that it was “Paid for by the Center for Union Facts.”

54. The second billboard is located above 572 8th Avenue on the corner of West 38th Street and 8th Avenue (hereinafter the “**8th Avenue Billboard**”). A picture of the 8th Avenue Billboard is attached hereto as **Exhibit F**. This location, too, is high yield for Defendant’s defamatory agenda. It is strategically placed between the Port Authority Bus Terminal and Times Square.

55. The 8th Avenue Billboard features different graphics than the first billboard, but the same text. The second billboard also directs viewers to SubwayScam.com for more information and also reveals that it was “Paid for by the Center for Union Facts.”

C. The YouTube Video

56. A third element of the smear campaign is a YouTube video entitled “Subway Scam – New York, New York.” *Available at* <https://www.youtube.com/watch?v=nKobAVKVRB4>, (last accessed May 9, 2018) (hereinafter the “**YouTube Video**”).

57. As of May 9, 2018, the YouTube Video had 909,475 views on YouTube, and an additional 3.7 million views, 5.6 thousand “shares,” and 6.9 thousand reactions on Facebook.

58. The YouTube Video is approximately two minutes long and compiles various images and video clips of the problems with the New York City subway system, including delays, rats, broken down trains, and homeless riders, set to the music of Frank Sinatra’s “New York, New York.”

59. The opening frame of the video is a “Warning” that “CONSTRUCTION UNION CORRUPTION AND DEMANDS HAVE CREATED UNSAFE CONDITIONS IN THE SUBWAY SYSTEM. VIDEO MAY BE UNSUITABLE FOR CHILDREN.” The YouTube

Video prominently displays an image of Mr. LaBarbera with blinking, glowing green eyes and a caption that reads “Gary LaBarbera Union Boss.” As Mr. LaBarbera’s image and name flash on the screen, the accompanying lyrics, which are simultaneously displayed at the bottom of the screen, state: “The unions stuff their bank\$.” A screenshot of the Video at this frame is attached hereto as **Exhibit G**.

60. The next clip shows a picture of New York Governor Andrew Cuomo, with the accompanying lyrics: “While the Governor, gives them thanks.”

61. The video then displays images of Mr. LaBarbera, Governor Cuomo, and New York City Mayor Bill de Blasio, accompanied by the lyrics, “They’re all to blame.” A screenshot of the Video at this frame is attached hereto as **Exhibit H**.

62. These statements in the Video are false. The only evidence on which Defendant appears to base its statements is the Times Article, which attributed none of the supposed ills to Mr. LaBarbera, BCTC, or BCTC’s affiliate unions. Indeed, the Times Article does not address at all the issue of rats or homelessness in the subway.

63. Moreover, the obvious, and intended, implication of the YouTube Video is that Mr. LaBarbera is corrupt and profits from the issues raised in the previous slides—*i.e.*, delays, rats, broken down trains, and homeless riders. Nothing in the Times Article suggests that unions are corrupt or making a profit, and the article does not accuse any union leader of receiving direct benefits.

D. www.SubwayScam.com

64. Linking all of the components of Defendant’s smear campaign against Mr. LaBarbera is www.subwayscam.com, a one-stop resource dedicated to pinning all the New York

City subway problems on Mr. LaBarbera. The website also provides links and access to the other elements of the campaign.

65. The website's focus is solely on Mr. LaBarbera. The homepage features a magnified image of Mr. LaBarbera appearing to be yelling into a microphone alongside text reading, "Meet the union boss making the subway suck." A screenshot of this portion of the homepage is attached hereto as **Exhibit I**.

66. While Defendant's use of the term "union boss" is intended to be pejorative, it is also factually incorrect. Mr. LaBarbera works for the Executive Board of the BCTC and its affiliate unions; he is not the "boss" of any unions.

67. The text on the homepage begins:

His name is **Gary LaBarbera** and his labor group, the Building and Construction Trades Council of Greater New York, is making New York's subway system a global embarrassment.

Known for their expensive work rules and cost overruns, LaBarbera's cash-hungry unions take valuable resources away from subway repairs and upgrades. Delays are the direct result of antiquated switching equipment that needs hundreds of millions to be upgraded. But the only upgrades are to LaBarbera's unions, which keep profiting while New York's subway keeps sucking.

68. Again, the website directly attributes problems with the New York subway system to Mr. LaBarbera and the BCTC—without any factual support. Indeed, the Times Article did not mention LaBarbera's unions at all. The only union whose rules were mentioned was Local 147, not BCTC or one of BCTC's affiliate unions.

69. Underneath the above quoted text is an infographic titled "5 ways unions are Ruining your commute," with a link to the Times Article. The homepage text then goes on to list some of the findings from the Times Article, *i.e.*, that New York City has the world's highest construction costs, the MTA paid for more tunnel diggers than necessary and overpays those tunnel

diggers, the MTA “creates union jobs that have no value,” and some unions are paid for use of tunnel-boring machines.

70. None of these “5 ways unions are ruining [New Yorkers’] commute” mention Mr. LaBarbera, BCTC, or any of the BCTC unions.

71. The text is followed by an invitation for the reader to get “more details” by clicking on a hyperlink to a Subwayscam.com article entitled “Digging Deep: How Unions are Making New York’s Subway Suck.” (hereinafter “**Digging Deep**,” attached hereto as **Exhibit J**.)

72. Digging Deep hyperlinks to, and repeats, the same concerns raised by the Times Article regarding “excessive staffing, little competition, and generous contracts.”

73. Yet while the Times Article concluded that “a host of factors” were to blame for excessive subway costs, Digging Deep selectively chooses only one—“[t]rade unions ... have secured deals requiring work to be staffed [by more personnel than in other countries].” Digging Deep gives, as an example, the practice of overstaffing on tunnel-boring machines.

74. Notably, this example cannot be attributed to Mr. LaBarbera or BCTC’s unions. Tunnel boring is a sandhog function, and the sandhogs are represented by Local 147—not an affiliate of BCTC. Moreover, it is Local 147 that is alleged in the Times Article to have negotiated contracts for pay and staffing protections.

75. Finally, staffing is a product of collective bargaining and is therefore not unilaterally controlled by any one union.

76. Digging Deep concludes as follows:

When unions negotiate wasteful contracts and inflate construction costs, they take valuable resources away from long-overdue subway improvements. The MTA already faces a \$1 billion budget deficit, which is only compounded by expensive union work rules.

If LaBarbera's unions have less power, New York's subway will be less dirty, less delayed, and less dangerous.

77. Again, Digging Deep's conclusion—directly linking Mr. LaBarbera to the issues of the “dirty,” “delayed,” and “dangerous” subway system—has no basis in fact. While the conclusion links these ills to unions “negotiate[ing] wasteful contracts and inflat[ing] construction costs,” the Times Article does not attribute any such practices to Mr. LaBarbera or his union, but rather to construction companies, vendors, and the MTA.

78. In addition to the homepage, www.subwayscam.com features three tabs, “Articles,” “Photo Quiz,” and “Gary LaBarbera.”

79. The “Articles” tab provides links to several articles posted by SubwayScam.com. In addition to Digging Deep, the website links to the following two articles (both of which are attached hereto as **Exhibit K**):

- “Subway Scam Billboards Hit New York City,” March 22, 2018, 11:07 a.m.

In this article, Defendant notes it has launched its “Subway Scam” campaign, “highlighting the trade unions that have made New York's subway system dirty, delayed, and dangerous. The new campaign specifically focuses on the [BCTC]—namely BCTC President Gary LaBarbera—whose member unions' expensive and wasteful contracts with the [MTA] increase transit construction costs and take resources away from subway repairs and upgrades.”

- “Subway Scam Ads Hit New York City,” April 5, 2018, 12:10 p.m.

In this article, Defendant publicizes the Print Ads and makes clear that “[t]he ad blames Gary LaBarbera, president of [BCTC for the subway system's many pitfalls.” (emphasis added).

80. Finally, the website offers a “Gary LaBarbera” tab at the top of its homepage. This tab links to an article entitled, “Gary LaBarbera: Engineer of New York City’s Subway Scam.” (hereinafter “**LaBarbera Article**,” attached hereto as **Exhibit L**.)

81. The LaBarbera Article opens with Mr. LaBarbera’s quote in the Times Article.

82. The LaBarbera Article then continues with citations to the Times Article findings that were not connected in any way to Mr. LaBarbera or any of his unions:

As the Times pointed out, New York isn’t getting much of a safety return on its investment:

“Statistics suggest that the labor deals multiply costs while doing little to boost safety. During the Second Avenue subway project, for example, there were 5.5 safety incidents for every 200,000 work hours, according to federal data. The national average is 3.2. The Silver Line in Washington, which cost just \$300 million per mile, had an even lower rate of incidents.”

83. The LaBarbera Article then implies that LaBarbera’s unions have been contributing money to Governor Cuomo so that he will allow the unions to carry on under the “status quo.”

This status quo is kept in place due to a cozy relationship between Governor Cuomo and the unions that LaBarbera represents. The *Times* reports that Governor Cuomo has received more than \$1 million in contributions from construction unions during his time in office.

84. While the Times Article does note that unions working on MTA projects have donated more than \$1 million combined to Governor Cuomo, it does not specify, whatsoever, which unions have made any donations, nor does it specifically link Mr. LaBarbera or any of his unions to Governor Cuomo.

85. The LaBarbera Article concludes with the statement that “Mr. LaBarbera has also been accused by the NAACP of ‘misleading’ New Yorkers on the lack of racial diversity in construction unions.” The text is hyperlinked to the website blackworkersmatter.com. But

nowhere on this website is Mr. LaBarbera mentioned, either singly or in connection with an NAACP accusation.

E. Contemporaneous Media

86. Since early March 2018, Defendant has been using the media to promote its smear campaign against Mr. LaBarbera.

87. For example, in an article titled “Corporate Lobbyist is Behind New Anti-Union Subway Ads in City,” published on www.wnyc.org on March 22, 2018 (and attached hereto as **Exhibit M**), Luka Ladan, Defendant’s Communications Director, provided the following quote making clear Defendant’s agenda:

For years, Gary LaBarbera’s nonsensical union work rules and no show-no work jobs have hiked transit construction costs at the expense of much-needed repairs, making New York’s subway system a global embarrassment.

88. Mr. Ladan, on behalf of Defendant, provided a similar quote to an article titled “National Watchdog Calls Foul on NYC Subway Unions,” published on www.insidesources.com on March 26, 2018 (and attached hereto as **Exhibit N**):

While many New Yorkers are frustrated with the subway system, we hope to make them aware that labor unions, particularly Gary LaBarbera and his trade unions, are to blame for a lot of the subway’s pitfalls.

89. And on April 5, 2018, Mr. Ladan, on behalf of Defendant, published an op-ed in Crain’s New York Business entitled “Cause of Transit Projects’ Runaway Costs is no Mystery: Unions” (attached hereto as **Exhibit O**). In this op-ed, Mr. Ladan detailed the various problems with the subway cited in the Times Article, and concluded—in contradiction to the Times Article:

The chief culprit is Gary LaBarbera, who oversees New York City’s trade unions as president of the [BCTC]. LaBarbera’s member unions negotiate expensive and wasteful project labor agreements with construction companies, scoring lucrative contracts at the expense of long-overdue subway improvements. When pressed on sky-high construction costs, LaBarbera doubled down: ‘Construction workers deserve every penny they make, and more.

... Nonetheless, LaBarbera’s unions carry on, hungry for more windfalls even as the MTA struggles for resources.

90. Defendant’s smear campaign, premised on demonstrably false facts, is ongoing and continues to cause Mr. LaBarbera damages, including but not limited to reputational harm, humiliation, embarrassment, mental suffering, shame and emotional distress.

FIRST CAUSE OF ACTION
(Defamation per se)

91. Plaintiff incorporates by reference paragraphs 1 through 90 of this Complaint as if fully set forth herein.

92. The following statements published by Defendant attribute untruthful and unethical conduct to Mr. LaBarbera, falsely impugn his integrity and honesty, and ascribe to him character and conditions that would adversely affect the proper conduct of his lawful profession:

- a) On www.subwayscam.com:
“Meet the union boss making the subway suck. His name is **Gary LaBarbera** and his labor group, the Building and Construction Trades Council of Greater New York, is making New York’s subway system a global embarrassment.”
- b) In the LaBarbera Article:
Calling “Gary LaBarbera [the] Engineer of New York City’s Subway Scam.”
- c) In Digging Deep:

“When unions negotiate wasteful contracts and inflate construction costs, they take valuable resources away from long-overdue subway improvements. The MTA already faces a \$1 billion budget deficit, which is only compounded by expensive union work rules.

If LaBarbera’s unions have less power, New York’s subway will be less dirty, less delayed, and less dangerous.”

d) In the Print Ads:

“Over 70% of subway riders believe the system is dirty, delayed, or dangerous.

Thanks to construction union boss Gary LaBarbera, expensive work rules and cost overruns take valuable resources away from repairs and upgrades.”

e) In the April 5 Print Ad:

“Union Payoffs Mean You Get to Ride With the Rats.”

“Governor Cuomo is best buddies with union boss Gary LaBarbera. Instead of properly funding the New York subway so it’s not dirty, delayed, and dangerous, Cuomo supports outrageously expensive construction union contracts with taxpayer money.”

f) In the YouTube Video:

Picture of Mr. LaBarbera accompanied by the lyrics, “The unions stuff their bank\$,” followed by a clip accompanied by the lyrics, “While the Governor gives them thanks.” Video, at 1:28 – 1:30.

Picture of Mr. LaBarbera, Mayor de Blasio, and Governor Cuomo accompanied by the lyrics “They’re all to blame.” Video, at 1:36 – 1:38.

g) In “Subway Scam Billboards Hit New York City,” March 22, 2017, 11:07 a.m.

[Defendant launched its “Subway Scam” campaign], “highlighting the trade unions that have made New York’s subway system dirty, delayed, and dangerous. The new campaign specifically focuses on the [BCTC]—namely BCTC President Gary LaBarbera—whose member unions’ expensive and wasteful contracts with the [MTA] increase transit construction costs and take resources away from subway repairs and upgrades.”

93. The statements described above expose Mr. LaBarbera to public contempt, aversion, and disgrace.

94. The statements described above impugn Mr. LaBarbera's reputation in his profession.

95. Moreover, these statements accuse Mr. LaBarbera of being unfit in his profession, paying politicians for personal gain, and improperly raising prices of construction jobs in order in use the money for personal gain.

96. Indeed, the thrust of the defamatory statements is that Mr. LaBarbera is the sole cause of the problems with the New York City Subway system, which would suggest he is unfit to lead a union comprised at least in some part of workers hired to improve the subway system.

97. These statements were false when made.

98. Defendant published these defamatory statements with knowledge that they are false or with reckless disregard for the truth of the statements.

99. Defendant knew (or was reckless in not knowing) the statements it published were false because the Times Article on which it relied did not specifically implicate Mr. LaBarbera, BCTC, or any of BCTC's affiliates in the problems discussed in the article.

100. Moreover, the defamatory statements state that Mr. LaBarbera is singlehandedly responsible for problems with the subways, whereas the Times Article conceded that such problems were the result of a "host of factors"—none of which involved Mr. LaBarbera specifically.

101. Indeed, the only trade union the Times Article singled out was Local 147, representing the sandhogs. Local 147 is not an affiliate of BCTC.

102. Defendant was aware of the content of the Times Article because it highlighted, quoted heavily from, and hyperlinked to it on www.subwayscam.com and its embedded articles. Indeed, the Times Article was the *only* source Defendants cited relating to labor unions and New York City subways.

103. Defendant therefore acted with actual malice in publishing the defamatory statements.

104. Defendant continued to publish defamatory statements in media outlets contemporaneous with the launching of the smear campaign. The statements by Mr. Ladan on behalf of Defendant in Exhibits M, N, and O are defamatory for the same reasons set forth herein.

105. Defendant had no privilege or authorization to publish the false and defamatory statements about Mr. LaBarbera.

106. The defamatory statements in the Print Ads, the April 5 Print Ad, Billboards, Video, and Subwayscam.com (including its linked articles), and in Exhibits M, N, and O have directly and proximately caused Mr. LaBarbera to suffer significant damages, including damage to his reputation, humiliation, embarrassment, mental suffering, shame and emotional distress.

SECOND CAUSE OF ACTION
(Defamation)

107. Plaintiff incorporates by reference paragraphs 1 through 106 of this Complaint as if fully set forth herein.

108. Defendant published or caused to be published the following false and defamatory statements of and concerning Mr. LaBarbera:

- a) On www.subwayscam.com:
“Meet the union boss making the subway suck.

His name is **Gary LaBarbera** and his labor group, the Building and Construction Trades Council of Greater New York, is making New York's subway system a global embarrassment."

b) In the LaBarbera Article:

Calling "Gary LaBarbera [the] Engineer of New York City's Subway Scam."

c) In Digging Deep:

"When unions negotiate wasteful contracts and inflate construction costs, they take valuable resources away from long-overdue subway improvements. The MTA already faces a \$1 billion budget deficit, which is only compounded by expensive union work rules.

If LaBarbera's unions have less power, New York's subway will be less dirty, less delayed, and less dangerous."

d) In the Print Ads:

"Over 70% of subway riders believe the system is dirty, delayed, or dangerous.

Thanks to construction union boss Gary LaBarbera, expensive work rules and cost overruns take valuable resources away from repairs and upgrades."

e) In the April 5 Print Ad:

"Union Payoffs Mean You Get to Ride With the Rats."

"Governor Cuomo is best buddies with union boss Gary LaBarbera. Instead of properly funding the New York subway so it's not dirty, delayed, and dangerous, Cuomo supports outrageously expensive construction union contracts with taxpayer money."

f) In the YouTube Video:

Picture of Mr. LaBarbera accompanied by the lyrics, "The unions stuff their bank\$," followed by a clip accompanied by the lyrics, "While the Governor gives them thanks." Video, at 1:28 – 1:30.

Picture of Mr. LaBarbera, Mayor de Blasio, and Governor Cuomo accompanied by the lyrics “They’re all to blame.” Video, at 1:36 – 1:38.

- g) In “Subway Scam Billboards Hit New York City,” March 22, 2017, 11:07 a.m.

[Defendant launched its “Subway Scam” campaign], “highlighting the trade unions that have made New York’s subway system dirty, delayed, and dangerous. The new campaign specifically focuses on the [BCTC]—namely BCTC President Gary LaBarbera—whose member unions’ expensive and wasteful contracts with the [MTA] increase transit construction costs and take resources away from subway repairs and upgrades.”

109. These statements were false when made.

110. The statements described above expose Mr. LaBarbera to public contempt, aversion, and disgrace.

111. Defendant published these defamatory statements with knowledge that they are false or with reckless disregard for the truth of the statements.

112. Defendant knew the statements it published were false because the Times Article on which it relied did not specifically implicate Mr. LaBarbera, BCTC, or any of BCTC’s affiliate unions in the problems

113. Moreover, the defamatory statements state that Mr. LaBarbera is singlehandedly responsible for problems with the subways, whereas the Times Article conceded that such problems were the result of a “host of factors”—none of which involved Mr. LaBarbera specifically.

114. Indeed, the only trade union the Times Article singled out was Local 147, representing the sandhogs. Local 147 is not an affiliate of BCTC.

115. Defendant was aware of the content of the Times Article because it highlighted, quoted heavily from, and hyperlinked to it on www.subwayscam.com and its embedded articles.

116. Defendant therefore acted with actual malice in publishing the defamatory statements.

117. Defendant continued to publish defamatory statements in media outlets contemporaneous with the launching of the smear campaign. The statements by Mr. Ladan on behalf of Defendant in Exhibits M, N, and O are defamatory for the same reasons set forth herein.

118. Defendant had no privilege or authorization to publish the false and defamatory statements about Mr. LaBarbera.

119. The defamatory statements in the Print Ads, the April 5 Print Ad, Billboards, Video, and Subwayscam.com (including its linked articles), and in Exhibits M, N, and O have directly and proximately caused Mr. LaBarbera to suffer significant damages, including damage to his reputation, humiliation, embarrassment, mental suffering, shame and emotional distress.

THIRD CAUSE OF ACTION
(Defamation by Implication)

120. Plaintiff incorporates by reference paragraphs 1 through 119 of this Complaint as if fully set forth herein.

121. Defendant attribute to Plaintiff responsibility for an entire “scam” to promulgate expensive work rules and cost overruns that benefit himself and his unions, while taking “valuable resources” away from repairs and upgrades to the subway system.

122. By only highlighting Mr. LaBarbera in the various publications and using magnified images of him in the publications, Defendant intended to create the inference that Mr. LaBarbera is singularly to blame for the problems with the New York City subway system.

123. This implication is defamatory because the Times Article, on which Defendant relies for its informational campaign, makes no mention specifically of Mr. LaBarbera's practices or blameworthiness and instead addresses the "host of factors" resulting from its investigation.

124. This implication exposes Mr. LaBarbera to public contempt, aversion, and disgrace.

125. Defendant knew (or was reckless in not knowing) the implications of its smear campaign were defamatory because the Times Article on which it relied did not specifically implicate Mr. LaBarbera, BCTC, or any of BCTC's affiliate unions in the problems.

126. Defendant knew (or was reckless in not knowing) the statements it published were false because the Times Article on which it relied did not specifically implicate Mr. LaBarbera, BCTC, or any of BCTC's affiliate unions in the problems it discusses.

127. Moreover, the defamatory statements state that Mr. LaBarbera is singlehandedly responsible for problems with the subways, whereas the Times Article conceded that such problems were the result of a "host of factors"—none of which involved Mr. LaBarbera specifically.

128. Defendant was aware of the content of the Times Article because it highlighted, quoted heavily from, and hyperlinked to it on www.subwaycam.com and its embedded articles.

129. Defendant therefore acted with actual malice in publishing the defamatory statements.

130. Defendant had no privilege or authorization to publish the false and defamatory statements about Mr. LaBarbera.

131. The defamatory statements in the Print Ads, April 5 Print Ad, Billboards, Video, and Subwaycam.com (including its linked articles), and Exhibits M, N, and O, have directly and

proximately caused Mr. LaBarbera to suffer significant damages, including damage to his reputation, humiliation, embarrassment, mental suffering, shame and emotional distress.

FOURTH CAUSE OF ACTION

(Invasion of Privacy – Civil Rights Law §§ 50 and 51)

132. Plaintiff incorporates by reference paragraphs 1 through 131 of this Complaint as if fully set forth herein.

133. New York Civil Rights Law § 50 provides that:

A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person...

134. New York Civil Rights Law § 51 provides that:

Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages...

135. The Print Ads, April 5 Print Ad, the YouTube Video, and www.subwayscam.com were part of an advertising campaign developed and carried out by Defendant to advertise its anti-union agenda and/or solicit support for its organization.

136. Defendant's use of Mr. LaBarbera's name and picture in the Print Ads, the YouTube Video, and the homepage of www.subwayscam.com was an invasion of Mr. LaBarbera's privacy because Defendant did not obtain Mr. LaBarbera's written consent.

137. Defendant accompanied Mr. LaBarbera's likeness with text that was substantially false.

138. Defendant knew the text alongside Mr. LaBarbera's likeness was substantially false because the statements made find no factual support in the Times Article on which Defendant relies—or elsewhere.

139. Defendant knew that it used Mr. LaBarbera's likeness for its own advertising purposes without his permission and in juxtaposition with text that was substantially false.

140. As a result of Defendant's violation of his privacy, Mr. LaBarbera has suffered significant damages, including damage to his reputation, humiliation, embarrassment, mental suffering, shame and emotional distress

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of judgment in this Court:

- (i) An award of compensatory, special and punitive damages in amounts to be established at trial;
- (ii) Injunctive relief prohibiting the publication or republication of the defamatory statements in the Print Ads, April 5 Print Ad, Billboards, Video, or Subwayscam.com and any of its linked articles;
- (iii) An award of Plaintiff's costs associated with this action, including but not limited to his reasonable attorneys' fees and expenses; and
- (iv) Such other and further relief as this Court deems just and proper to protect Plaintiff's rights and interests.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York
May 9, 2018

Respectfully submitted,

/s/ Michael de Leeuw

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