12-Person Jury

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOSE A. BAEZ and LAW OFFICES OF JOSE A. BAEZ ESQUIRE P.A.,	)	
Plaintiffs,	)	Case No.
v.	)	**JURY TRIAL DEMANDED**
ROSE MCGOWAN, JS CIVIL LAW GROUP P.L.L.C. d/b/a SALVATORE PRESCOTT & PORTER, P.L.L.C., and JULIE B. PORTER,	)	
Defendants.	)	

VERIFIED COMPLAINT

Plaintiffs Jose A. Baez ("Baez") and Law Offices of Jose A. Baez Esquire P.A. (the "Baez Law Firm") by and through their attorneys, Burke, Warren, MacKay & Serritella, P.C. and Tacopina, Seigel & DeOreo, for their Complaint against Defendants Rose McGowan ("McGowan"), JS Civil Law Group P.L.L.C. d/b/a Salvatore Prescott & Porter, P.L.L.C. ("SPP"), and Julie B. Porter ("Porter") states as follows:

NATURE OF THE COMPLAINT

1. This defamation *per se* action arises from Defendants' utterly false, public declarations, including in a federal civil complaint published on LinkedIn, that Plaintiffs Baez and the Baez Law Firm, as McGowan's prior criminal defense counsel, acted unethically and unprofessionally in purportedly pressuring and advising McGowan to enter into a plea agreement in a felony drug possession case in the Commonwealth of Virginia.

2. Despite her misguided effort to blame Plaintiffs for her own criminal conduct, the fact is McGowan possessed cocaine in her wallet, while on an airplane in Virginia, and the evidence against her was overwhelming. That is why she appeared in Court, agreed that the

evidence demonstrated her guilt, and accepted her conviction. In fact, McGowan signed a document on the date of her plea acknowledging that she "freely and voluntarily" accepted her conviction to possessing cocaine. Moreover, following her plea and conviction, the presiding judge issued an Order which specifically found that McGowan's plea was "freely, voluntarily, and intelligently made."

3. Notwithstanding the foregoing, McGowan knew that her criminal conviction harmed her reputation and her ability to sell her new book, *Brave*. As a result, McGowan and her attorneys, SPP and Porter, concocted a malicious scheme to salvage McGowan's reputation at the expense of the reputation of Baez and the Baez Law Firm. Specifically, Defendants issued a series of wild and specious statements to the public, falsely claiming that Plaintiffs, at the behest of Harvey Weinstein ("Weinstein"), improperly coerced and advised McGowan to enter a plea in her case and agree to a conviction.

4. Indeed, Defendants, in furtherance of their scheme to impugn the reputation of Baez and the Baez Law Firm, have gone so far as to astonishingly contend that Weinstein somehow planted the subject cocaine in McGowan's wallet (the "purported Weinstein defense"), and that McGowan should thus never have pled guilty while represented by Plaintiffs. Similarly, Defendants have further publicly stated that McGowan pled guilty because Baez and the Baez Law Firm unethically abandoned the purported Weinstein defense, at the behest of Weinstein.

5. The preceding statements, constituting defamation *per se*, are demonstrably false. More to the point, Defendants knew they were demonstrably false when they made such statements. *First*, the purported Weinstein defense was not only unsupported by the evidence but it was critically belied by it. *Second*, Baez and the Baez Law Firm did not participate in plea discussions or even advise McGowan regarding her decision to plead. Rather, McGowan's other

criminal defense attorney, Jim Hundley ("Hundley), fully assumed both of those responsibilities. Furthermore, when the presiding judge questioned McGowan during her plea proceeding, in the presence of Hundley, whether she was "satisfied with what [Hundley's] done for [her]," meaning Hundley negotiating her plea agreement and advising her in regard to it, McGowan confirmed that she was indeed satisfied.

6. It is beyond cavil that Defendants, when they publicized their defamatory statements, knew that Baez and the Baez Law Firm were not involved in McGowan's plea negotiations and/or her decision to plead guilty. Likewise, Defendants also knew that the role of Baez and the Baez Law Firm was limited to representing McGowan at a trial if she elected to exercise her right to one. In light of the overwhelming evidence against her, however, McGowan freely and voluntarily chose to forego that right and accept her criminal conviction.

7. Significantly, emails between McGowan and her criminal defense attorneys in Virginia make manifest that Baez and the Baez Law Firm were not involved in plea negotiations or the rendering of advice to McGowan about her plea. In fact, remarkably, these emails show that McGowan agreed to plead and accept her conviction based exclusively on Hundley's advice *before* Baez and the Baez Law Firm even knew about her plea agreement.

8. In written correspondence with Plaintiffs, Defendants previously acknowledged that they conducted an investigation into the allegations contained in their complaint, *and* that they possessed the preceding emails. In addition, while citing these emails, Plaintiffs highlighted to Defendants the defamatory nature of Defendants' statements.

9. In fact, SPP and Porter had an ethical duty and were required by Rule 11 of the Federal Rules of Civil Procedure to investigate the meritless conspiracy claims against Plaintiffs prior to alleging them in a federal complaint, and thus prior to posting that federal complaint on

LinkedIn. Importantly, based on SPP's and Porter's acknowledgement that they had all the relevant emails regarding McGowan's plea negotiations prior to filing the federal complaint (both in Court and on LinkedIn), SPP and Porter thus also had all the information required to readily establish the falsity of McGowan's defamatory claims prior to publicizing them. Indeed, the relevant emails made readily apparent that: (a) Plaintiffs were not involved in McGowan's plea discussions, (b) Hundley handled such plea discussions without Plaintiffs, and (c) Plaintiffs never advised McGowan to abandon the purported Weinstein defense.

10. Although SPP and Porter had an ethical duty to investigate McGowan's claims against Baez and the Baez Law Firm, and they possessed information demonstrating the blatant falsity of such claims, SPP and Porter nonetheless publicized Defendants' false claims against Plaintiffs on LinkedIn (by posting on that professional networking website the federal complaint containing the false claims). In light of the foregoing, the decision of SPP and Porter to defame Baez and the Baez Law Firm was made knowingly or recklessly in disregard of the truth. As referenced herein, that decision was made in furtherance of Defendants' plan to falsely purge McGowan of criminal wrongdoing by casting aspersions of unethical and unprofessional conduct upon Baez and the Baez Law Firm.

11. Defendants' audacious lies about Plaintiffs Baez and the Baez Law Firm stand in stark contrast to the highly ethical and professional manner in which Plaintiffs operate. Indeed, because Baez and the Baez Law Firm are so renowned, defamatory statements of the ilk advanced by Defendants have posed a great risk of harm to Baez both personally and professionally. Specifically, Baez has ascended to national prominence as a hard-hitting trial attorney, based on his passion, hard work and brilliant courtroom strategies.

12. In fact, Baez was named "Lawyer of the Year for 2011" by Lawyers USA magazine, named as one of the "Top 100 Trial Lawyers" for 2011, 2012, 2013 and 2014 by the National Trial Lawyers, and served on the Criminal Defense Executive Committee for the Top 100 Trial Lawyers. Additionally, the National Trial Lawyers named Baez Criminal Defense Lawyer of the Year for 2017, and one of the 50 Most Influential Trial Lawyers for 2017 and 2018.

13. The notion that Baez or the Baez Law Firm would act adversely to any client's best interests, as falsely proclaimed by Defendants, defies reason.

14. What similarly defies reason is the notion that McGowan did not accept her conviction because she was, in fact, guilty of possessing cocaine. Indeed, after pleading to that offense, when asked by the presiding judge if she wanted to make a statement, McGowan – rather than asserting her innocence, that she was framed, or that she was improperly pressured to take a plea – actually apologized to the Court, stating: "I'm very sorry for the inconvenience and for all the work that has gone into this." That statement of contrition was not the hallmark of an innocent criminal defendant.

15. Notably, this is not the first occasion in which McGowan has made publicly false accusations. In September of 2018, McGowan released an apology after making a public, and false, accusation against her friend, Asia Argento. In her public retraction, which occurred only after being threatened with legal action, McGowan admitted that her false claim against Ms. Argento "contained a number of facts that were not correct," including her accusation that Ms. Argento had been receiving unsolicited sexually explicit text messages from a minor from the time he was twelve years old. "I deeply regret not correcting my mistake sooner and apologize to Asia for not doing so," McGowan wrote.

16. Unfortunately, McGowan, and her attorneys, SPP and Porter, have refused to retract her lies and apologize to Plaintiffs, which has compelled Plaintiffs to file this suit.

PARTIES, JURISDICTION AND VENUE

17. Plaintiff Baez is an individual and a resident of the State of Florida.

18. Plaintiff the Baez Law Firm is a law firm and professional association organized under the laws of Florida with a principal place of business in the State of Florida.

19. Defendant McGowan is an individual who, upon information and belief, resides in the United Kingdom.

20. Defendant SPP is a law firm and professional limited liability company, which, upon information and belief, was organized under the laws of Michigan and, according to the Illinois Secretary of State, maintains its "Principal Office" in Evanston, Illinois. Upon information and belief, Porter was the primary attorney for McGowan at SPP, and Porter, upon information and belief, resides and works in Cook County, Illinois.

21. Defendant Porter is an individual who, upon information and belief, resides and works in Cook County, Illinois. Porter is a founding member and principal of SPP.

22. This Court has general personal jurisdiction over SPP and Porter because SPP has a Principal Office in this State, and both SPP and Porter have engaged in a substantial, continuous, and systematic course of business in Illinois.

23. This Court has specific personal jurisdiction over McGowan pursuant to 735 ILCS 5/2-209(a)(1&2) because McGowan transacted business and committed tortious acts in Illinois (a) through her expressed agent, SPP and Porter, in that SPP and Porter, on McGowan's behalf and with her expressed authority, made defamatory statements set forth herein; (b) by hiring an Illinois law firm (SPP) and an Illinois lawyer (Porter) to make defamatory statements set forth herein; and

(c) upon information and belief, by having multiple meetings and communications with SPP and Porter in Illinois discussing her hiring of SPP and Porter, as well as the defamatory statements set forth herein. Baez's defamation *per se* claim directly arises from such contacts between McGowan and Illinois.

24. Furthermore, in or about January 2018, McGowan released her book *Brave*, which, upon information and belief, she has sold to numerous buyers in Illinois. As set forth herein, one of McGowan's motives in defaming Plaintiffs was to generate favorable press to assist her in selling her book, including to buyers in Illinois. Upon information and belief, numerous persons in Illinois read McGowan's defamatory statements concerning Plaintiffs set forth herein.

25. Upon information and belief, McGowan has had extensive contacts with Illinois through her 18-year acting career.

26. Defendants also conspired together to defame Plaintiffs, and thus, their tortious conduct, transaction of business in and contacts with Illinois apply to each of them as coconspirators.

27. The Defendants' scheme to defame Plaintiffs and all of the defamatory statements set forth herein, which were made pursuant to that scheme, arise from the same nucleus of operative facts.

28. Venue is proper pursuant to 735 ILCS 5/2-101 and 102, as SPP and Porter reside here, and Defendants transacted business and made defamatory statements about Plaintiffs in this county and many of the transactions and operative events out of which this action arose occurred in this county.

FACTS COMMON TO ALL COUNTS

29. Prior to McGowan's malicious defamatory statements, Baez was a highly respected attorney with an unblemished reputation in the legal industry and community. Prior to the defamatory statements described herein, the Baez Law Firm shared such a reputation and was held in high esteem within the legal industry and community.

30. By way of some examples, Plaintiffs impeccable reputation is further evidenced by Baez being (a) named "Lawyer of the Year for 2011" by Lawyers USA magazine; (b) named one of the "Top 100 Trial Lawyers" for 2011, 2012, 2013 and 2014 by the National Trial Lawyers; (c) on the Criminal Defense Executive Committee for the Top 100 Trial Lawyers of the National Trial Lawyers; (d) named Criminal Defense Lawyer of the Year for 2017, and one of the 50 Most Influential Trial Lawyers for 2017 and 2018, both by the National Trial Lawyers; (e) on the faculty at Harvard Law School where he teaches trial techniques to second- and third-year law students; (f) considered "the best defense lawyer in the country" and "one of the greatest trial lawyers of all time" by Fox News.

31. Upon information and belief, McGowan is an actress, activist, model and author of the book *Brave*. She has appeared in over thirty motion pictures, over a dozen television shows and a handful of video games and music videos. She is also a social media influencer with almost one million twitter followers and 700,000 Instagram followers.

McGowan's Criminal Case in Virginia

32. On or about February 1, 2017, a felony criminal complaint was filed against McGowan for her unlawful possession of cocaine on a flight from Los Angeles, California to Washington Dulles International Airport. The felony criminal complaint, which specifically charged McGowan with violating Section 18.2-250 of the Code of Virginia, provided in part:

> [O]n January 20, 2017 at approximately 2100 hours the accused flew into Washington Dulles International Airport from Los Angeles, CA on United Airlines flight 653. The accused dropped her wallet (contained CA Driver's License, Medical Marijuana card, numerous credit cards, and insurance cards in the name of the accused [)] on the floor by her seat (6L) and departed the plane. The wallet was located by a member aircraft cleaning services and upon checking the wallet for ID two (2) small plastic bags containing a white powder substance was located inside. The item was immediately turned over to the police department.
>
> The white powder substance was field tested and it tested positive for cocaine.

33. On or about that same day, a felony arrest warrant was issued for McGowan.

34. On or about November 14, 2017, McGowan traveled to Leesburg, Virginia and surrendered herself on the outstanding warrant.

35. By email dated March 12, 2018, one of McGowan's criminal defense attorneys at that time, Jessica N. Carmichael ("Carmichael"), of Harris Carmichael & Ellis PLLC, proposed a possible resolution of the criminal case to McGowan, which would require McGowan to complete fifty hours of community service and attend an eight-hour substance abuse education class, in exchange for the prosecution potentially dismissing all charges against her after six months of good behavior.

36. McGowan did not object to such a potential resolution, and she instead emailed Carmichael back the next day, March 13, 2018, that she "Approved!" If McGowan honestly believed that Weinstein had caused the two bags of cocaine to be planted in her wallet, she would not have been so enthusiastic about this proposed plea deal. This email, which was sent two months prior to McGowan hiring Plaintiffs, establishes that McGowan desired a plea agreement long before the alleged conspiracy between Plaintiffs and Weinstein purportedly arose (which never existed).

37. Around this time, McGowan had also hired Jim Hundley ("Hundley"), of Briglia Hundley P.C., to serve as co-counsel with Carmichael. Indeed, as of March 13, 2018, Hundley

also participated in plea negotiations with the prosecutors, and he eventually became the only lawyer dealing with the plea negotiations, not Plaintiffs (or Carmichael).

38. McGowan did not retain Plaintiffs until May 17, 2018, after McGowan's other counsel, Carmichael and Hundley, had been negotiating a plea bargain for over two months.

39. When McGowan hired Plaintiffs, it was clear to her that Plaintiffs would serve as trial counsel, preparing in advance for such a proceeding if it came to pass, and would not be involved in plea negotiations with the prosecutors. In fact, Plaintiffs never communicated with the prosecutors, let alone for plea negotiations. The plea negotiations were handled solely by Carmichael and Hundley, which Hundley eventually handled on his own without Carmichael.

40. On or about June 11, 2018, a grand jury of the Commonwealth of Virginia, in and for the body of the County of Loudoun, returned an indictment charging that McGowan:

> did feloniously and unlawfully, knowingly or intentionally, possess a controlled substance classified in Schedule I or II not obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of a professional practice, or not authorized by the Drug Control Act, in violation of Section 18.2-250 of the Code of Virginia.

41. Thereafter, Hundley, not Plaintiffs, handled all plea negotiations with the prosecutors. The emails between Hundley and the prosecutors make this fact perfectly clear.

42. Furthermore, Plaintiffs Baez and the Baez Law Firm did not provide McGowan any advice as to her plea negotiations. McGowan relied on Hundley and Carmichael for such advice. In fact, there are numerous emails between Hundley and McGowan concerning plea negotiations, on which Plaintiffs were not even copied. Hundley merely kept Plaintiffs up-to-date as to the status of the plea negotiations, and Plaintiffs did not provide any advice concerning such negotiations.

43. In fact, McGowan sent an email to Hundley on or about December 17, 2018, in which she stated: "Do you think they'd be willing to do a deferred 251? I want to do that, but not start it until June if possible." Hundley responded to McGowan stating that he would speak to the prosecutors. The following day, on or about December 18, 2018, McGowan replied to Hundley's email, stating: "That would be incredible." These emails, wherein McGowan initiates the negotiations that ultimately led to her plea, were between McGowan and Hundley alone. They were forwarded to Plaintiffs only *after* the fact. Remarkably, this chain of emails is among those that Defendants SPP and Porter acknowledges were in its possession.

44. For that matter, by email dated January 2, 2019, Hundley emailed Plaintiffs and advised them that McGowan, without Plaintiffs' involvement, **already agreed** to accept the Commonwealth's plea offer. Hundley wrote to Plaintiffs that McGowan agreed to this plea because he (Hundley), not Plaintiffs, thought it was McGowan's "best option." Hundley did not ask Plaintiffs for their opinion as to the plea offer. Indeed, at that point, McGowan had already agreed to it and her plea was a *fait accompli*.

45. Notably, the Commonwealth's plea offer would reduce McGowan's charged felony offense to a misdemeanor, and thereby reduce her potential sentencing exposure. In particular, the felony with which McGowan was charged, Section 18.2-250 of the Code of Virginia, carried a potential maximum sentence of ten years imprisonment. In contrast, the Commonwealth agreed that in consideration for her plea to the reduced misdemeanor, McGowan would receive a sentence of 12 months in custody, the entire duration of which would be suspended. In other words, as a *quid pro quo* for her plea, McGowan would not have to serve a single day in prison. Stated otherwise, based on her decision to enter into a plea agreement, McGowan eliminated the risk of facing ten years in prison.

46. In sum, the emails between McGowan, Hundley, and Plaintiffs demonstrate that McGowan ultimately accepted the plea due to her desire to resolve the case through a plea agreement from its outset – *before* Plaintiffs were ever involved in the case. McGowan's participation in these emails, and SPP's and Porter's admission to being in possession of these emails, leaves no question that McGowan, SPP and Porter were fully aware of the falsity of their defamatory statements against Plaintiffs.

McGowan's Plea Proceeding and Conviction

47. On January 7, 2019, Hundley emailed McGowan the formal plea form (the "Plea Form") for her review and acceptance. Hundley did not ask Plaintiff for any input as to the Plea Form prior to sending it to McGowan for approval.

48. McGowan never reached out to Plaintiffs for advice as to her plea. This is so, because McGowan relied solely upon Hundley for these plea negotiations.

49. By email dated January 7, 2019, Plaintiffs emailed McGowan further notifying her that Hundley, not Plaintiffs, were handling the plea negotiations, and that Plaintiffs would only get involved in her case if she, after consulting with Hundley (not Plaintiffs), decided to go to trial:

> Rose:
>
> As you may have noticed Jim is being the point person on this plea, as he is the best person to advise you on how this jurisdiction operates, as well as the in's and out's of what's expected of you. That is why I have let him convey it to you as well has manage the whole thing. Should you decide after consulting with Jim that you would like to try the case, I can step back in and take control. Either way I am in constant contact with Jim to keep me in the loop with everything.

50. One day later, on January 8, 2019, Hundley emailed Plaintiffs informing them that he and McGowan had agreed to a disposition with the prosecutors, Hundley had already removed the case from the trial docket due to such disposition, and McGowan already approved a public statement concerning such plea agreement – all without the involvement of Plaintiffs:

> This afternoon I filed a Notice with the Loudoun County Clerk of Court removing the jury trial from the Court's docket because the parties had reached an agreed disposition. The press is sure to pickup on this filing tomorrow, if not sooner, so don't be surprised if your phones start ringing. Rose has approved the following statement:
>
> *Ms. McGowan accepted a plea agreement to a reduced misdemeanor charge in order to spare her family, her friends, and her supporters the emotional strain of a criminal trial. The agreement brings this ordeal to an end and allows her to focus all of her energy on what matters most – creating a better world. Ms. McGowan will comment on the day of the plea.*

(Italics in the original).

51. Upon information and belief, Defendants had possession of all of the above-referenced emails prior to making the defamatory statement set forth herein.

52. That day, January 8, 2019, Hundley, not Plaintiffs, made a statement to the media detailing the terms of McGowan's plea:

> The commonwealth has agreed to reduce the current felony charge to a misdemeanor of possession of a controlled substance. Ms. McGowan will enter a plea of no contest to the reduced charge when she appears in court on January 15, and the commonwealth will recommend a sentence that requires Ms. McGowan to pay a fine. *** Ms. McGowan has accepted this agreement in order to spare her family, her friends and her supporters the emotional strain of a criminal trial. *** The agreement brings this ordeal to an end and allows her to focus all of her energy on what matters most to her — creating a better world.[1]

53. Less than a week later, on January 14, 2019, McGowan and Hundley appeared in Court without Plaintiffs and formally accepted the plea in Court. Plaintiffs never made any Court appearances in the Virginia Criminal Case.

54. On January 14, 2019, prior to her Court appearance, McGowan signed the Plea Form for submission to the Court, which adopted, *inter alia*, the following statements:

[1] https://wtop.com/loudoun-county/2019/01/exclusive-actress-rose-mcgowan-to-plead-no-contest-avoid-jail-for-va-drug-charge/

a. "I am represented by counsel whose name is James W. Hundley, and I am completely satisfied with his service as my lawyer in this matter."

b. "I have told my lawyer all the facts and circumstances, as known to me, concerning the case against me and my criminal record, if any. My lawyer has discussed with me the nature of the charge and has advised me as to any possible defenses I might have in this case. I have had ample time to discuss the case and all possible defenses with my lawyer."

c. "I understand that by pleading no contest I will be found guilty of the offense as charged, and the only issue to be decided by the Court is punishment."

d. "I understand I am giving up or waiving the following rights: (a) my right to appeal; (b) my right to a trial by jury; (c) my right to confront and cross-examine my accusers; and (d) my right not to incriminate myself."

e. "After having discussed the matter with my lawyer, I do freely and voluntarily plead no contest to the offense of Unlawful Possession of a Schedule III Controlled Substance, Case No. CR-32372 and waive my right to a jury and request the Court to hear all matters of law and fact."

55. The Plea Form was also signed by McGowan's attorney, Hundley, as well as the prosecuting attorney and the presiding judge.

56. In fact, when signing the Plea Form, Hundley certified that he made a "thorough investigation of the facts and law relating to this case" and that he "explained to the defendant [McGowan] the charges in this case," that he "reviewed [the Plea Form] and its contents with the defendant [McGowan] and that the defendant's plea of no contest is voluntarily and understandably made."

57. For that matter, the presiding judge, when signing the Plea Form, also found that "the defendant [McGowan] fully understands the nature and consequences of the plea" and that "the plea of no contest and waiver of right to trial by jury were given knowingly, intelligently, and voluntarily."

58. In addition to signing the Plea Form, McGowan appeared before the presiding judge on January 14, 2019, and at that time, pursuant to her plea agreement, entered a plea to a reduced misdemeanor charge of possessing a controlled substance.

59. During her plea proceeding, McGowan, in response to questioning by the Court, agreed that she was "satisfied with what [Hundley's] done for [her]," which services included negotiating McGowan's plea and advising her in connection with it.

60. In addition, in response to questioning by the Court during her plea proceeding, McGowan agreed that she understood the following:

a. McGowan was "going to be found guilty" and she is "just as guilty as if [she] had been found guilty by a jury or a judge."

b. McGowan was "accepting what the Commonwealth's evidence is and pleading guilty."

61. During McGowan's plea proceeding, the Commonwealth detailed the following overwhelming evidence of McGowan's guilt of cocaine possession, which evidence McGowan agreed she was "accepting" by pleading in her criminal case:

a. "[O]n January 20th, 2017, the defendant [McGowan] took United Flight 653 from Los Angeles to Dulles Airport, located in Loudoun County, within the confines of the 20th Judicial Circuit."

b. "After Flight 653 landed and the passengers departed, the plane was secured and towed to Terminal C, Gate C5, to be cleaned."

c. "While cleaning the first-class cabin, an employee recovered a black CHANEL wallet in Row 6L. He observed identification documents and bags of white powder in the wallet and immediately turned it over to his supervisor."

d. "The supervisor looked in the wallet, observed the same white powdery substance, and notified airport authorities."

e. Officers with the Metropolitan Washington Airport Authority responded, took possession of the wallet due to safety concerns about the unknown white powder. They used a Gemini detection device and tested the powder and received a preliminary result of cocaine. They then used a department of forensic science approved test kit, which also yielded a positive result for cocaine."

f. "At the time the wallet was maintained by authorities in a secure chain of custody, and a full search of the wallet was conducted. In addition to the two bags of cocaine, identification cards, a medical marijuana card, and multiple credit cards were located all in the name of Rose McGowan. The wallet, its contents, and including the narcotics were photographed."

g. "Detective Hughes took over the investigation of the case and confirmed, through security footage, that the defendant [McGowan] departed the plane after it landed."

h. "Detective Hughes then submitted the two bags of cocaine to the department of forensic science. They tendered a certificate of analysis, dated June 20th, 2017, confirming the powder to be 1.5 grams of cocaine, a schedule II substance."

i. "Shortly after recovering the wallet and its contents, Detective Hughes contacted the defendant [McGowan] and informed her that her wallet, with her IDs and her credit cards, had been located."

j. "The defendant [McGowan] stated that she would only need her identification and requested that her wallet be left at the claims area for her to retrieve. Detective Hughes explained that it was secured at the police station, asked her to arrange to come down to the Dulles Police Station and pick it up."

k. The defendant [McGowan] stated that she was in town for the Woman's March and that she would contact the detective as soon as it was over to pick up her wallet. Despite that, the defendant [McGowan] never contacted Detective Hughes, never made any arrangements to pick up her wallet or any of its contents."

62. Further, during McGowan's plea proceeding, photographs of McGowan's wallet, her wallet's contents, her cocaine, and a security image of McGowan departing the plane were all received in evidence, without objection by McGowan's attorney, Hundley. Similarly, during the same proceeding, the certificate of analysis which confirmed the powder in McGowan's wallet to be one and one-half grams of cocaine was received in evidence, again without objection by Hundley.

63. Following the statement of undisputed facts and introduction of uncontested evidence establishing McGowan's guilt, the presiding judge asked whether McGowan's attorney, Hundley, had "any evidence [McGowan] wants to present or proffer at this time." Hundley responded that McGowan did not have any evidence to present on her behalf.

64. Notably, when presented with the opportunity during her plea proceeding, McGowan, through her counsel, Hundley, did not deny that the cocaine was hers. Nor did she

offer any evidence to remotely suggest that Weinstein somehow planted the drugs in her wallet. In fact, McGowan did not offer any evidence even tending to prove her purported unawareness that the cocaine was in her wallet. To the contrary, as McGowan acknowledged, upon learning that law enforcement had recovered her wallet, McGowan told a detective "she would only need her identification" and never made arrangements to retrieve her wallet, which contained cocaine. Such conduct plainly evidences McGowan's consciousness of guilt regarding the contraband in her wallet.

65. As further evidence of her consciousness of guilt, McGowan informed Baez that she did not want the bags of cocaine that were found in her wallet tested for DNA. Plainly, if McGowan truly thought the cocaine were planted, she would have wanted such DNA evidence to support her potential defense. McGowan's specific directive to not have the bags of cocaine tested undercuts any concocted notion that she was unaware of the contraband's presence in her wallet and, for that matter, that someone other than her knowingly placed it in there. In short, McGowan proactively sought to prevent the gathering of DNA evidence as she knew that it would further prove her guilt.

66. Accordingly, when the presiding judge asked McGowan directly, with respect to the Commonwealth's evidence of McGowan's guilt, "is that the evidence that you were expecting to hear," McGowan replied, "Yes, Your Honor."

67. Moreover, before imposing upon McGowan the agreed upon disposition of a suspended sentence on her negotiated reduced offense, the presiding judge asked McGowan if she wanted to make a statement. In response, McGowan actually apologized to the Court, stating: "I'm very sorry for the inconvenience and for all the work that has gone into this. Thank you,

Your Honor." That statement of contrition was not the hallmark of an innocent criminal defendant.

68. Following the entry of her plea, the presiding judge, who witnessed McGowan during her plea proceeding, issued an Order dated January 23, 2019, which specifically found that McGowan's plea was "freely, voluntarily, and intelligently made."

69. After pleading and accepting her criminal conviction, McGowan, while standing next to Hundley, made the following statement to the media:

> Well, sometimes you have to lose the battle to win the war and I'm in it for the long-haul and that's what's going on and, you know, once you get tangled in the legal system it's very hard to get out of it and sometimes you just take what you can get and -- hope for the best. *** It's caused a lot of stress and I just wanted it to be over, I just wanted it to be over, however it ended, I just wanted it to be over. Thank you.

70. Although McGowan at one point, prior to the entry of her plea, contemplated asserting some defense at trial that Weinstein planted the cocaine in her wallet, she had no evidence to establish such wild conjecture. Consequently, confronted with actual and overwhelming evidence of her guilt, and while advised by Hundley (and, for a period of time, Carmichael) – not Plaintiffs – McGowan ultimately agreed, freely and voluntarily, to plead in her criminal case and accept a conviction to a misdemeanor.

71. Despite the foregoing, in a disingenuous effort to salvage her reputation in the wake of her conviction to drug possession, McGowan, SPP and Porter devised a scheme to falsely blame Baez and the Baez law firm for McGowan's criminal conviction. McGowan's desire to deflect from her own wrongdoing was heightened by the fact she committed the crime of cocaine possession while traveling to the Woman's March in Washington, D.C., as an activist. Thus, McGowan feared that members of the public would view her putative good deeds through a tainted lens tarnished by her criminal conduct. To avoid that harm to her own reputation, as set forth

herein, McGowan falsely publicized that Baez and the Baez Law firm, at the behest of Weinstein, improperly coerced and advised her to plead in her criminal case and accept her conviction.

72. Prior to defaming Plaintiffs as set forth herein, Defendants had actual knowledge of all of the events and emails described above, which clearly establish that Plaintiffs were not advising McGowan as to plea negotiations, such advice only came from Hundley and Carmichael, and McGowan was not pressured into taking the plea and foregoing some purported defense that Weinstein somehow planted the two bags of cocaine in her wallet on a plane.

73. Notably, while Defendants have publically defamed Baez for purportedly coercing her into pleading, they, upon information and belief, have not made such accusations against Hundley, who directly orchestrated the plea with the prosecutors and was the sole attorney advising McGowan to plead. If Defendants truly believed that McGowan was improperly pressured to take a plea and forego the purported Weinstein defense, they would have made such accusations against Hundley as well. However, they have not made such accusations against Hundley, because they know such accusations are false.

Weinstein's Criminal Case

74. After McGowan's criminal case ended, and Plaintiffs Baez and the Baez Law Firm no longer represented her, Weinstein hired Plaintiffs to represent him in a criminal case in the State of New York arising from multiple alleged sex crimes of which McGowan was not an alleged victim ("Weinstein Criminal Case"). Prior to agreeing to represent Weinstein, Plaintiffs Baez and the Baez Law Firm obtained an opinion from an ethics attorney stating that it was permissible for Plaintiffs to represent Weinstein despite McGowan's allegations against Weinstein.

75. Thereafter, on or about January 25, 2019, the Court in the Weinstein Criminal Case permitted Plaintiffs to represent Weinstein in that case despite the fact that Plaintiffs previously

represented McGowan. Baez represented Weinstein at that time with co-counsel, Ronald Sullivan, and Duncan Levin.

76. Plaintiffs eventually withdrew as Weinstein's counsel in the Weinstein Criminal Case on or about July 11, 2019.

Defendants' Defamatory Statements

77. Upon information and belief, Defendants conspired with and aided and abetted each other in making knowingly false and unprivileged statements about and concerning Plaintiffs to third parties, which greatly harmed Plaintiffs' reputation in their trade and business. Upon information and belief, Defendants each knowingly and voluntarily participated in this common scheme to harm Plaintiffs' professional reputation.

78. Upon information and belief, Defendants did so for the purpose of accomplishing, by concerted action and common design, a direct harm to the professional reputation of Plaintiffs, to which Defendants agreed. Each Defendant committed overt tortious acts in concert with each other and in furtherance of this conspiracy by making defamatory statements about and concerning Plaintiffs, and each substantially participated and assisted in such public campaign and scheme to defame Plaintiffs. Each Defendant also accepted and ratified each other's defamatory statements.

79. These defamatory *per se* statements harmed Plaintiffs' reputation in their trade and business by lowering such reputation in the eyes of the community and, upon information and belief, deterred the community from associating with Plaintiffs. Such knowing false statements negatively impugned Plaintiffs' ability to perform their duties on behalf of their clients, imputed a lack of integrity to the performance of those duties, conveyed a lack of ability by Plaintiffs in their profession, and prejudiced Plaintiffs in their profession.

80. Prior to making the defamatory statements, Defendants knew the above-described facts and had copies of the cited emails concerning Plaintiffs **not** advising McGowan as to the plea

negotiations and agreement, and they knew that the claim that Weinstein purportedly caused two bags of cocaine to be planted in McGowan's wallet was based upon pure speculation. Furthermore, Plaintiffs knew that the purported Weinstein defense was contradicted by the undisputed evidence of McGowan's guilt, McGowan's decision to freely and voluntarily accept such evidence and her conviction, and McGowan's apology to the Court.

81. Additionally, SPP and Porter had an ethical duty and were required by Rule 11 of the Federal Rules of Civil Procedure to investigate the meritless conspiracy claims against Plaintiffs prior to alleging them in a federal complaint, and thus prior to posting that federal complaint on LinkedIn. Importantly, based on SPP's and Porter's acknowledgement that they had all the relevant emails regarding McGowan's plea negotiations prior to filing the federal complaint (both in Court and on LinkedIn), SPP and Porter thus also had all the information required to readily establish the falsity of McGowan's defamatory claims prior to publicizing them. Indeed, the relevant emails made readily apparent that: (a) Plaintiffs were not involved in McGowan's plea discussions, (b) Hundley handled such plea discussions without Plaintiffs, and (c) Plaintiffs never advised McGowan to abandon the purported Weinstein defense.

82. Although SPP and Porter had an ethical duty to investigate McGowan's claims against Baez and the Baez Law Firm, and they possessed information demonstrating the blatant falsity of such claims, SPP and Porter nonetheless publicized Defendants' false claims against Plaintiffs on LinkedIn (by posting on that professional networking website the federal complaint containing the false claims). In light of the foregoing, the decision of SPP and Porter to defame Baez and the Baez Law Firm was made knowingly or recklessly in disregard of the truth. As referenced herein, that decision was made in furtherance of Defendants' plan to falsely purge

McGowan of criminal wrongdoing by casting aspersions of unethical and unprofessional conduct upon Baez and the Baez Law Firm.

83. Therefore, Defendants knew that the defamatory statements set forth below were false. At the very least, Defendants acted in a reckless disregard of whether the defamatory statements below were false or not, in that Defendants possessed a high degree of awareness of their probable falsity or entertained serious doubts as to the truth of such statements.

84. Defendants' defamatory statements were as follows (collectively, the "Defamatory Statements"):

a. On or about January 23, 2019, McGowan made the following defamatory statements to the Daily Beast concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein: "This is a major conflict of interest but I knew there was shadiness going on behind the scenes .... This is why my case didn't go to trial—my instinct was my lawyers had been bought off .... I thought Harvey would get to them behind the scenes and I wouldn't have fair representation. *** I asked Jose Baez directly if he would ever work with Harvey and I told him it was my fear that he would be bought off while representing me .... He responded by saying, 'I don't like to lose.' *** This does not happen overnight they have been planning it for sometime."[2]

b. On or about January 23, 2019, McGowan made the following defamatory statements to the New York Times concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein: "This is an egregious

[2] https://www.thedailybeast.com/harvey-weinstein-hires-dream-team-of-lawyers-who-repped-casey-anthony-kobe-bryant-and-aaron-hernandez

conflict of interest .... Baez is still listed as my attorney in the VA matter. Baez did nothing for my case and now I know why. A truly terrible human and a disgrace of a lawyer."[3]

c. On or about January 23, 2019, McGowan made the following defamatory statements on Twitter concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein: "I'm not even surprised by the level of fuckery going on here. @thedailybeast"

d. On or about January 25, 2019, McGowan caused the following defamatory statements to be published on The Blast concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein: "Sources close to McGowan tell The Blast she is 'not surprised' Baez is working for Weinstein, and believes the ex-producer has had 'tentacles' into her life for years. The actress, who claims she was raped by Weinstein during the 1997 Sundance Film Festival, feels it's highly unethical for her lawyers to work with Weinstein .... *** McGowan thinks it is 'insane how much of a monster Weinstein' is for going after her lawyers, even though the case is unrelated to her claims against him."[4]

e. On or about January 27, 2019, McGowan made the following defamatory statements on Twitter concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein: "When Rats Attack! Coming to a cineplex near you!"

[3] https://www.nytimes.com/2019/01/23/nyregion/harvey-weinstein-new-lawyers.html
[4] https://theblast.com/c/harvey-weinstein-rose-mcgowan-jose-baez-attorney

f. On October 23, 2019, SPP and Porter, upon information and belief, from SPP's and Porter's Illinois office, with McGowan's expressed authority and knowledge, publically published a seventy-two page complaint ("Complaint")[5] on SPP's LinkedIn account,[6] which made the following defamatory statements concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein:

i. "On or about January 14, 2019, on Baez's advice, MCGOWAN dropped the defense relating to WEINSTEIN and, instead, pled no contest to the drug-possession charge, meaning that she did not admit she possessed cocaine but acknowledged that the prosecutor could nevertheless move forward on a case against her." (Complaint on LinkedIn at ¶ 60).

ii. "Approximately nine days later, Baez appeared as criminal-defense counsel for WEINSTEIN, to defend WEINSTEIN against criminal sexual-assault

[5] The Complaint was filed on October 23, 2019, the same day as the LinkedIn publication, in the action *McGowan v. Weinstein, et al*, Case No. 2:19-cv-09105 (C.D. Ca. filed Oct. 23, 2019). Porter is listed as the primary counsel for SPP on the face of the Complaint, wherein SPP's Illinois office is listed as SPP's office.

[6] Re-publication of a filed complaint by the person who filed the complaint is not protected by the fair report privilege. *See, e.g., Missner v. Clifford*, 393 Ill. App. 3d 751, 762, 914 N.E.2d 540, 551 (1st Dist. 2009) ("Under the common law rule, '[a] person cannot confer [the fair report] privilege upon himself by making the original defamatory publication himself and then reporting to other people what he had stated' under the guise of privilege, even if the original publication was itself privileged. Restatement (Second) of Torts § 611, Comment c, at 299 (1977)."); *Republic Tobacco Co. v. N. Atl. Trading Co.*, 381 F.3d 717, 732 (7th Cir. 2004)("While the Illinois Supreme Court has not directly addressed whether this privilege may be 'self-conferred'—i.e., by filing a pleading and then reporting on it, we are confident that if presented with the issue, the Illinois Supreme Court would determine that the privilege may not be self-conferred. It is significant in our view that the Illinois Supreme Court has adopted the official proceeding privilege as expressed in the Second Restatement § 611. *See Catalano v. Pechous*, 419 N.E.2d 350, 360–61 (Ill. 1980) (abandoning § 611 of the Restatement (First) of Torts and adopting § 611 of the Restatement (Second) of Torts)."). The LinkedIn publication was also made prior to the Court, where the complaint was filed, taking any judicial action. Thus, no fair report privilege existed. *See* Restatement (Second) of Torts § 611, Comment e.

charges in New York. Given the very short time frame that elapsed between MCGOWAN's no-contest plea and Baez's appearance as WEINSTEIN's criminal-defense counsel in an extremely high-profile matter, MCGOWAN can only conclude that WEINSTEIN—as he has done repeatedly to MCGOWAN and others—exercised his influence to harm MCGOWAN, silence her, and discredit her." (*Id.* at ¶ 61).

iii. "The WEINSTEIN- PROTECTION ENTERPRISE consisted of HARVEY WEINSTEIN, DAVID BOIES, BOIES SCHILLER FLEXNER, LISA BLOOM, THE BLOOM FIRM, BLACK CUBE, AMI, Jose Baez, Christopher Boies, Lanny Davis, Charles Harder, Dylan Howard, Lacy Lynch, Jan Miller, Stella Penn Pechanac, Roy Price, and Avi Yanus, as well as others known and unknown." (*Id.* at ¶ 135).

iv. "In addition, MCGOWAN believes that WEINSTEIN concealed and failed to disclose that he sought to hire MCGOWAN's criminal-defense counsel, Baez, as his own counsel at a time when Baez was representing MCGOWAN in the drug-possession case, as a means to exert influence on MCGOWAN's actions in the drug-possession case and harm her reputation." (*Id.* at ¶ 159).

v. "MCGOWAN believes that WEINSTEIN concealed and failed to disclose that he sought to hire MCGOWAN's criminal-defense counsel, Baez, as his own counsel at a time when Baez was representing MCGOWAN in the drug-possession case, as a means to exert influence on MCGOWAN's actions in the drug-possession case and harm her reputation." (*Id.* at ¶ 168).

vi. "Defendants' use of fraud, coercion, and intimidation is described in more detail in paragraphs 17 to 131. By way of summary, the tactics included enlisting and relying on BLACK CUBE agents to assume false identities (Filip and Laurent), to use false pretenses (Freedman), and to lie to MCGOWAN about their motives, in order to gain MCGOWAN's trust, record her, extract information from her, and obtain her unpublished book; enlisting and relying on BLACK CUBE agents to follow and surveil MCGOWAN and her partner; enlisting and relying on Howard and AMI to obtain nonconsensual recordings of MCGOWAN and information about her; BLOOM's false and deceptive approach to MCGOWAN through Lynch; WEINSTEIN's corruption of people who were supposed to be representing MCGOWAN, such as Lynch, Miller, **and Baez**, to coerce MCGOWAN to act against her own interests; releasing information about the criminal charges against MCGOWAN in order to discredit her and put pressure on her; WEINSTEIN's effort through representatives to bribe MCGOWAN not to release Brave; labeling MCGOWAN as "crazy" to reporters who were investigating WEINSTEIN; and launching a smear campaign about MCGOWAN when she did release *Brave*." (*Id.* at ¶ 178)(Emphasis in bold supplied).

g. On or about October 24, 2019, McGowan made the following defamatory statements to CNN concerning Plaintiffs' representation of McGowan and subsequent representation of Weinstein: "Harvey Weinstein was able to perpetrate and cover up decades of violence and control over women because he had a

sophisticated team working on his behalf to systematically silence and discredit his victims .... My life was upended by their actions, and I refuse to be intimidated any longer."[7]

COUNT I
DEFAMATION *PER SE*

85. Plaintiffs hereby reincorporate and restate the above paragraphs as if specifically set forth and re-alleged herein.

86. Defendants conspired with and aided and abetted each other in making the Defamatory Statements, which greatly harmed Plaintiffs' reputation in their trade and business.

87. Upon information and belief, Defendants each knowingly and voluntarily participated in this common scheme to harm Plaintiffs' professional reputation.

88. Upon information and belief, Defendants did so for the purpose of accomplishing, by concerted action and common design, a harm to the professional reputation of Plaintiffs, to which Defendants agreed.

89. Each Defendant committed overt tortious acts in concert with each other and in furtherance of this conspiracy by making Defamatory Statements, and each substantially participated and assisted in such public campaign and scheme to defame Plaintiffs.

90. Each Defendant also accepted and ratified each other's Defamatory Statements.

91. The Defamatory Statements constituted defamation *per se* in that such statements concerned Plaintiffs' reputation in their trade and business by lowering such reputation in the eyes of the community and, upon information and belief, deterred the community from associating with Plaintiffs. Therefore, damages are presumed.

[7] https://www.cnn.com/2019/10/24/entertainment/rose-mcgowan-harvey-weinstein/index.html

92. The Defamatory Statements negatively impugned Plaintiffs' ability to perform their duties on behalf of their clients, imputed a lack of integrity to the performance of those duties, conveyed a lack of ability by Plaintiffs in their profession, and prejudiced Plaintiffs in their profession.

93. Prior to making the Defamatory Statements, Defendants knew the above-described facts and had copies of the cited emails concerning Plaintiffs **not** advising McGowan as to the plea negotiations and agreement, and they knew that the claim that Weinstein purportedly caused two bags of cocaine to be planted in McGowan's wallet was based upon pure speculation. Furthermore, Plaintiffs knew that the purported Weinstein defense was contradicted by the undisputed evidence of McGowan's guilt, McGowan's decision to freely and voluntarily accept such evidence and her conviction, and McGowan's apology to the Court.

94. Therefore, Defendants knew that the Defamatory Statements were false, or at the very least, Defendants acted in a reckless disregard of whether the Defamatory Statements were false or not.

95. Accordingly, Defendants acted with malice and made the Defamatory Statements for the purpose of harming Plaintiffs' professional reputation.

96. The Defamatory Statements were factual statements, in that (a) the specific language at issue (statements that Plaintiffs conspired with Weinstein to improperly advise and pressure McGowan to take a plea) have precise meanings which are readily understood; (b) the Defamatory Statements are capable of being proven true or false; and (c) the full context of the Defamatory Statements in which they appear in the above-referenced media and in the broader social context and surrounding circumstances are such as to communicate to the readers of these statements that what was read is not opinion, but a statement of fact.

97. As a direct and proximate result of Defendants' defamatory statements, Plaintiffs have suffered presumed damages in the form of mental suffering, personal humiliation, impairment of professional reputation and standing in the community.

98. Additionally, due to the malicious nature of the Defamatory Statements and the highly egregious and reprehensible conduct of Defendants detailed above, Plaintiffs also demand punitive damages.

WHEREFORE, Plaintiffs Jose A. Baez and the Law Offices of Jose A. Baez Esquire P.A. respectfully request that the Court enter judgment in their favor against Defendants Rose McGowan, Salvatore Prescott & Porter, P.L.L.C., and Julie B. Porter on all counts and award the following relief: (a) Compensatory damages; (b) Punitive damages; (c) Prejudgment interest; and (d) Such other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs request a trial by jury on all issues permitted to be tried to a jury.

Dated: January 21, 2020

Respectfully submitted,

JOSE A. BAEZ AND LAW OFFICES OF JOSE A. BAEZ ESQUIRE P.A.

By: */s/ Nicholas A. Gowen*
One of the Attorneys for Plaintiffs

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