

Counterclaim-Defendants Interfor, Inc. (“Interfor”), Juval Aviv, and Anna Moody (collectively, the “Interfor Parties”), by their undersigned attorneys, as their reply to the Verified Counterclaim (the “Counterclaim”) of Counterclaim-Plaintiff Rick Ross:

1. Deny the allegations of paragraph 1.
2. Deny the allegations of paragraph 2.
3. Deny the allegations of paragraph 3.
4. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, except admit that Ross operates a web site at www.rickross.com.
5. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, except admit that Ross has published reports concerning NXIVM Corporation (“NXIVM”) on his web site.
6. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, except admit that Keith Raniere is the founder of NXIVM.
7. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, except admit that Nancy Salzman is the president of NXIVM.
8. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, except admit that Kristin Keefe has served as a legal liaison for NXIVM.
9. Admit the allegations of paragraph 9.

10. Admit the allegations of paragraph 10.

11. Admit the allegations of paragraph 11.

12. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, except admit that NXIVM alleges that Joseph O'Hara is its former attorney.

13. Deny that Counterclaim-Defendant Jane Doe is an actress hired by the Interfor Defendants, and admit the remaining allegations of paragraph 13.

14. Deny the allegations of paragraph 14.

15. Deny the allegations of paragraph 15.

16. Deny the allegations of paragraph 16.

17. Deny the allegations of the last sentence of paragraph 17 and admit the remainder of the allegations of paragraph 17.

18. Deny that Ross met with Moody in November 2004 and admit the remainder of the allegations of paragraph 18.

19. Admit that Ross met with Moody and "Zuckerman" at Interfor's offices on April 20, 2005 and deny the remaining allegations of paragraph 19.

20. Admit the allegations of the first sentence of paragraph 20, deny the allegations of the second sentence of paragraph 20, and admit the allegations of the third sentence of paragraph 20, except lack knowledge or information sufficient to form a belief as to whether the retainer agreement was "promptly" returned.

21. Admit that Ross was advised that "Ms. Zuckerman" would not be utilizing his services and deny the remainder of the allegations of paragraph 21.

22. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22.

23. Deny the allegations of paragraph 23.

24. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Deny that Interfor illegally obtained Ross's bank records and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25.

26. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26, except admit that Ross's attorneys caused subpoenas to be served on the Interfor Parties on or about July 11, 2006 which demanded testimony and/or documents.

27. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, which largely concern what O'Hara said to Ross during certain telephone calls, except deny that Interfor bribed anyone, or engaged in "pretexting," to obtain Ross's bank or telephone records or garbage, that Interfor violated any law, and that "Susan L. Zuckerman" was an actress hired by Interfor.

28. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, which concern what O'Hara said to Ross.

29. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 and respectfully refer the Court to O'Hara's March 11, 2005 letter for its contents, except admit that Ross had a second meeting with Interfor on April 20, 2005.

30. Lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 30 and deny the remainder of the allegations of paragraph 30.

31. In response to paragraph 31, repeat their responses to paragraphs 1-30.

32. Deny the allegations of paragraph 32.

FIRST DEFENSE

This Court lacks subject-matter jurisdiction over the Counterclaim.

SECOND DEFENSE

This Court lacks personal jurisdiction over the Interfor Parties.

THIRD DEFENSE

Venue is improper in this Court.

FOURTH DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

FIFTH DEFENSE

The Counterclaim is barred in whole or in part by the applicable statute of limitations.

SIXTH DEFENSE

Ross has a diminished expectation of privacy, which the Interfor Parties did not invade.

SEVENTH DEFENSE

Ross has waived any right to privacy he may have.

EIGHTH DEFENSE

As someone whose business is based on intruding on the seclusion of others, Ross should be denied relief on the basis of unclean hands.

NINTH DEFENSE

The Counterclaim should be dismissed because it is the result of Ross's exploitation of information provided by O'Hara in violation of O'Hara's ethical obligations as an attorney.

TENTH DEFENSE

Ross has failed to mitigate his purported damages.

CROSS-CLAIM

1. This Court has supplemental jurisdiction over this Cross-Claim asserted by the Interfor Parties against NXIVM, Raniere, Salzman, and Keeffe pursuant to 28 U.S.C. § 1367 because the Cross-Claim is so related to the claims asserted in the Complaint and Counterclaim that it forms part of the same case or controversy.

NXIVM's Breach of the Indemnity Agreement

2. In or around September 2004, Interfor was retained on NXIVM's behalf to investigate Ross.

3. On November 23, 2004, Interfor and NXIVM, doing business as Executive Success Programs ("NXIVM/ESP"), entered into an Indemnity Agreement.

The Agreement provides in relevant part:

Interfor is conducting an investigation for NXIVM/ESP. NXIVM/ESP agrees to indemnify Interfor for any claim, lawsuit, obligation, action, cause of action or cost or expense, of any amount and nature whatsoever incurred by or imposed upon Interfor as a result of, related to or in any way in connection with or arising out of its investigation, provided that

such indemnity shall be limited to that part of such investigation, or any part thereof, which was requested and/or agreed to by NXIVM/ESP or disclosed to NXIVM/ESP by Interfor without any objection thereto by NXIVM/ESP.

Should any claim, lawsuit, obligation, action, cause of action or cost or expense, of any amount and nature whatsoever be incurred by or imposed upon Interfor, NXIVM/ESP agrees to pay all costs and expenses immediately. Interfor shall not be required to pay its expenses itself and then seek compensation from NXIVM/ESP. Rather, NXIVM/ESP must pay all costs and expenses immediately. . . .

Costs and expenses, as the term is used herein, shall include but not be limited to, attorney fees and any other cost or expense imposed upon or incurred by Interfor in the defense, investigation or settlement of any matter that is subject to this Indemnity Agreement.

* * *

In the event of any asserted claim, Interfor shall provide NXIVM/ESP reasonably timely written notice of same, and thereafter NXIVM/ESP shall at its own expense defend, protect and save harmless Interfor against said claim or any loss or liability thereunder.

* * *

Upon default, NXIVM/ESP further agrees to pay all reasonable attorney fees necessary to enforce this agreement.

This agreement shall be unlimited as to amount or duration.

A copy of the Indemnity Agreement is attached hereto as Exhibit A.

4. Keeffe, a NXIVM employee, closely supervised Interfor's investigation of Ross through numerous telephone calls and frequent meetings. No action on the Ross investigation was taken by Interfor without Keeffe's express approval. At no time during the course of the Ross investigation did NXIVM object that the investigation exceeded the scope of what NXIVM had requested and/or agreed to, or that the investigation was not disclosed.

5. NXIVM also did not object that the investigation exceeded the scope of what NXIVM had requested and/or agreed to, or that the investigation was not disclosed, upon receipt of Interfor's two written reports on Ross, dated November 23, 2004 and February 9, 2005.

6. In addition, NXIVM did not object to indemnifying Interfor in August 2006, after the Interfor Parties were served with subpoenas, or in January 2007, after Ross filed a counterclaim against the Interfor Parties and NXIVM's counsel was provided with written notice of the same pursuant to the Indemnity Agreement. To the contrary, NXIVM complied with its contractual obligation to indemnify Interfor for the period through January 2007. NXIVM paid in full five invoices for legal services rendered to Interfor, the last on April 26, 2007, and never objected that Interfor's investigation exceeded the scope of what NXIVM had requested and/or agreed to, or that the investigation was not disclosed.

7. Five statements for services rendered for the period after February 2007, however, have not been paid. Upon receipt of these invoices, NXIVM did not object that the investigation exceeded the scope of what NXIVM had requested and/or agreed to, or that the investigation was not disclosed. It was not until October 19, 2007, after counsel for Interfor had made several requests for an explanation as to why the invoices had not been paid, that Interfor was advised by NXIVM's counsel that NXIVM would not continue to reimburse or indemnify Interfor for expenses or liabilities.

NXIVM's False and Defamatory Statements About Aviv

8. On October 23, 2007, The Village Voice, a New York City newspaper that describes itself as “America’s largest weekly newspaper,” published an article titled “Secret Agent Schmuck: The Spooky Truth Behind the Media’s Favorite ‘Spy.’” The article was the cover story of the newspaper’s October 24-30, 2007 print edition, which was circulated in New York, New Jersey, and elsewhere, and was circulated throughout the world on the newspaper’s Web site, www.villagevoice.com.

9. In the article, NXIVM, through its spokesman Phil Robertson, stated the following about Aviv:

According to NXIVM spokesman Robertson, company leaders were appalled to learn what Aviv was up to. . . . Robertson says that NXIVM was barely in contact with Aviv, whom O’Hara hired on its behalf for entirely legal investigations. “We knew nothing here about a sting,” he said. “We had no participation in any sting. We found out about it afterward. What we saw was, a corrupt attorney hires a corrupt private investigator. . . . We certainly didn’t—and would not—authorize illegal activities. That was his doing, and I understand that’s his nature. He’s pretty much a loose cannon. . . . [B]ehind your back he creates fantastic programs like, uh, we later found out he was going to do some kind of insane sting kind of deal. . . . We’re certainly not responsible, nor do we condone this type of activity.”

10. The statements by NXIVM quoted above, including that NXIVM was unaware of Interfor’s “sting” operation, were false. NXIVM made these statements knowing they were false or with reckless disregard for whether they were true or false.

11. In fact, Keeffe, a NXIVM employee, routinely participated in meetings with Aviv and other Interfor employees. Keeffe admitted in a Declaration dated August 7, 2004 (attached hereto as Exhibit B) that she “participated in discussions with O’Hara and Interfor during the course of their work.” As set forth in Interfor’s calendar report (Exhibit C), Keeffe also participated in at least 30 different meetings or telephone

conferences with Interfor, nine of which took place before the Ross sting. Furthermore, as set forth in an invoice from Sitrick and Company, NXIVM's public relations firm (excerpted as Exhibit D), on November 19, 2004 Keffe participated in meeting with Aviv and other Sitrick employees.

12. On November 5, 2004, Keffe e-mailed a list of action items for Interfor to O'Hara, one of which expressly referenced the Ross sting (see Exhibit E).

13. Keffe also attended a November 22, 2004 meeting at Interfor's offices during which the Ross sting was discussed. During the meeting, Keffe indicated that she wanted to participate in the sting by playing the part of "Judy Zuckerman" (see meeting notes attached as Exhibit F).

14. NXIVM's statements that Aviv acted without its knowledge and consent are also contradicted by Keffe's and Raniere's October 15, 2007 Responses to Ross's First Set of Interrogatories.

COUNT I
(By Interfor Against NXIVM for Contractual Indemnification)

15. Interfor repeats the allegations contained in paragraphs 1-7 of this Cross-Claim.

16. All conditions precedent to NXIVM's performance under the Indemnity Agreement have been performed or have occurred.

17. Interfor denies any liability to Counterclaim-Plaintiff Ross. However, if Interfor is found liable to Ross, NXIVM is contractually obligated to indemnify Interfor for any liability Interfor may have to Ross.

18. Regardless of whether Interfor is found liable to Ross, NXIVM is contractually obligated to indemnify Interfor for the costs and expenses, including attorneys' fees, that Interfor has incurred and will incur in connection with this action.

19. NXIVM has breached the Indemnity Agreement by refusing to indemnify Interfor for its legal expenses in connection with this action and by announcing that it will not comply with the Indemnity Agreement in the future.

20. Interfor has been damaged by NXIVM's breach of the Indemnity Agreement.

21. Interfor is entitled to a declaration that Interfor is entitled to indemnification from NXIVM for any future expenses or liabilities arising out of this action.

COUNT II

(By Interfor, Aviv and Moody Against NXIVM, Keffe, Salzman and Ranieri for Common Law Indemnification)

22. The Interfor Parties repeat the allegations contained in paragraphs 1-7 of this Cross-Claim.

23. Ross's claims, if any, against Interfor, Aviv, and Moody derive solely from the conduct of NXIVM, Keffe, Salzman, and/or Ranieri.

24. By reason thereof, the Interfor Parties are entitled to indemnification from NXIVM, Keffe, Salzman, and Ranieri for any and all loss, liability, damage, and expense arising out of this action.

COUNT III
**(By Interfor, Aviv and Moody Against NXIVM,
Keeffe, Salzman and Raniere for Contribution)**

25. The Interfor Parties repeat the allegations contained in paragraphs 1-7 of this Cross-Claim.

26. Should Interfor, Aviv, and/or Moody be found liable to Ross, then the Interfor Parties shall be entitled to contribution from NXIVM, Keeffe, Salzman, and Raniere in proportion to the relative degrees of fault, if any, as between the Interfor Parties on the one hand and NXIVM, Keeffe, Salzman, and Raniere on the other.

27. By reason thereof, the Interfor Parties are entitled to an allocation of any damages by reason of any verdict or judgment in proportion to the parties' degrees of fault, if any.

COUNT IV
(By Aviv Against NXIVM for Defamation and Defamation *Per Se*)

28. Aviv repeats the allegations contained in paragraphs 1 and 8-14 of this Cross-Claim.

29. NXIVM and its agents and representatives knowingly, consciously, deliberately, intentionally, willfully, maliciously, recklessly, with actual malice, with evil motive, and/or with ill will disseminated false statements of fact about Aviv and/or relating to Aviv's conduct of his trade or business.

30. The defamatory statements, which were made to a newspaper reporter, were widely published.

31. These false statements of fact (a) were defamatory; (b) injured Aviv in his reputation, tended to degrade and disparage him, brought him into ill repute,

and destroyed confidence in his competence and integrity; and (c) imputed to Aviv occupational incompetence or misconduct.

32. NXIVM and its agents and representatives intended for their false and defamatory statements to cause such injury to Aviv.

33. As a natural and proximate result of these statements by NXIVM and its agents and representatives, Aviv has been injured, has suffered general and special damages, and is entitled to punitive damages.

WHEREFORE, the Interfor Parties demand judgment as follows:

A. Against Ross, dismissing the Counterclaim as against the Interfor Parties, in its entirety and with prejudice, and awarding the costs, attorneys' fees, and expenses incurred in defending the Counterclaim;

B. Awarding Interfor damages from NXIVM, in an amount to be determined at trial, for breach of the Indemnity Agreement;

C. Declaring that NXIVM is obligated to indemnify Interfor for any expenses or liabilities arising out of this action;

D. Awarding the Interfor Parties damages from NXIVM, Keeffe, Salzman, and Ranieri in an amount to be determined at trial;

E. Awarding Aviv damages from NXIVM, including general damages, special damages, and punitive damages, in an amount to be determined at trial;

F. Awarding the Interfor Parties pre- and post-judgment interest at the highest rate allowed by law and the costs and disbursements of this action;

G. In accordance with the terms of the Indemnity Agreement, awarding Interfor its attorneys' fees incurred in the defense of this action and in the prosecution of this Cross-Claim; and

H. Granting the Interfor Parties such other and further relief as the Court deems just and proper.

Dated: Newark, New Jersey
November 7, 2007

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