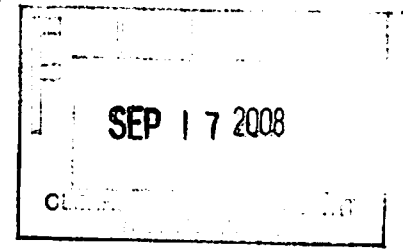


Victor E. Cretella III, Esq.

V.

David L. Kuzminski



Case Number: 3:08cv109

To:

Victor E. Cretella III, Esq.  
113 East Church Street  
P.O. Box 151  
Frederick, MD 21705-0151

Plaintiff

### Second Pretrial Motion to Dismiss Complaints

The Defendant requests the Court convene a pretrial hearing at its earliest convenience to consider this matter. Additional information to Defendant's previous pretrial motion has emerged through Discovery. Consequently, Defendant asks the Court to dismiss all of the Plaintiff's complaints for the following reasons based on the attached documentation.

The Plaintiff's suit is a misrepresentation in that the Plaintiff wants information that is not germane to his civil suit against the Defendant. (Exhibit One and Exhibit Two). The Plaintiff has requested information from the Defendant about other legal suits or criminal actions that his client and employer, PublishAmerica, might face. The Plaintiff's civil suit is essentially about whether he was libeled. It is not his responsibility to gather documentation for his employer within the confines of this civil suit to use either as defense of his employer in other legal actions or to initiate suits against others on his employer's behalf.

Plaintiff has not taken any action against any other individuals who also alleged that the Plaintiff's cease-and-desist action against Ms. Norris was extortion or sent letters to the authorities (Exhibit Three). This in combination with Exhibits One and Two shows the Plaintiff has singled out the Defendant because the Defendant is known to hold documentation of the Plaintiff's employer's behavior toward its client authors and because the Defendant is a well-known critic of the Plaintiff's employer..

The Plaintiff has admitted orally to the Defendant in face-to-face Discovery that the Plaintiff voluntarily left his former employ with Gordon and Simmons, LLC to take employment with PublishAmerica. Based on numerous complaints and other documentation showing the poor reputation of the Plaintiff's new employer, which the Defendant stands ready to present to the

Court, the Plaintiff cannot point to any action by the Defendant as being solely responsible for any harm to the Plaintiff's reputation and how that might affect the Plaintiff's future earnings. The Defendant stands ready to present documentation showing how the Plaintiff has damaged his own reputation. Consequently, the Plaintiff is not and should not be entitled to any damages for future earnings since those cannot be proved at this time and may never come about.

Plaintiff has provided a privilege log (Exhibit Four) to the Defendant showing all communications between the Plaintiff and his client, PublishAmerica, that mentions the Defendant along with any that mention Christine Norris. The logs clearly target the Defendant on numerous occasions dating back to 12/14/2000. This documents the Defendant's claim that the Defendant was being targeted because of the Defendant's criticism of PublishAmerica (Exhibit Five). Likewise, one log shows possible collusion between the Plaintiff as an in-house counsel and his employer in avoiding Discovery of his employer's records. Consequently, if the Plaintiff's suit is allowed to request non-relevant information about the Plaintiff's employer from the Defendant, then the Defendant should be permitted to demand information from the Plaintiff's employer in order to show where there is any possibility of collusion among them in the making of this civil suit even if it means denying privilege to the Plaintiff since the privilege log shows an intertwining so long established that it's unlikely that this suit is the sole result of the Plaintiff believing himself to have been libeled. Otherwise the Plaintiff would not have needed to consult with his employer and would have filed almost immediately after the alleged libel took place instead of waiting for close to ten months before filing. If the Defendant is not allowed such evidence, then a fair trial cannot result and the Plaintiff's complaints should all be denied since the actual content of the Plaintiff's privilege log is unknown. Because the log's content can be interpreted in two ways, it should be interpreted in favor of the Defendant.

Other information from the privilege log shows communication between PublishAmerica and the Plaintiff concerning fund raising for the Defendant. This is too coincidental to ignore in light of actual threats made against one website operator who voluntarily posted a plea for legal funds for the Defendant (Exhibit Six). This is especially important since the dates and URLs for these referenced sites produced only entries asking the sites' visitors to consider supporting the Defendant's need for legal funds and further documents the Defendant's initial statement in the first Pretrial Hearing about PublishAmerica targeting individuals who stood near or sided with the Defendant.

Equally of concern, Defendant has observed that the Plaintiff's employer, PublishAmerica, destroyed a website (Exhibit Seven) that held evidence of their combined targeting of the Defendant. Despite their efforts, a printout of that website is available (Exhibit Eight). This site is important because it reveals legal sophistication in its design as opposed to PublishAmerica's earlier efforts at smearing the character of its critics.

As well, Plaintiff has insisted upon email contact with the Defendant. Said contact has resulted in warning messages on the Defendant's computer stating that Phishing may be occurring (Exhibit

Nine). Phishing consists of a viral program intended to gather email addresses from an individual's computer which are then forwarded to the phishing program's origin. While the Defendant cannot point to concrete evidence that the Plaintiff is responsible for the introduction of a phishing program on the Defendant's computer, the coincidence of the appearance of this warning cannot be ignored in light of the Plaintiff's demands for the identify of individuals with complaints about his employer which the Court stated could be redacted to remove such information from complaint documents being provided to the Plaintiff.

Lastly, the Defendant reiterates his statement from his first pretrial hearing request that no libel was intended and a careful review of his words, when considered with the facts revealing that the Defendant was being targeted since 2000, particularly those in the Plaintiff's Privilege Log, shows that the Defendant's words about the Plaintiff were stated in exasperation at the continuing attacks on the Defendant and his associates and not out of malice, contrary to what the Plaintiff claimed in the previous pretrial hearing when the Plaintiff claimed that the Defendant hated PublishAmerica and stated that in his motion when in actuality the Defendant stated he knew of hundreds of writers who hated PublishAmerica. The Defendant's original statement on the Internet was pure rhetoric just as was the statement in the closing remarks by the Plaintiff in the Arbitration Hearing with Marie Pacha where the Plaintiff accused her of extortion when all she wanted was her royalty statement and found herself forced to go to arbitration to get information she was entitled to by her contract with the Plaintiff's client, PublishAmerica.



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Defendant

- Exhibit 1 is Plaintiff's Second Document Request
- Exhibit 2 is Plaintiff's Amended First Interrogatories
- Exhibit 3 is from Abolute Write showing other posts critical of Cretella's cease-and-desist.
- Exhibit 4 is Plaintiff's Privilege Log
- Exhibit 5 is Letter from Plaintiff dated 2000 showing P&E listing for PA
- Exhibit 6 is Letter threatening site operator who posted a donation button for Defendant
- Exhibit 7 is copy of message showing Author's Market site missing.
- Exhibit 8 is copy of Author's Market website
- Exhibit 9 is Email from Plaintiff with Phishing warning message