

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

In the matter of the Application of

HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Petitioner,*

for an order pursuant to section 3102(c) of the  
Civil Practices Laws and Rules to compel  
disclosure from

BREAKING MEDIA, INC.,

*Respondent,*

of information about the identity of the  
defendant JOHN DOE being unknown to  
Petitioner, in an action about to be  
commenced.

**AFFIRMATION IN SUPPORT  
OF ORDER TO SHOW  
CAUSE COMPELLING  
DISCLOSURE OF IDENTITY**

Index No.

MIGUEL A. LOPEZ, an attorney duly admitted to practice before the Courts of the States  
of New York, affirms under penalty of perjury, pursuant to C.P.L.R. § 2106, as follows:

1. I am associated with Boies, Schiller & Flexner LLP, counsel for Highland Capital  
Management, L.P., in the above-captioned petition and I am familiar with all the facts and  
circumstances set forth in this affirmation. I make this affirmation in support of Highland Capital  
Management, L.P.'s application for an order, pursuant to CPLR § 3102(c), for compelling  
Breaking Media, Inc. to make certain pre-action disclosures.

2. Petitioner is Highland Capital Management, L.P. ("Highland"), a Delaware  
Limited Partnership having its principal place of business in Dallas, Texas. Highland has an  
office in New York, New York.

3. Respondent is Breaking Media, Inc., a Delaware corporation having its headquarters in New York, New York.

4. On or about November 2, 2016, an unknown individual using the pseudonym “Low”land Realist (“John Doe”) posted a defamatory comment concerning petitioner on Dealbreaker.com, a widely read financial industry news website wholly owned and operated by Respondent.

5. John Doe’s comment falsely asserted that Petitioner stole money from its investors, and engaged in “tried and true criminal behavior.”

6. Specifically, responding to another pseudonymous user who posted, “Dealing with idiot investors is hard man,” John Doe wrote on Dealbreaker’s website:

Especially ones that get tired of having their money stolen from them...well, Highland will just have to find some new suckers, to quote PT Barnum, who aren’t smart enough to do a Google search about their tried and true criminal behavior.

7. Petitioner has never stolen money from its clients, or been charged with or convicted of any other crime.

8. John Doe willfully submitted these false assertions of fact to Dealbreaker in New York, with the intention that it be published for all users of the Internet to see.

9. Petitioner satisfies the requirements necessary to set forth a cause of action for defamation against John Doe: (1) a false statement; (2) published to a third party without privilege or authorization; (3) with fault amounting to at least negligence; (4) that amounted to defamation per se. *See Proposed Complaint, attached hereto as Exh. A.*

10. Allegations that a party has committed a serious crime—which would indisputably include stealing money from clients—constitute defamation per se.

11. Furthermore, false allegations that an investment management firm, like Petitioner, has stolen its clients' money constitute defamation per se as they impugn the integrity of Petitioner's business.

12. No information about John Doe's identity accompanies the comment, and Highland is currently unaware of John Doe's real identity.

13. Knowledge of John Doe's real identity is material and necessary for Petitioner to pursue its meritorious claim for defamation.

14. Breaking Media requires all visitors to its websites who wish to publish comments on Dealbreaker's website to provide Breaking Media "current, correct, and complete" details about themselves. *See* Breaking Media Privacy Policy, Exhibit 2 to the Proposed Complaint.

15. Breaking Media states on its website that it collects and stores usage information about users such as "traffic data, location data, logs and other communication data, [and] IP address." *See* Proposed Complaint, Exhibit 2.

16. Breaking Media informs users of its website that it reserves the right to comply with court orders directing the disclosure of the identity of any user posting any material on its websites. *See* Breaking Media Terms of Service, attached hereto as Exhibit 1 to the Proposed Complaint.

17. Breaking Media's Terms of Service provide that any dispute arising from John Doe's use of Dealbreaker "shall be governed by and construed in accordance with the internal laws of the State of New York," and that any "legal suit, action or proceeding arising out of, or related to, these Terms of Use or the Website shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York." In using Dealbreaker, John Doe has

“waive[d] any and all objections to the exercise of jurisdiction over [him] by such courts and to venue in such courts.” *See Proposed Complaint, Exhibit 1.*

18. Breaking Media’s Terms of Service further provide that in contributing content to Dealbreaker, John Doe conveyed to Breaking Media, a company operating out of New York, a license “to use, copy, distribute and disclose to third parties any such material for any purpose.” *See Proposed Complaint, Exhibit 1.* In agreeing to Breaking Media’s Terms of Services, and then making use of Dealbreaker by publishing a defamatory comment, John Doe knowingly availed himself/herself of the laws of New York.

19. On November 21, 2016, Petitioner sent a letter to Breaking Media requesting that it voluntarily disclose all information in its possession, custody, or control, about the identity of John Doe.

20. On November 28, 2016, Breaking Media informed Highland that it would not provide the information requested.

21. Petitioner therefore respectfully requests that an order be issued, pursuant to CPLR 3102(c), for pre-action disclosure, compelling Breaking Media to disclose all information in its possession, custody, or control, about the identity of John Doe, including but not limited to: (a) John Doe’s IP address, (b) any user profile information provided to Dealbreaker, (c) the frequency and dates of John Doe’s visits to the Dealbreaker site, and (d) the frequency and dates John Doe’s comments on the Dealbreaker site. Petitioner further respectfully requests that Breaking Media be compelled to disclose the same identifying information for any additional aliases, user names, or commenter names associated with the same IP address or identifying information as John Doe, and for such other relief as the Court deems proper.

22. There has been no prior application for the relief requested herein.

Dated: December 1, 2016

Respectfully submitted,

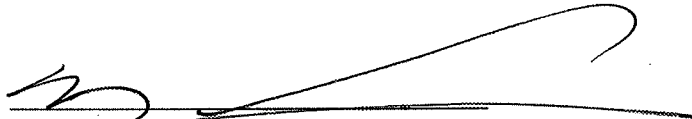


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Certification Pursuant to Part 130



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