UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MARIELLE ("MOLLY") KRONBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 1:09cv947**
	)	**AJT/TRJ**
LYNDON LAROUCHE, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants, by counsel, hereby file their reply in support of their motion to dismiss the First Amended Complaint ("Complaint") of Plaintiff, Marielle ("Molly") Kronberg.

I. INTRODUCTION -- TWO-PRONGED LEGAL STANDARD OF *TWOMBLY* AND *IQBAL*

In Plaintiff's Opposition to Defendants' Motion to Dismiss ("Plaintiff's Opposition"), Plaintiff correctly acknowledges that the Supreme Court's 2007 decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) ("*Twombly*") sets forth the legal standard for assessing whether a complaint is sufficient to survive a motion to dismiss, but then quotes extensively from the dissent in an unpublished Fourth Circuit decision, *Bartlett v. Frederick County, Md.*, 246 Fed. Appx. 201, 205 (4th Cir. 2007), which repeats the superceded *Conley v. Gibson*[1] standard that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff cannot prove any set of facts supporting his claim for relief.[2]

---

[1] 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957).

[2] Although *Bartlett* was decided a few months after the Supreme Court's *Twombly* decision, Chief Judge Williams in his dissent did not mention *Twombly* in discussing the standard for a Rule 12(b)(6) motion, but instead quoted from the Fourth Circuit's 2006 decision

In *Twombly,* the Supreme Court rejected the *Conley v. Gibson* standard and enunciated a new rule that to survive a motion to dismiss, a complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face." *Twombly,* 550 U.S. at 570. Thus, to prevail on a Rule 12(b)(6) motion, no longer must a defendant show that there is no-set-of-facts on which the plaintiff would be entitled to relief, which was the prior standard under *Conley.* 355 U.S. at 45-46. Rather the burden now is on the plaintiff to plead specific factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Twombly,* 550 U.S. at 556.

Recently, in *Ashcroft v. Iqbal,* 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) ("*Iqbal*"), the Supreme Court explained and expanded upon its *Twombly* decision in dismissing a claim against U.S. government officials for allegedly violating the plaintiff's constitutional rights. As emphasized by the Court in *Iqbal,* two working principles underlie the *Twombly* decision -- both of which are applicable to the analysis of Plaintiff's Complaint in this case. The first is that legal conclusions set forth in a complaint are not entitled to the assumption of truth and should be ignored in assessing whether the complaint contains adequate factual allegations to support a claim for relief. *Iqbal,* 129 S. Ct. at 1950. The second is that "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.*

---

in *Bominflot, Inc. v. M/V Henrich S,* 465 F.3d 144, 145-46 (4th Cir. 2006), a pre-*Twombly* case which repeated the *Conley v. Gibson* standard.

More recent decisions in the Fourth Circuit have recognized the change in the Rule 12(b)(6) analysis effectuated by *Twombly* and have jettisoned the former more liberal *Conley v. Gibson* pleading standard set forth in pre-*Twombly* cases. See, e.g., *Johnson v. D&D Home Loans Corp.,* 2007 U.S. Dist. LEXIS 90140 *5, n 2 (E.D. Va. Dec. 6, 2007) (noting that in *Twombly,* the Supreme Court expressly abrogated the "no set of facts" language); *Williams v. Equity Holdings Corp.,* 498 F. Supp. 2d 831, 838, n 7 (E.D. Va. Aug. 3, 2007).

As discussed below, when this two pronged approach is applied to the Plaintiff's Complaint in this case, it is clear that it fails to pass muster under Rule 12(b)(6) and, hence, should be dismissed.

II. COUNT I OF PLAINTIFF'S COMPLAINT FAILS TO SUFFICIENTLY ALLEGE A PLAUSIBLE CONSPIRACY CLAIM

A. Inadequacy of Plaintiff's Conspiracy Allegations

The first step in the analysis of whether Count I of Plaintiff's Complaint is well pled is to identify the allegations in the Complaint pertaining to Plaintiff's § 1985(2) conspiracy claim that are not entitled to the assumption of truth because they are nothing but legal conclusions, "bare assertions," or a "formulaic recitation of the elements" of a legal claim. *Iqbal*, 129 S. Ct. at 1951. The next step is to "consider the factual allegations to determine if they plausibly suggest an entitlement to relief." *Id.*

A review of Plaintiff's Complaint confirms that Plaintiff's conspiracy allegations are woefully inadequate to meet the pleading standards for a conspiracy claim under the *Twombly* and *Iqbal* standards. Although Plaintiff's Complaint contains a general description of each of the named Defendants (Complaint, ¶¶ 6-9), the Complaint fails to specify not only the respective role of each of these Defendants in any purported conspiracy, but also any other factual details pertaining to any mutual agreement or understanding that they had to retaliate against Plaintiff for her testimony in the LaRouche criminal trial ("LaRouche Litigation").

All Plaintiff's Complaint contains are mere bare assertions of the legal elements of a conspiracy cause of action. For example, Plaintiff states that "[c]ommencing at least as early as April 10, 2007," the named Defendants and "other persons not named herein, conspired to injure plaintiff Molly Kronberg in her person and property, in violation of title 42 U.S.C. § 1985, by reason of the testimony she gave as a witness at the above-referenced trial where LaRouche was

convicted of fraud" (Complaint, ¶ 14), and that "[c]ommencing in or around 2006 and culminating on April 10 and 11, 2007, Lyndon LaRouche, the other defendants, and others, commenced a campaign to criticize those operating PMR, the printing company for all LaRouche-related publications." Complaint, ¶ 14(i). Similar conclusory statements are made in Paragraphs 19 and 20 of the Complaint. Plainly, these are nothing more than boiler-plate, formulaic recitations that the Supreme Court specifically rejected as being insufficient in its *Twombly* and *Iqbal* decisions.[3]

Ignoring these basic pleading deficiencies, Plaintiff's Opposition asserts that she has pled "the acts taken in furtherance of the conspiracy" by quoting from the Defendants' alleged defamatory writings. Plaintiff's Opposition at 3, citing Complaint ¶¶ 14-17. However, while some of these purported writings might form the basis for a common law defamation claim (see discussion, Section III, *infra*), these individual writings do not show that the Defendants entered into a conspiracy to retaliate against Plaintiff for testifying in the LaRouche Litigation 20 years earlier.

---

[3] The Fourth Circuit, likewise, has held that such conclusory statements fail to satisfy the pleading requisites for a civil conspiracy claim. See, e.g., *Bardes v. Magera*, 2009 U.S. Dist. LEXIS 91441, *35 (D.S.C. Aug. 10, 2009) (plaintiff's assertion in complaint that defendant "conspired with other defendants to violate his constitutional rights," was "wholly conclusory and is subject to dismissal on that ground alone"); *Sanford v. Commonwealth*, 2009 U.S. Dist. LEXIS 76041, *16 (E.D. Va. Aug. 25, 2009) (a plaintiff must allege "more than mere conclusory language" when detailing the agreement among civil conspirators); *McHam v. North Carolina Mutual Life Ins. Co*., 2007 U.S. Dist. LEXIS 42582, *12-13 (M.D.N.C. June 11, 2007) (plaintiff's conclusory allegations fail to satisfy Fourth Circuit's standards for establishing § 1985 conspiracy), aff'd, 250 Fed. App. 545 (4th Cir. 2007).

Plaintiff's Opposition attempts to make much of the fact that the Fourth Circuit's decision in *Simmons v. Poe*, 47 F.3d 1370 (4th Cir. 1995), affirming the district court's dismissal of a § 1985 conspiracy claim, was decided on summary judgment rather than a motion to dismiss. Plaintiff's Opposition at 9-10. However, Plaintiff does not dispute that *Simmons* sets forth the substantive legal standards for assessing the viability of a conspiracy claim, whether on summary judgment or on a Rule 12(b)(6) motion to dismiss.

Plaintiff's Complaint is utterly devoid of specific factual allegations as to the time, place, and manner of any purported concerted activity of the Defendants in conspiring to injure her. To the extent that any of the writings described by Plaintiff in her Complaint may be defamatory, Plaintiff may have a common-law claim for defamation. Nonetheless, she should not be allowed to transform a state law defamation claim into a multi-defendant, wide ranging civil rights conspiracy under § 1985(2).[4] Because Plaintiff's Complaint fails to set forth the factual requisites of a § 1985 conspiracy claim, but merely has strung together a series of bare, conclusory allegations, Plaintiffs' § 1985(2) conspiracy claim is fatally flawed under the standards of *Twombly* and *Iqbal* and should be dismissed.[5]

B. Intra-Corporate Immunity Bars Plaintiff's Conspiracy Claim

Moreover, to the extent that Plaintiff would have this Court believe that the named Defendants were "acting in concert" due to their commonality of interests (Plaintiff's Opposition at 11), then Plaintiff's Complaint for conspiracy runs afoul of the intra-corporate immunity doctrine. Plaintiff's Opposition specifically asserts that her Complaint "provides an ample basis to plead that these Defendants – LaRouche, a dedicated supporter of LaRouche's, an independent PAC organized to promote his philosophy, and a magazine which espouses his views in many of its pages – were acting in concert." Plaintiff's Opposition at 11.

But, if this Court were to assume that the Defendants were acting in concert because they all supported and promoted LaRouche's political views, as Plaintiff contends, then they also

---

[4] Plaintiff's Opposition fails to cite to any case in which the courts have recognized a § 1985(2) claim based upon defamatory statements as to a witness' testimony.

[5] Apparently recognizing the deficiencies in her Complaint, Plaintiff asks that she be given leave to plead her case in more detail. Plaintiff's Opposition at 8 n. 5. However, Plaintiff already has amended her Complaint one time and has provided no reasoned basis for giving her a second bite at the apple.

should share a unity of interest under the intra-corporate immunity doctrine. Although Plaintiff asserts that the unity of interest doctrine is "solely a § 1 Sherman Act antitrust concept" (Plaintiff's Opposition at 14), Plaintiff has advanced no reason for limiting the analysis in this fashion merely because it may have its origins in anti-trust law.[6] Whether the conspiracy is in the context of anti-trust or in the context of interference with civil rights, the principle remains the same. If, as Plaintiff alleges, the named Defendants acted in concert because they all are dedicated supporters of LaRouche or promote or espouse his philosophy, then the intra-corporate immunity/unity of interest analysis clearly should apply.[7]

In sum, Plaintiff wants this Court to rule that her conspiracy allegations are sufficient because of the Defendants' purported unity of interest in promoting LaRouche's philosophy, but Plaintiff also wants this Court to treat the interests of the Defendants as separate and distinct for purposes of intra-corporate immunity.[8] Defendants respectfully submit that Plaintiff cannot have

---

[6] The Supreme Court's *Twombly* decision addressed the legal sufficiency of a § 1 Sherman Act antitrust complaint, but the Court's analysis of the pleading standards for stating a viable claim in the face of a Rule 12(b)(6) motion to dismiss has not been limited to antitrust cases. The Court's analysis has been applied generally to all causes of action.

[7] The allegations in Plaintiff's Complaint pertaining to the unity of interest of the named Defendants is a far cry from the situation addressed by the Fourth Circuit in *Oksanen v. Page Memorial Hospital*, 912 F.2d 73 (4th Cir. 1990), cited in Plaintiff's Opposition at 16, where the court held that intra-corporate immunity did not apply. In that case, the circuit court ruled that merely because a hospital and the doctors who provided care to patients at the hospital may have had a shared interest in the hospital's success, they were sufficiently independent actors to defeat the unity of interest for a conspiracy claim. However, the individual doctors who provided care to patients in the *Oksanen* case are radically different from what Plaintiff asserts in her Opposition to be the close unity of interest of the Defendants in supporting and promoting LaRouche's views and philosophy.

[8] Plaintiff's Opposition asserts that her Complaint alleges that Defendant LaRouche has an "independent personal stake" in Defendant LaRouche PAC "and organizations that support him" (Plaintiff's Opposition at 17) because of LaRouche's "lavish lifestyle." Complaint, ¶ 6. Plaintiff's argument is a non-sequitor. If, as Plaintiff claims, LaRouche's organizations are nothing more than conduits to support his purported "lavish lifestyle," there is a clear unity of interest -- not an independent stake. Moreover, the one purported libelous publication in which

it both ways. If the Defendants do not have a sufficient unity of interest to support Plaintiff's conspiracy claim, then her conspiracy count must fail. On the other hand, if the Defendants have a sufficient unity of interest to make out a plausible conspiracy claim, then the claim runs afoul of intra-corporate immunity. Either way, this Court should dismiss Count I of the Complaint.

C. Even if Plaintiff's Conspiracy Allegations Are Sufficient, It Is Not Plausible That Defendants Conspired to Retaliate Against Plaintiff For Being a Witness 20 Years Earlier.

Plaintiff acknowledges that her testimony in the LaRouche Litigation which purportedly triggered the conspiracy against her was "long ago." Plaintiff's Opposition at 2. In fact, almost 20 years elapsed between Plaintiff's court testimony and the statements made about her that form the gravamen of Plaintiff's § 1985(2) claim . This lengthy lapse of time, in and of itself, renders her conspiracy claim implausible under the standards enunciated by the Supreme Court in *Twombly* and, most recently, in *Iqbal.*

It can not be enough that the alleged libelous statements refer to Plaintiff's testimony in the LaRouche trial, although this apparently is Plaintiff's view. Plaintiff's Opposition at 5. That is because the statutory language specifically provides that the alleged wrongful actions of the defendant in a § 1985(2) action must have been taken to injure the plaintiff "on account of his having . . . testified" in any court in the United States. It is not sufficient that a plaintiff merely demonstrate that the alleged wrongful conduct, in this case libel *per se,* refers to the witness's testimony. Simply because the author of a purported libelous statement comments upon the testimony of a trial witness does not mean that the statement was made with the motive and intent to injure the witness for having testified in court, as is required in order to set forth a claim

---

Defendant Barbara Boyd is alleged to have participated is a publication of LaRouche PAC, (Complaint, ¶ 14(vii), for which she is alleged to be the Treasurer and "principal officer." Complaint, ¶ 8. There are no factual allegations in the Complaint that Defendant Boyd has any independent personal stake to render her a separate actor.

under § 1985(2). There may be a host of reasons why someone might make the statement that a witness did not tell the truth, but only one reason, i.e., to injure the witness "on account of" having so testified, is actionable under § 1985(2). Plaintiff's apparent theory of § 1985(2) liability eliminates this requirement of motive and a causal connection and, hence, should be rejected.

One will search in vain through the allegations in Plaintiff's Complaint to find any factual statements, as opposed to bare assertions, that could plausibly explain why Defendants would have waited almost 20 years to purportedly retaliate against Plaintiff for her testimony. There is not even a conclusory statement in the Complaint that following her testimony in 1988, Defendants continued to harbor ill will against Plaintiff because of her testimony and only found an opportunity to inflict injury upon her 20 years later. Instead, the Complaint alleges that Plaintiff continued her support and association with LaRouche followers up until the summer of 2007 when she severed relations after the suicide of her husband. See Complaint, ¶ 5. Plaintiff's Opposition, however, does provide a key to understanding why statements were made about Plaintiff at that time (in 2007) and that reason has nothing to do with retaliation for Plaintiff's testimony 20 years earlier.

Rather, as Plaintiff's Opposition points out, in 2007 when the first statements were made, Plaintiff's husband had just committed suicide after Defendant LaRouche allegedly urged him to do so and LaRouche was being blamed for his death. In response, Defendant LaRouche purportedly wrote that his followers "had no reason to feel guilt over his suicide" because the reason for the suicide was Kenneth Kronberg's feelings of betrayal by Plaintiff. Complaint, ¶ 14(ii). Thus, in a Morning Briefing, Plaintiff's Opposition states that LaRouche wrote:

> Who's been evil all along! [Plaintiff's] behavior had never been good. She's never been honest. And

> then, he commits suicide, and these bums try to blame me for it! He [Plaintiff's husband] was driven -- there was no reason for the suicide, there was no excuse for it.

Opposition at 3, quoting Complaint, ¶ 14(v) (emphasis added).

Thus, rather than "attacking" Plaintiff "because of testimony in the federal criminal trial," as Plaintiff's Complaint implausibly posits, the factual allegations in Plaintiff's Complaint and the reasonable inferences therefrom lead to the conclusion that what triggered Plaintiff being "attacked" (to use Plaintiff's words) was the fact that LaRouche and his followers were being blamed for the suicide of Plaintiff's husband. As Plaintiff's Opposition highlights, the purported libelous statements of which she complains revolve around assertions that Plaintiff's conduct was the cause of her husband's suicide and that Plaintiff was not to be believed because she had a history of lying, including providing untruthful testimony in the LaRouche Litigation. Plaintiff's Opposition at 3-5. In sum, Plaintiff's Opposition confirms the implausibility of her claim that Defendants' statements about Plaintiff starting in 2007 were triggered and motivated by her testimony 20 years before, rather than by her "blame" of LaRouche for her husband's death.

D. Plaintiff Lacks Standing to Pursue a § 1985(2) Claim.

Even if Plaintiff's Complaint were to contain sufficient factual allegations of a plausible basis to believe that Defendants retaliated against her for having testified in the LaRouche Litigation more than 20 years ago, § 1985 does not provide Plaintiff with a cause of action. As was pointed out in Defendants' opening brief, there is a split in the circuits as to whether a witness has standing to bring a cause of action under § 1985. See Memorandum in Support of Defendants' Motion to Dismiss at 7-8. The Fourth Circuit has not ruled on the issue, and not surprisingly, Plaintiff contends that this Court should follow decisions of three circuit courts

which have held that a witness does have standing. Plaintiff's Opposition at 6. The Seventh and Ninth Circuits, however, have taken a contrary view based upon the plain language of § 1985.[9]

Given this clear circuit court split, Defendants respectfully submit that this Court should defer to the language of the statute and base its interpretation upon a plain reading of the statutory language. In this case, the specific language of § 1985 does not provide a witness the right to pursue a cause of action under the statute's remedial provision. That right is limited to a "party" (see § 1985(3)), and there is no question that Plaintiff was not a party in the LaRouche Litigation. Although the court may believe the statutory language creates an anomaly, it is for Congress, not for a court, to rewrite a statute.

E. Purported Wrongful Acts Occurring Prior to August 21, 2007 Are Time Barred.

Although Plaintiff's Opposition cites to cases in which the courts have applied a continuing violation theory to § 1985 actions (Plaintiff's Opposition at 19), none of the cases cited by Plaintiff involve § 1985(2) claims of witness retaliation. In one of the cases cited by Plaintiff, *Smith v. Shorstein*, 217 Fed. Appx. 877 (11th Cir. Feb. 13, 2007), a former prisoner alleged that his civil rights had been violated by being unlawfully incarcerated from February, 1999 until he was released in April, 2002. Given this situation, the court, in an unpublished opinion, stated that the plaintiff had alleged a continuing violation that did not end until he was released. In the other case, the plaintiff alleged that she had been subjected to a hostile work environment, which the Second Circuit found constituted a "continuing wrong." *Cornwell v. Robinson,* 23 F.3d 694, 704 (2d Cir. 1994).

---

[9] Although Plaintiff would have this Court believe that this is an older, superceded view of the law, the Ninth Circuit reaffirmed its reading of § 1985(2) in its 1999 decision in *Blankenship v. McDonald*, 176 F.3d 1192 (9th Cir. 1999), which is the same year as the decision of the Third Circuit in *Heffernan v. Hunter*, 189 F.3d 405 (3d Cir. 1999) upon which Plaintiff chiefly relies. See Plaintiff's Opposition at 6-7.

In this case, Plaintiff has alleged that Defendants' wrongful actions were discrete defamatory writings that were published at separate times on separate occasions over a two year period. This alleged wrongful conduct bears no relationship to the "continuing wrong" of incarceration or being subjected to a hostile work environment which, in appropriate circumstances, may constitute a continuing violation for statute of limitations purposes.[10]

Because, as Plaintiff recognizes, the applicable statute of limitations for her § 1985 claim is two years, this Court should dismiss Plaintiff's § 1985 claim to the extent that it is based upon any alleged wrongful acts that occurred more than two years prior to August 21, 2009, the date her complaint was filed. Any claim that Plaintiff may attempt to assert based upon statements or actions prior to August 21, 2007 clearly are time barred.

III. DEFENDANTS' STATEMENTS THAT ARE NOT LIBELOUS *PER SE* AND ARE TIME-BARRED SHOULD BE STRUCK FROM COUNT II OF PLAINTIFF'S COMPLAINT.

Count II of Plaintiff's Complaint is for libel *per se*. In her Opposition, Plaintiff concedes that at least some of the alleged defamatory statements in her Complaint are not *per se* libelous. Plaintiff's Opposition at 22. Moreover, Plaintiff acknowledges that the statute of limitations for defamation is one year (*Id.* at 18 n. 9, citing Va. Code Ann. § 8.01-247.1), and a number of the statements referenced in her Complaint were made more than one year prior to the filing of her lawsuit on August 21, 2009.

Nonetheless, Plaintiff contends that because "so many" of the writings referenced in her Complaint rise to the level of actionable libel *per se*, this Court need not "parse through every

---

[10] As Plaintiff's Opposition also makes clear (Plaintiff's Opposition at 19), in those situations where the Fourth Circuit has held that the continuing violation doctrine may apply there must be an unlawful "continuing practice," *National Advertising Co. v. City of Raleigh*, 947 F.2d 1158, 1166 (4th Cir. 1991), such as a hostile work environment, *Gilliam v. South Carolina Dep't of Juvenile Justice*, 474 F.3d 134, 140-41 (4th Cir. 2007).

alleged libelous statement," but simply deny Defendants' motion in its entirety. Plaintiff's Opposition at 21. However, the course of action recommended by Plaintiff is directly contrary to the procedure utilized by this Court in the primary case upon which Plaintiff relies in arguing that Count II of her Complaint passes legal muster, *Chapin v. Greve*, 787 F. Supp. 557 (E.D. Va. 1992). In *Chapin,* Judge Ellis did precisely what Plaintiff would have this Court avoid -- make an assessment as to whether or not each of the statements identified in the complaint is actionable defamation. Thus, in *Chapin,* Judge Ellis analyzed each of the statements the plaintiffs asserted were libelous, and after doing so, concluded that none of the statements were defamatory, resulting in the dismissal of the case under Rule 12(b)(6). *Chapin*, 787 F. Supp. at 568.

Although Plaintiff would have a jury -- not this Court -- consider the implications of the allegedly defamatory statements set forth in the Complaint, Judge Ellis in *Chapin* made clear that in considering a Rule 12(b)(6) motion, the Court first must consider "whether or not a reasonable fact finder could conclude that the . . . statements . . . state or imply, in their plain and natural sense, the defamatory meanings ascribed to them by plaintiffs in their complaint." *Chapin*, 787 F. Supp. at 564. As set forth in more detail in Defendants' opening memorandum at 19-21, many of the statements in Plaintiff's Complaint clearly do not rise to the level of actionable defamation. Hence, this Court should dismiss Plaintiff's libel claims to the extent that they are predicated upon alleged statements that do not constitute libel *per se*.

In an effort to save her libel claim, Plaintiff argues that this Court should not dismiss those statements that are not libelous *per se* because they still may be considered defamatory, even if not *per se* libelous. Plaintiff's Opposition at 23. But, this is not what Plaintiff pled in her Complaint. Count II of the Complaint is for libel *per se*, not for defamation generally, and

Plaintiff should be held to the standard, i.e., libel *per se*, that she has pled. Defendants are entitled to know the basis for Plaintiff's libel claims and not be faced with having to defend against a shape-shifting complaint.[11]

Finally, Plaintiff's Opposition does not dispute that the statements identified in Paragraph 14(i)-(iv) of the Complaint were made more than one year prior to the filing of this action on August 21, 2009. Hence, under the one year limitations period for claims of defamation in Virginia, Plaintiff's libel *per se* claim based upon these subparagraphs clearly should be dismissed.

IV. CONCLUSION

For the reasons set forth above, and those set forth in their opening memorandum, Defendants respectfully submit that this Court should dismiss with prejudice Plaintiff's First Amended Complaint.

---

[11] That this Court should strike those alleged statements from Plaintiff's Complaint that do not constitute libel *per se* especially is warranted since, as Plaintiff states in her Opposition, she is seeking emotional distress damages for Defendants' purportedly libels and not as a separate tort. Plaintiff's Opposition at 25-27. Defendants certainly are entitled to know what statements are actionable libel *per se* such as to give rise to emotional distress damages. Otherwise, there will be no practical way to place a limit on what, by its very nature, is a subjective, amorphous element of damage.

Respectfully submitted,

All Defendants
By Counsel

_____/s/_____
Edward B. MacMahon, Jr. (VSB # 25432)
Law Office of Edward B. MacMahon, Jr.
107 East Washington Street
P. O. Box 25
Middleburg, Virginia 20118
(540) 687-3902
(540) 687-6366 (facsimile)
ebmjr@verizon.net
Counsel for Lyndon LaRouche and EIR News Services, Inc.

_____/s/_____
Bernard J. DiMuro, Esq. (VSB # 18784)
Hillary J. Collyer, Esq. (VSB #50952)
DIMUROGINSBERG, P.C.
908 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 684-4333
Fax: (703) 548-3181
Email: bdimuro@dimuro.com; hcollyer@dimuro.com
Counsel for Defendants Barbara Boyd and Lyndon LaRouche Political Action Committee, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

John Bond, Esq.
LAW OFFICE OF JOHN BOND, PLLC
10617 Jones Street, Suite 101
Fairfax, Virginia 22030
Phone: (703) 359-7116
Fax: (703) 359-7120
Email: jbond@jbondlaw.com
Counsel for Plaintiff

John J.E. Markham, II, Esq.
MARKHAM & READ
One Commercial Wharf West
Boston, Massachusetts 02110
Phone: (617) 523-6329
Fax: (617) 742-8604
Email: jmarkham@markhamread.com
Of Counsel for Plaintiff: Admitted pro hac vice

____/s/_____
Bernard J. DiMuro (VSB # 18784)
Hillary J. Collyer, Esq. (VSB #50952)
DIMUROGINSBERG, P.C.
908 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 684-4333
Fax: (703) 548-3181
Email: bdimuro@dimuro.com;
hcollyer@dimuro.com
Counsel for Defendants Barbara Boyd and Lyndon LaRouche Political Action Committee, Inc.