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JUDGE SPADIZZO

'08 CIV 5166

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEREMY S. PITCOCK,

Plaintiff,

- against -

KASOWITZ, BENSON, TORRES &
FRIEDMAN, LLP, ERIC WALLACH, and
SITRICK AND COMPANY,

Defendants.
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Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Jeremy S. Pitcock ("Pitcock"), by his attorneys, Balestriere Lanza PLLC, for his Complaint against Defendants Kasowitz, Benson, Torres & Friedman, LLP ("the Kasowitz Firm" or "the Firm"), Eric Wallach ("Wallach"), a partner of the Kasowitz Firm, and Sitrick and Company ("Sitrick") (collectively, "Defendants"), respectfully alleges as follows upon information and belief, except as to allegations concerning Pitcock, which are made upon personal knowledge, and except as otherwise indicated:

PRELIMINARY STATEMENT

1. The Kasowitz Firm and public relations (“PR”) firm Sitrick have destroyed the professional reputation and enormous earning potential of Pitcock, one of the Firm’s former partners, by widely disseminating a press release (the “Press Release”) which misrepresents that Pitcock was “terminated for cause . . . because of extremely inappropriate personal conduct.” Pitcock was not fired for cause, nor had he ever engaged in any “extremely inappropriate personal conduct.” The Kasowitz Firm and Sitrick knew that the Press Release, as well as the Firm’s other public and private statements, would severely damage Pitcock’s reputation. When the Kasowitz Firm smeared him, Pitcock was only 35 years old and was a rising star in intellectual property (“IP”) litigation with at least three decades of a satisfying and lucrative legal career ahead of him.

2. The Firm issued the Press Release in January 2008—and made further statements to the media and even to Pitcock’s clients—for two reasons. First, the Kasowitz Firm and Sitrick knew that large law firms and their generally conservative IP clients would not hire Pitcock if it appeared that he had engaged in outrageous sexual misconduct, as the Press Release strongly, yet misleadingly, implied. The Press Release stated that the conduct was not only “extremely inappropriate” but “personal,” without details. As the Kasowitz Firm and Sitrick must have known and intended, this deliberate vagueness regarding the “extreme” and “personal” conduct fed an ongoing rumor mill about what this conduct could be—especially given that large law firms and companies often tolerate and keep private inappropriate personal and professional

conduct, and that the Kasowitz Firm actually went to the trouble of hiring Sitrick and issuing the Press Release. This made it impossible for Pitcock to get a job with another large law firm, let alone recruit with him associates from Kasowitz or work with his former clients.

3. Second, the Kasowitz Firm was angry about the way Pitcock's departure had been reported in one media source—*not* by Pitcock or his new law firm, Morgan & Finnegan, LLP ("Morgan & Finnegan"). This media source reported that Morgan & Finnegan " nabbed " Pitcock from the Kasowitz Firm. Apparently angered by the reporting—which they may have believed could undermine their plan to maintain at their Firm the business Pitcock successfully brought to the Kasowitz Firm—the Firm falsely characterized Pitcock's withdrawal: he was not fired "for cause," and he did not engage in extremely inappropriate conduct, personal or professional.

4. The Kasowitz Firm stated it only wished "to set the record straight." However, if the Kasowitz Firm sought only to correct what it claims was inaccurate reporting, it simply could have stated that the Firm asked Pitcock to leave by means of an "involuntary withdrawal." Instead, the Firm went out of its way to publicly smear Pitcock in a profession that has only once before seen a firm go to such lengths to disseminate deliberately and widely such negative statements about a former partner. The Firm's intent was to destroy Pitcock's reputation, thus preventing him from taking clients and associates with him to Morgan & Finnegan or to any other firm.

5. As discussed below, it might have been the Kasowitz Firm's plan to get rid of Pitcock (just as it had done with another IP partner at the Firm) after Pitcock had

brought IP clients to the Firm and recruited staff to develop a substantial IP department. It seems that, once Pitcock achieved these two goals for the Kasowitz Firm, the Firm did not need him as much and used minor misconduct as a pretext for firing him right before he was due substantial end-of-the-year compensation. By asking Pitcock to leave—after the IP department was built and had garnered many clients—the managing partners could retain for themselves the profits from Pitcock’s efforts.

6. If the blogs are right, the Kasowitz Firm has done nothing to help its own reputation by its treatment of Pitcock, but the Firm did achieve its goal of devastating Pitcock’s reputation. Pitcock lost his job at Morgan & Finnegan just weeks after the Firm issued the Press Release. Notwithstanding Pitcock’s excellent academic and professional credentials, other large firms’ interest in Pitcock prior to the Press Release, and Pitcock’s extensive efforts to find a new job, Pitcock simply cannot find another suitable legal job.

7. Before the Firm’s defamatory statements, Pitcock was fewer than ten years out of law school, yet he had already developed a substantial book of IP litigation business and was earning more than a million dollars annually, with three decades or more of a promising career ahead of him. Now, he cannot find any law firm employment of the kind that he has trained for since he began studying physics at the Massachusetts Institute of Technology (“MIT”) nearly two decades ago. In fact, because only larger, established firms deal with the type of high value, complex, and technical IP litigation that Pitcock handles, Pitcock cannot work as a solo practitioner, in

government, or at a non-profit organization. Despite pursuing every employment avenue open to him for months, Pitcock cannot find any law firm job at all.

8. Having no alternative, Pitcock is forced to sue his former partners at the Kasowitz Firm and its PR firm for defaming him, conspiring to destroy his reputation, tortiously interfering with one employment contract, interfering with future business relationships with clients and firms, violating his privacy, and breaching their duties to him when he was a partner and as a former partner.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of different states. Pitcock is a citizen of New Jersey; the Kasowitz Firm is a New York limited liability partnership with its principal place of business in New York; Wallach is a New York citizen; and Sitrick is a California corporation with offices in California and New York.

10. This Court has personal jurisdiction over the parties because Pitcock submits to the jurisdiction of this Court; the Kasowitz Firm and Wallach are citizens of New York, do business in New York, and avail themselves of the privileges and protections of the laws of New York; and Sitrick is a California corporation that does business in New York and avails itself of the privileges and protections of the laws of New York.

11. Venue is properly laid in the Southern District of New York under 28 U.S.C. § 1391(a)(2) because the claims arose in this District.

PARTIES

12. Plaintiff Jeremy S. Pitcock is a citizen of New Jersey and resides in Englewood, Bergen County.

13. Pitcock and his family are very involved in the Englewood community. Pitcock's wife, Grace, and Pitcock's older son attended many local classes in New Jersey. Grace also attends a study group with a northern New Jersey Methodist church and has family, numerous friends, and acquaintances in the community.

14. The Kasowitz Firm knew that Pitcock lived in New Jersey: his home address was listed in various firm directories, and materials were sent to him at his home during his tenure at the Firm and thereafter.

15. Pitcock is currently self-employed and works as an IP consultant out of his New Jersey home.

16. The Kasowitz Firm is a New York registered limited liability partnership and has offices in New York, Atlanta, Houston, Newark, and San Francisco. The Firm is noted for its extremely aggressive approach to litigation and comprises more than 250 attorneys specializing in matters from family law to IP litigation.

17. Sitrick is a California corporation that purports to offer PR services and operates out of offices in Los Angeles and New York.

18. Eric Wallach is a senior partner in the Kasowitz Firm and heads the Firm's Employment Practices and Litigation group.

STATEMENT OF FACTS

Pitcock's Early and Remarkable Professional Career Growth

19. Jeremy Pitcock is a well-educated, highly experienced IP attorney who specializes in complex, high financial value patent litigation.

20. After graduating from MIT in 1994, Pitcock graduated from the University of Pennsylvania Law School in 1998 and thereafter joined the IP practice at Simpson Thacher & Bartlett LLP ("Simpson"), one of the nation's most prominent law firms.

21. Pitcock excelled at Simpson for more than seven years, working on a variety of complex IP matters, assuming a great deal of responsibility, and establishing himself as one of Simpson's premiere young IP attorneys.

22. Indeed, Pitcock had developed a stellar reputation in the IP field, as well as a substantial client base, and was even the focus of an article in *The American Lawyer* underscoring the central role of IP attorneys in a profitable law practice. (American Lawyer Article, attached hereto as Exhibit A.)

23. Given the lucrative and competitive nature of the IP field, Pitcock's accomplishments were exemplary in any case, but especially so because of his young age and status as a mere associate.

Kasowitz's Recruitment of Pitcock

24. A few years ago, lured by the promise of substantial profits, the Kasowitz Firm was looking to start and quickly build its IP practice and began targeting talented and reputable attorneys in the field.

25. In or around February 2006, Salem Katsh, a Kasowitz Firm recent hire, approached Pitcock about joining the Firm. Katsh introduced Pitcock to Marc Kasowitz, the head of the Kasowitz Firm, who offered Pitcock an immediate partnership and guaranteed starting salary of \$1.2 million per year, plus significant bonus potential. (Salary Letter, attached hereto as Exhibit B.)

26. Pitcock accepted the offer and joined the Kasowitz Firm as an equity partner in March of 2006.

27. The Kasowitz Firm told Pitcock that it wanted Pitcock to bring over the business he developed at Simpson—which he did—and also that the Firm wanted Pitcock to build a full-blown IP practice at the Firm—which he also did.

Pitcock Develops the IP Practice as Promised

28. After joining the Kasowitz Firm, Pitcock made an immediate impact, generating new business, and attracting new attorneys to the Firm.

29. By April 2007, a little more than a year after joining the Firm, Pitcock had successfully developed several new IP matters, including the following large corporate clients for which Pitcock was both the Firm's primary contact and billing partner: JDS Uniphase Corporation, a fiber optics manufacturing and design company; Harmonic Inc., a video systems delivery company; Adelphia Communications Corporation, formerly the fifth-largest cable provider in the United States; Shaklee Corporation, a leading nutritional and green cleaning products company; Euro RSCG, a large global advertising and marketing agency network; and Bridge Associates LLC, a leading turnaround, crisis, and interim management firm.

30. Pitcock also helped generate large contingency fee matters. He was the primary contact and billing partner for high-potential-return cases, including one for Modern Creative Services Inc. against Dell, Inc. and another for WebXChange against many patent litigation defendants.

31. Pitcock did more than bring in business. He also helped build a team of IP lawyers, nearly tripling the size of the Firm's IP department. While at the firm, Pitcock hired one partner and one special counsel, and recruited and hired several associates.

32. Pitcock worked to build a diverse IP litigation team, and recruited to the firm talented women and minority attorneys, two greatly underrepresented groups in the IP field. Indeed, approximately 50% of Pitcock's hires were women, including an attorney who became the only minority female partner and another attorney who is the lone African-American female attorney at the Firm. Apart from enhancing the Firm's culture, this also made the Kasowitz Firm's IP department more attractive to potential clients seeking to hire diverse firms.

33. When Pitcock started at the Kasowitz Firm, the Firm had a very small IP practice; however, just one year of Pitcock's arrival, the IP practice had grown to more than ten attorneys with a wide range of experience, and was generating millions in annual revenue.

34. In February 2007, the Firm chose Pitcock to head the IP department. The Firm had pushed out the previous head, Salem Katsh, in June 2006, fewer than three months after Pitcock joined the Firm. By then, the Firm believed that Katsh had already

served his purpose because Katsh recruited Pitcock and another senior partner, Lawrence Goodwin (“Goodwin”).

Conflict with Goodwin

35. When the Firm promoted Pitcock to head the IP department, he was the youngest of all IP attorneys in the group and was chosen over a number of far more senior attorneys, including Goodwin.

36. Unfortunately, though perhaps by design, Pitcock’s promotion over Goodwin caused enormous conflict within the IP group. Goodwin, who was much older and had decades more experience than Pitcock, was embarrassed that a much younger attorney was chosen to lead the department.

37. Goodwin and Pitcock were in constant conflict and the two frequently argued about running of the IP department and various other IP matters.

December 5, 2007, Meeting with Wallach and Marks

38. As a result of the tension between Pitcock and Goodwin, upon information and belief, by late 2007 several members at the Kasowitz Firm believed that Pitcock planned to abandon the Firm for another large law firm, and that he was sticking around simply to claim his end-of-the-year 2007 bonus.

39. To avert a potentially disastrous situation at the Kasowitz Firm in which Pitcock could take both business and attorneys with him on his way out, two of the Firm’s partners, Wallach and Aaron Marks (“Marks”) met with Pitcock on December 5, 2007, on the pretext of discussing Pitcock’s supposed “misconduct.”

40. Wallach had previously shown personal animosity towards Pitcock, almost certainly because Pitcock's ex-wife used to be an associate in the Firm's Employment Practices and Litigation Group working under Wallach. Wallach has always been aware that Pitcock knew of allegations of misconduct against him and has always been biased against Pitcock as well as desiring to end the Firm's relationship with Pitcock, preferably in a manner which would insure Pitcock's silence regarding any allegations of misconduct against Wallach.

41. During the December 5 meeting, Wallach interrogated Pitcock regarding an unfortunate incident from Pitcock's recent past.

42. In September 2007, Pitcock and an associate from another group at the Firm shared a brief, consensual kiss. The kiss occurred in the associate's apartment after they had been out drinking together with other Firm staff at a bar near the Firm. Pitcock and the associate both realized that they had made a mistake and had no further physical contact. Pitcock believes that this consensual, one-time kiss is what the firm later described as "extremely inappropriate personal conduct" in its Press Release.

43. Pitcock thereafter had only sporadic, friendly communications with the associate, seeing her perhaps two times at Firm events and sending her no more than a couple of e-mails, including one at the Firm Holiday party a few days before the December 5, 2007, meeting. The associate gave no indication that such friendly interactions were unwanted. Pitcock never had any other such contact with anyone associated with the Firm, either before or after this September 2007 episode.

44. Given the sensitive nature of this incident, Pitcock discussed this encounter with only Wallach and Marks at the December 5, 2007, meeting in response to Wallach's questions, believing that, as partners with a fiduciary duty to one another, they deserved truthful responses to their questions about a very private matter. Pitcock believed and expected that his partners Wallach and Marks would treat this matter with the utmost discretion and would keep this private matter in confidence.

45. Wallach interrogated and humiliated Pitcock for at least thirty minutes in an extremely aggressive manner, berating Pitcock for his indiscretion. Pitcock was shocked at Wallach's demeanor and accusations during the interrogation. Pitcock had never been accused of any impropriety prior to the December 5 meeting and, prior to that meeting, had no reason to believe that anyone was unhappy with his job performance or personal conduct.

46. As the meeting ended, Wallach told Pitcock that he was still a partner in the Firm and that he should conduct himself accordingly. Pitcock apologized to Marc Kasowitz for his behavior by e-mail the next day, December 6, 2007. Marc Kasowitz replied that Pitcock should come see him the day after that.

47. Pitcock had always gotten along quite well with Marc Kasowitz, and Kasowitz himself assured Pitcock on multiple occasions that Pitcock was doing a great job for the Firm and would receive substantial additional compensation at year's end.

The Kasowitz Firm Forces Pitcock Out

48. On December 7, 2007, two days after the meeting Marks and Wallach, Marc Kasowitz told Pitcock that he was no longer a partner and had to leave the Firm.

49. Given that Pitcock essentially built the IP practice at the Kasowitz Firm, Pitcock could not believe that his “misconduct” –the September 2007 incident– warranted his involuntary withdrawal, especially in an environment where heavy drinking and other improper conduct appeared to be tolerated.

50. The Firm terminated Pitcock in early December 2007, using the September 2007 incident as a pretext, to deprive Pitcock of the additional compensation which he would have received at the end of December.

51. Pitcock was surprised at the decision, but he always understood that Marc Kasowitz had the authority to hire or fire anyone at the Kasowitz Firm. Involuntary withdrawal of partners for no cause is specifically provided for in the partnership agreement of the Kasowitz Firm (“Partnership Agreement”). In fact, Marc Kasowitz had previously discussed in front of Pitcock firing other partners, including Goodwin, on multiple occasions.

52. Pitcock is unaware of any investigation conducted before the December 7, 2007, meeting. Pitcock certainly was not given a chance to ascertain the reasons for his involuntary withdrawal or even to defend himself against any allegations –he simply had to listen while Wallach berated him in front of Marks. Just as had been the case with Katsh, after the Firm told Pitcock of his involuntary withdrawal, Pitcock was ordered to leave the building and never return.

53. No one ever told Pitcock that he was “terminated for cause,” and no one ever told Pitcock that he had engaged in “extremely inappropriate personal conduct.”

Winding Up Business with the Kasowitz Firm

54. Four days after Pitcock learned of his involuntary withdrawal, the Firm sent Pitcock a draft severance agreement on December 11, 2007 (the "Draft Severance Agreement"). (Draft Severance Agreement, attached hereto as Exhibit C.)

55. The Draft Severance Agreement included a specific provision whereby, if asked, the Kasowitz Firm would state that Pitcock had "resigned for personal reasons," *not* that he was "terminated for cause" *or* for any alleged "extremely inappropriate personal conduct." (Draft Severance Agreement at 7.)

56. On December 13, 2007, two days after receiving the Draft Severance Agreement, Pitcock sent the Kasowitz Firm his markup of that agreement.

57. Pitcock never received a response from the Firm.

58. The Draft Severance Agreement required Pitcock to help "transition" work, and upon information and belief, the Kasowitz Firm wanted to get as much help from Pitcock as possible to keep the business that Pitcock had developed.

59. Pitcock initially believed that the Kasowitz Firm would negotiate his severance in good faith and, as such, fielded numerous phone calls and e-mails from Firm staff for weeks after Marc Kasowitz told him to leave the Firm on December 7.

60. However, it is now clear that the Kasowitz Firm never intended to negotiate the severance agreement in good faith, fraudulently inducing Pitcock to continue working with the Firm for no further compensation at a time when Pitcock would have earned his substantial end-of-the-year bonus.

61. Pitcock even remained on the Kasowitz Firm website in late December 2007, suggesting to the outside world that he was still providing services to the Firm and the Firm's clients.

Pitcock's Opportunity with Morgan & Finnegan

62. Meanwhile, Pitcock needed a job. He was supporting his then-pregnant wife and their child, and, as a relatively young if established lawyer, he was determined to continue to build his career. Pitcock interviewed with large law firms to do the highly specialized work he had been training to do for nearly two decades. After negotiating offers from reputable firms—each offering guaranteed starting annual salaries of around one million dollars with the ability to earn far more over time, particularly if he brought business to those firms—Pitcock ultimately decided to join Morgan & Finnegan, a firm known for focusing on IP litigation.

63. Even though Pitcock did not begin searching for opportunities until after the December 7, 2007, meeting with Marc Kasowitz, Pitcock was able to rely on his excellent reputation to find quickly other employment opportunities using a recruiter.

64. Pitcock wanted to move on with his life and his career, so on January 2, 2008, about three weeks after he had sent to Marks his proposed edits for the Draft Severance Agreement, Pitcock informed the Kasowitz Firm that he had joined Morgan & Finnegan as an equity partner.

65. Based on his new employment contract, Pitcock's equity partnership at Morgan & Finnegan was estimated to be worth in excess of \$950,000 per year.

66. Under his new contract Pitcock would earn even more when he generated IP business for his new firm, as he had done at both Simpson and the Kasowitz Firm. Pitcock had developed his own book of business from clients he knew and serviced for years, and hoped that some would want to engage him and his new team at Morgan & Finnegan.

67. On January 7, 2008, Morgan & Finnegan announced Pitcock's arrival, touting Pitcock as "an outstanding addition to [its] successful litigation practice." (Morgan & Finnegan Release, attached hereto as Exhibit D.) Neither Morgan & Finnegan nor Pitcock said anything disparaging about the Kasowitz Firm.

68. Because Pitcock had an established reputation in the hot field of IP litigation, the legal media picked up on Morgan & Finnegan's announcement and reported the move.

69. On January 15, 2008, one legal website reported Pitcock's new employment with the headline, "Morgan & Finnegan Nabs Kasowitz Benson IP Leader." (IP Law360 Article, attached herein as Exhibit E.) The article described Pitcock as "jumping ship" to Morgan & Finnegan, yet neither Pitcock nor Morgan & Finnegan used the terms "nab" or "jumping ship." (*Id.*) Indeed, such words were chosen by IP Law360.

70. As sophisticated parties such as the partners of the Kasowitz Firm must have known, these stock phrases—"nab" or "jump ship"—are commonly used by legal media to describe the lateral moves of partners, not to soil the image of a former firm.

The Smear Campaign: the Public Statements

71. This lone press statement by IP Law360 angered and alarmed the Kasowitz Firm. Because Pitcock had taken business with him from Simpson to the Kasowitz Firm and had been primarily responsible for rainmaking and IP client interactions at the Kasowitz Firm, the partners at the Kasowitz Firm knew that Pitcock could bring clients with him to Morgan & Finnegan.

72. The Firm made an almost unprecedented move and hired its PR firm, Sitrick, to engage in what has been an extraordinarily successful negative public relations campaign. As a result of the Firm's public and private statements, Pitcock's reputation has been destroyed: it has since become impossible for him to get a job at a large law firm, let alone recruit a team to a new firm or get business at a new firm. Without the resources and support provided by a large firm, Pitcock is not a threat to the Kasowitz Firm—he can neither take clients with him as a solo practitioner nor hire associates with a greatly reduced income.

73. Given Pitcock's exemplary track record at the Kasowitz Firm before the December 5, 2007, meeting, the Kasowitz Firm could not protect itself by spreading the truth. Instead, in order to retain the clients Pitcock brought to the Firm as well as the staff he had recruited, the Kasowitz Firm was forced to circulate false and misleading statements about Pitcock's departure.

74. On Friday, January 18, 2008, the Kasowitz Firm and Sitrick widely issued the following Press Release:

Kasowitz, Benson, Torres and Friedman LLP., made the following statement today:

Recent news items have reported, following a news release by a law firm, Morgan & Finnegan, that Jeremy Pitcock left Kasowitz, Benson, Torres and Friedman LLP., to join that firm. Some news items incorrectly reported that Mr. Pitcock had 'defected' or 'jumped ship.'

The fact is that Mr. Pitcock was terminated for cause by our firm in December, 2007, because of extremely inappropriate personal conduct. We were not looking to publicize this incident, but because of those incorrect news items, we feel compelled to set the record straight.

For more information contact Seth Faison, Sitrick and Company, 212-573-6100.

(Press Release, attached hereto as Exhibit F.)

75. These statements were false: the Kasowitz Firm never told Pitcock that he had been "terminated for cause." Rather, the Firm told him that his departure would be mutually amicable and that both parties, if asked, would say that he "resigned for personal reasons." Furthermore, Pitcock did not engage in any behavior that could be characterized as "extremely inappropriate personal conduct."

76. The Kasowitz Firm continued its smear campaign, spreading injurious falsehoods almost immediately after the Martin Luther King Holiday weekend that followed the Press Release. One business day later, on Tuesday, January 22, 2008, legal media giant *The American Lawyer* published an article regarding the Press Release. In this article, Wallach is quoted as stating that "Pitcock was terminated Dec. 7 following a 'thorough,' weeklong investigation into reported inappropriate conduct, which the firm

would not describe. . . . The firm's action was consistent with its zero-tolerance policy for such misconduct." (January 22, 2008, Article at 2, attached hereto as Exhibit G.)

77. Notwithstanding Wallach's statements, Pitcock is unaware of any investigation, let alone a "thorough" one, into his conduct, and he has had no opportunity to defend himself against specific allegations. Moreover, the statements about the Firm's "zero-tolerance . . . for such misconduct" are also false because other partners at the Firm have engaged in conduct at least as bad and, arguably, far worse than Pitcock's September 2007 incident without fear of termination. As with the Press Release, Wallach's lies had no purpose but to destroy Pitcock's reputation, making him unmarketable in the reputation-sensitive big firm legal market, and no threat to the business of the Kasowitz Firm.

78. However, other parts of Wallach's statement appear to be an unsuccessful attempt to pull back from what the Firm and Wallach must have known was baseless and inflammatory language in the Press Release. The initial reference to "termination for cause" in the Kasowitz Firm's press statement was changed to mere "termination," which is still wrong, as Pitcock had left by involuntary withdrawal. The "extremely inappropriate conduct" was changed to merely "reported inappropriate conduct," though still without description or clarification, thus fueling to this day the rumors about Pitcock's conduct.

79. Inexperienced in dealing with the press, and having just spent the weekend with his wife in the hospital after the birth of his second son, Pitcock declined to respond to the Firm's incendiary allegations. Heeding the advice of others who said

that the best way to maintain his reputation was to take the high ground, Pitcock revealed nothing about what he considered a private matter that had nothing to do with his business or professional life.

80. The press statements by Kasowitz and Sitrick were almost certainly vague by design. The Press Release refers to extreme “personal” conduct, leading readers—including law firm partners and general counsel at companies—to believe that Pitcock engaged in some kind of sexually deviant or extreme sexual misconduct that would shock the conscience even of litigators at a firm known for its tough and hard-nosed litigation methods.

81. This vagueness—combined with the reality that many large firms tolerate high levels of genuinely inappropriate conduct—unleashed a torrent of rumors on blogs and in the legal media. (Rumor Communications, attached hereto as Exhibit H.)

82. This terrible press has not only destroyed Pitcock’s reputation, but it has humiliated him and his family.

83. The Kasowitz Firm’s inaction in the months after Morgan & Finnegan withdrew its offer of partnership to Pitcock proves the malice of its earlier actions. Since issuing its Press Release, the Firm has done nothing to correct the specious speculation about Pitcock’s alleged inappropriate conduct, and in fact only exacerbated the situation when Wallach followed up with his own misrepresentations.

The Smear Campaign: the Private Statements

84. The Firm has coordinated its public smear campaign with private misrepresentations to the clients that Pitcock used to represent.

85. Goodwin and other individuals at the Kasowitz Firm have defamed Pitcock to various Firm clients to discourage clients from following him to his new firm.

86. This defamation is consistent with the Kasowitz Firm's silence: the Firm cannot privately destroy Pitcock's reputation while publicly "clarifying the record." These private statements also advance the Kasowitz Firm's goal: to keep the clients and staff Pitcock brought to the Firm while making it impossible for him to get a job at another Firm where he would be a threat to the Kasowitz Firm.

The Smear Campaign Succeeds in Destroying Pitcock's Reputation

87. Things unraveled quickly for Pitcock. By early February 2008, only a few weeks after the Firm issued the Press Release and Wallach followed up with his defamatory statements, the Sitrick media assault was well under way. This press and media blitz caused Morgan & Finnegan to oust Pitcock despite their preexisting contract. Pitcock learned that he had been voted out of his new partnership via a secret partnership meeting to which Pitcock was not invited. Absent the various malicious and defamatory statements by the Kasowitz Firm and Sitrick, as well as the succeeding media storm, Pitcock would still be a partner at Morgan & Finnegan.

88. Currently, no other firms will hire Pitcock. Ever since Morgan & Finnegan withdrew its offer of partnership almost four months ago, Pitcock has spent nearly all of his free time looking for a law firm job.

89. Unfortunately, the law firm partners tell Pitcock that they simply cannot hire him due to the negative press that they would receive.

90. These firms fear that clients and attorneys looking to join their ranks will believe that the truth *must* be terrible if the Kasowitz Firm went so far as to issue a Press Release in the first place and thereafter remain silent amid the rumors and blogs. The Kasowitz Firm previously has tried to control the “spin” on blogs concerning other Firm matters by encouraging associates to post anonymously (most of the postings in Pitcock’s case have been anonymous), and the Firm and Sitrick are attempting the same with respect to Pitcock. Sitrick has also sought to “spin” stories by using anonymous blogging in previous, non-Firm matters.

91. The Kasowitz Firm succeeded in its smear campaign: Pitcock’s inability to find a large law firm job is entirely due to the Kasowitz Firm’s, Wallach’s, and Sitrick’s malicious and defamatory statements.

92. The Kasowitz Firm’s conduct has had a devastating effect on Pitcock and his family, both personally and financially, yet Pitcock initially did not want to resort to litigation. Pitcock tried to resolve this matter at all times in an amicable manner and has tried for months to get a job with a large law firm.

93. However, there are no offers from large law firms. Pitcock performs some IP related consulting work, but earns a small fraction of what he once did, and the consulting work could end at any time. Kasowitz has successfully destroyed Pitcock’s reputation and once highly promising career.

CLAIMS AGAINST THE KASOWITZ FIRM AND WALLACH

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

94. Pitcock repeats and realleges paragraphs 1 through 93 above as though fully set forth herein.

95. As a partner of the firm, the Kasowitz Firm's partners owed Pitcock a fiduciary duty.

96. The Kasowitz Firm's partners breached their fiduciary duty to Pitcock by conducting an unfair and incomplete investigation of Pitcock and by acting on the unsupported findings from this investigation. The Kasowitz Firm's partners breached their fiduciary duty to Pitcock by refusing Pitcock the chance to respond to complaints or statements concerning any alleged misconduct in order to resolve any factual dispute contributing to Pitcock's involuntary withdrawal or standing with the Firm.

97. The Kasowitz Firm's partners breached their fiduciary duty to Pitcock by failing to maintain the confidentiality of certain information disclosed by Pitcock to fellow partners, information which was disclosed pursuant to an implicit understanding of trust and confidence arising out of their status as partners.

98. The breach of those duties has caused significant harm to Pitcock.

SECOND CAUSE OF ACTION

(Breach of the Duty of Good Faith and Fair Dealing)

99. Pitcock repeats and realleges paragraphs 1 through 98 above as though fully set forth herein.

100. The Kasowitz Firm, including Wallach, and Pitcock entered into the Partnership Agreement whereby, among other things, each agreed to exercise good faith dealing with one another throughout the relationship.

101. The Kasowitz Firm and Wallach breached this duty by failing to exercise good faith and fair dealing in investigating Pitcock's conduct, depicting the circumstances surrounding Pitcock's departure, terminating Pitcock, and winding up its business with Pitcock, including its refusal to negotiate in good faith the Draft Severance Agreement.

102. As a result of the Kasowitz Firm's and Wallach's breach, Pitcock was severely damaged.

THIRD CAUSE OF ACTION

(Breach of Contract as to Partnership Agreement on Post-Termination Payments)

103. Pitcock repeats and realleges paragraphs 1 through 102 above as though fully set forth herein.

104. In or around March of 2006, Pitcock entered into a Partnership Agreement with the Kasowitz Firm. The Partnership Agreement made Pitcock an equity partner at the firm.

105. A key element of the Partnership Agreement deals with a partner's rights upon termination of partnership interest, particularly rights related to post-termination payment.

106. The Partnership Agreement outlines both the payment structure for partners who withdraw from the partnership involuntarily and the rules of the termination process.

107. Under the Partnership Agreement, a Partner is to receive the value of the Partner's interest in Partnership capital (the Partner's capital account balance as of December 31 of the year preceding termination of interest; plus any contributions or additions to capital made by the Partner since December 31 of the year preceding termination of interest; less any returns of capital made to the partner or other capital account reductions since December 31 of the year preceding termination of Interest); plus the value of the Partner's Points interest in undistributed net profits for the year to be dispersed within ninety days of the close of that year; plus Any other amount owed to the Partner.

108. The Managing Partner and the Executive Committee may award additional amounts upon their discretion, presumably the \$60,000 severance pay found in the Draft Severance Agreement. (Draft Severance Agreement at 1.)

109. Under the Terms of the Partnership Agreement, involuntary withdrawal takes effect upon written notice to the partner or upon such other date as may be specified by the written notice.

110. The Draft Severance Agreement lists the "effective date" of involuntary withdrawal as December 7, 2007. (Draft Severance Agreement at 1.)

111. The Draft Severance Agreement might have never become effective due to Pitcock's modifications, but the Partnership Agreement did. And the Draft Severance

Agreement, while perhaps not a contract, constituted notice of involuntary withdrawal sufficient to trigger the Firm's obligations under the Partnership Agreement.

112. Pitcock has done all of the things that the Firm has required of him; however, the Firm has failed to abide by key elements of the Partnership Agreement.

113. The Firm's failure to pay Pitcock as promised constitutes a material breach of their Partnership Agreement. Furthermore, the Firm's failure to notify Pitcock of the special meeting to determine withdrawal constitutes improper exclusion based on fiduciary duty, the punctilio of honor, and the express terms of the Partnership Agreement.

114. Pitcock expected to receive approximately \$400,000 in post-termination payments; this does not include additional monies for goodwill distribution, compensation for his promotion to head of a department, or the contingency fee matters he brought to the Firm. Pitcock also expected the Firm to return his \$80,000 capital contribution and to pay at least \$60,000 in severance payments. As a result of the Firm's bad faith conduct, Pitcock has incurred and will incur substantial attorney's fees.

FOURTH CAUSE OF ACTION

(Fraudulent Inducement)

115. Pitcock repeats and realleges paragraphs 1 through 114 above as though fully set forth herein.

116. On or about December 11, 2007, Pitcock received the Draft Severance Agreement as notice of his involuntary withdrawal. (Draft Severance Agreement.)

117. This agreement was designed to induce Pitcock to continue working for the Kasowitz Firm.

118. It required Pitcock's "cooperation in transitioning any matters he was working on as of the Effective Date." (Draft Severance Agreement at 1.)

119. In return, Pitcock was entitled to severance pay and "neutral reference," meaning the firm would respond to any inquiries about Pitcock's departure "by stating that Pitcock resigned for personal reasons." (Draft Severance Agreement at 7.) While Pitcock's conduct was not "extremely inappropriate," it was embarrassing to him and his family; thus the confidentiality element of the Draft Severance Agreement was very important to Pitcock.

120. Two days after receiving the Draft Severance Agreement, Pitcock returned his markup of that agreement.

121. Acting in good faith, Pitcock continued to transition the work for the Kasowitz Firm for weeks, despite the Firm's silence on his markup of the Draft Severance Agreement.

122. On or about January 2, 2008, Pitcock informed the Kasowitz Firm that he joined Morgan & Finnegan as an equity partner.

123. On or about January 18, 2008, the Defendants issued the defamatory Press Release, which falsely characterized Pitcock's departure from the firm, not as resignation for personal reasons as the Firm suggested in its attempt to induce Pitcock to continue his work for the firm, but as termination for cause, and alleged "extremely inappropriate personal conduct."

124. Defendants fraudulently misrepresented their intent to negotiate a severance agreement in good faith. They did so in order to retain Pitcock's services for free, without the responsibility to pay his substantial end-or-the-year bonus.

125. In response to press inquiries about the situation surround his withdrawal from the Kasowitz Firm, Pitcock abided by the terms of the Draft Severance Agreement, refusing to comment but to say that he left for personal and not professional reasons. Pitcock did not defame the Firm and maintained strict confidentiality even after the Firm's defamatory Press Release.

126. Instead, the Kasowitz Firm encouraged wide dissemination of the statements throughout the legal and business community by way of Wallach's public announcement and the Firm's subsequent comments on several websites.

127. The Kasowitz Firm fraudulently misrepresented its intention to negotiate with Pitcock, which induced him to continue to work for Kasowitz for weeks in reliance on Kasowitz's misrepresentations.

128. The Firm is liable for the harm caused by his justified reliance.

FIFTH CAUSE OF ACTION

(Unjust Enrichment)

129. Pitcock repeats and realleges paragraphs 1 through 128 above as though fully set forth herein.

130. Pitcock conferred benefits onto the Kasowitz Firm by bringing new clients and contingency fee matters to the Firm.

131. It is unjust for the Kasowitz Firm to retain this benefit because the Firm did not earn these benefits, as it was Pitcock who generated all of this business. Moreover, the Firm unjustly and intentionally drove Pitcock out by way of an incomplete and unfair investigation and soiled his reputation by spreading false and misleading statements about his departure.

SIXTH CAUSE OF ACTION

(Unfair Competition)

132. Pitcock repeats and realleges paragraphs 1 through 131 above as though fully set forth herein.

133. The Kasowitz Firm misappropriated Pitcock's skill and labor by fraudulently inducing him to join the Firm as a partner.

134. This was done in bad faith and for the Firm's own commercial advantage, as the Kasowitz Firm planned to oust Pitcock after he had attracted substantial business to the Firm, recruited a number of exceptional attorneys, and almost single-handedly transformed the Firm's IP department into a reputable practice.

135. The Kasowitz Firm further misappropriated Pitcock's skill and labor by fraudulently inducing him to continue to work for the firm after the Firm terminated Pitcock. Moreover, for three weeks after his involuntary withdrawal, the Firm represented to the outside world, through its website and by making his services available, that he was still a member of the Firm.

136. This was also done in bad faith and for the Firm's own commercial advantage. The Kasowitz Firm needed Pitcock to ease the transition and did not want

lose any clients, yet the Firm knew all too well that it would not negotiate the Draft Severance Agreement in good faith.

CLAIMS AGAINST ALL DEFENDANTS

SIXTH CAUSE OF ACTION

(Conspiracy)

137. Pitcock repeats and realleges paragraphs 1 through 136 above as though fully set forth herein.

138. Around January 2008, the Firm and Sitrick conspired unlawfully to defame Pitcock and to perpetrate other tortious behavior in order to retain Pitcock's IP clients and associates and otherwise benefit themselves.

139. The Firm hired a PR firm, Defendant Sitrick, to issue the Press Release, which was widely disseminated throughout the legal community, and which falsely characterized Pitcock's departure from the Firm as termination for cause, alleging "extremely inappropriate personal conduct."

140. Defendant Wallach reinforced these false statements on January 23, 2008, through an article published in *The American Lawyer*.

141. The Firm and Sitrick subsequently encouraged wide dissemination of the statements throughout the legal and business community by posting comments on several websites designed to engender intense and false speculation about what Pitcock had done.

142. The false, defamatory statements published by the Defendants injured Pitcock's reputation; caused Pitcock severe emotional distress, humiliation, and

embarrassment; and continue to injure Pitcock in his good name, reputation and business and caused special damages in the form of lost income.

SEVENTH CAUSE OF ACTION

(Tortious Interference with Contract)

143. Pitcock repeats and realleges paragraphs 1 through 142 above as though fully set forth herein.

144. Pitcock entered into a contract with Morgan & Finnegan whereby Pitcock agreed to join Morgan & Finnegan as a partner in its IP practice group.

145. The Kasowitz Firm knew about this contract with Morgan & Finnegan.

146. The Kasowitz Firm sought to interfere with this contract out of fear that Pitcock would take clients from the Kasowitz Firm over to Morgan & Finnegan, thus costing the Kasowitz Firm millions of dollars in lost future business.

147. The Kasowitz Firm and Wallach made various malicious statements about Pitcock, as described above, without justification or privilege, intending these statements to cause Morgan & Finnegan to renege on its partnership agreement with Pitcock.

148. These malicious statements caused enormous damage to Pitcock.

EIGHTH CAUSE OF ACTION

(Tortious Interference with Business Relationships)

149. Pitcock repeats and realleges paragraphs 1 through 148 above as though fully set forth herein.

150. After being terminated by the Kasowitz Firm, Pitcock entered into a business relationship with Morgan & Finnegan.

151. After the Kasowitz Firm learned of this relationship, the Firm sought to destroy this relationship as well as the relationships that Pitcock had formed with many of his clients.

152. In the weeks that followed Pitcock's departure from the Firm, Defendants proceeded to disseminate false and misleading statements about Pitcock, statements which were intended to cause others to sever their relationships with Pitcock.

153. As a result, Morgan & Finnegan withdrew its offer of partnership, costing Pitcock many millions of dollars.

NINTH CAUSE OF ACTION

(Tortious Interference with Prospective Employment or Advantage)

154. Pitcock repeats and realleges paragraphs 1 through 153 above as though fully set forth herein.

155. Prior to commission of the acts by the Defendants, Pitcock was reputed, esteemed, and sought after in the legal community.

156. On or about January 18, 2008, Defendants sought to interfere with Pitcock's prospective employment in order to protect their recently acquired IP department and retain Pitcock's clients.

157. The firm hired a PR firm, Defendant Sitrick, to issue a press release January 18, 2008, which was widely disseminated throughout the legal community and which falsely characterized Pitcock's departure from the Firm, alleging "extremely

inappropriate personal conduct” and falsely claiming that Pitcock was “terminated for cause.”

158. The Press Release was intended to imply deviant sexual behavior but was in every way false, misleading, defamatory, libelous, unprivileged, and without legal excuse.

159. Defendant Wallach reinforced the false statements on January 23, 2008, through an article he published in *The American Lawyer*.

160. The Defendants subsequently encouraged wide dissemination of the statements throughout the legal and business community by posting comments on several websites designed to engender intense and false speculation about what Pitcock had done.

161. The false, defamatory statements published by the Defendants injured Plaintiff’s reputation, caused severe emotional distress, humiliation, and embarrassment, continue to injure Plaintiff in his good name, reputation and business and caused special damages in the form of lost income.

162. Moreover, after the Firm spread misleading statements to many of Pitcock’s clients, those clients wanted nothing more to do with Pitcock, believing the Firm’s false and misleading statements. This lost client base cost and will continue to cost Pitcock many millions of dollars.

163. The Firm’s statements to Pitcock’s clients also violated American Bar Association and New York State Bar Association ethical guidelines by engaging in dishonest and deceitful behavior, which additionally impinged on the clients’ right to

choose counsel by deceitfully slanting the choice between remaining at the Firm and following Pitcock to his new firm.

TENTH CAUSE OF ACTION

(Defamation and Defamation *Per Se*)

164. Pitcock repeats and realleges paragraphs 1 through 163 above as though fully set forth herein.

165. Defendants made numerous misrepresentations regarding the underlying reasons for and means of Pitcock's departure in both its Press Release and subsequent comments found in several articles.

166. These statements clearly identified Pitcock, referencing him by name.

167. These statements were false, as they inaccurately misrepresented the events in question and were unsupported by the facts.

168. The various statements made by Defendants were defamatory as they greatly exaggerated the conduct of Pitcock and were designed to engender intense and false speculation about what Pitcock had done.

169. Defendants made these statements either intentionally or with reckless disregard for the truth.

170. These statements severely damaged Pitcock by causing great harm to his reputation, both publicly and privately.

ELEVENTH CAUSE OF ACTION

(Injurious Falsehood)

171. Pitcock repeats and realleges paragraphs 1 through 170 above as though fully set forth herein.

172. In or around January 2008 and soon thereafter Defendants published injurious falsehoods to disparage Pitcock's integrity and damage his legal career.

173. On or about January 18, 2008, the Defendants issued the defamatory Press Release, which was widely disseminated throughout the legal community and which falsely characterized Pitcock's departure from the Firm as being termination for cause, alleging "extremely inappropriate personal conduct."

174. The statements intentionally implied that Pitcock engaged in deviant sexual behavior, a charge which is false, misleading, defamatory, libelous, unprivileged, and without legal excuse.

175. Defendant Wallach reinforced these false statements on January 23, 2008, in an article published in *The American Lawyer*.

176. The Defendants subsequently encouraged wide dissemination of the statements throughout the legal and business community by posting comments on several websites designed to engender intense and false speculation about what Pitcock had done.

177. The false, defamatory statements published by the Defendants injured Pitcock's reputation, caused severe emotional distress, humiliation, and embarrassment,

continue to injure Pitcock in his good name, reputation and business and caused special damages in the form of lost income.

TWELFTH CAUSE OF ACTION

(False Light Invasion of Privacy)

178. Pitcock repeats and realleges paragraphs 1 through 177 above as though fully set forth herein.

179. In making and disseminating remarks about Pitcock's departure and the kiss in September 2007, Defendants' gave publicity to a matter concerning Pitcock that placed Pitcock before the public in a false light.

180. The Firm's statements placed Pitcock in a false light. By saying that Pitcock was "terminated for cause" for "extremely inappropriate personal conduct," particularly given its knowledge of the conduct far worse than Pitcock's that goes unpunished in the legal community, the Firm insinuated that Pitcock engaged in outrageous conduct that was beyond the pale.

181. Defendants' purposefully inaccurate portrayal of Pitcock as a professional who conducts himself in an extremely inappropriate manner is offensive.

182. Defendants knew that they would be portraying Pitcock in a false light when making these statements.

183. As a result of the Defendants' actions, Pitcock has suffered irreparable damage to his professional and personal reputation.

THIRTEENTH CAUSE OF ACTION

(Public Disclosure of Private Facts)

184. Pitcock repeats and realleges paragraphs 1 through 183 above as though fully set forth herein.

185. Defendants publicly disclosed matters regarding Pitcock's termination and personal life that would be offensive to the reasonable person.

186. These matters were not of public concern.

187. Pitcock has suffered injury as a result of the Defendants' disclosure.

PRAYER FOR RELIEF

WHEREFORE, Pitcock prays for the following relief:

A. Compensatory damages in the amount of no less than \$540,000 for breach of contract, plus interest, for which the Kasowitz Firm is liable;

B. Compensatory damages in the amount of no less than \$30 million, plus interest, for injury to reputation resulting in loss of current and prospective income; emotional distress, humiliation, and embarrassment; loss in billable time; and out-of-pocket expense resulting from his attempts to clear his name, for which the Defendants are jointly and severally liable;

C. Special damages in the amount of no less than \$28.5 million, plus interest, for lost income as a result of the Defendants' tortious interference with his contract with Morgan & Finnegan, for which the Defendants are jointly and severally liable;

D. Punitive damages in an amount of no less than \$60 million, plus interest, for the wanton, malicious, and intentional nature of Defendants' conduct, punitive damages to deter the Defendants from further misconduct;

E. An Order from this Court that the Kasowitz Firm and Sitrick retract all defamatory statements, issue a release affirmatively stating that Pitcock was not terminated for cause and that earlier statements were false and misleading, and refrain from making any further misleading or defamatory statements or doing anything else which would interfere with Pitcock's present or future business relationships; and

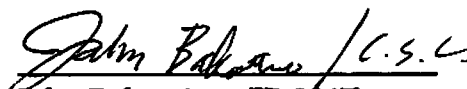
F. Any other such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury for all issues so triable in this action.

Dated: New York, New York
June 5, 2008

Respectfully submitted,



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