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Via NYSCEF and hand delivery October 4, 2018

Hon. O. Peter Sherwood
Justice of the Supreme Court
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601

Melcher v. Greenberg Traurig – Index No. 650188/2007

Dear Justice Sherwood:

This letter responds to the last minute six-page letter from Defendants, asking for permission to make another summary judgment motion. This Court denied Mr. Melcher summary judgment in 2014/2015 on the grounds that issues of fact existed. *Exhibit A*. All of the "facts" that Greenberg relies on now were known to Greenberg when the 2014 summary judgment motion was pending, but they carefully chose not to cross-move, asserting only procedural defenses. That was four years ago.

In 2018, Defendants rely on language in the *Facebook* case, which this Court previously and correctly stated in 2017 was *dicta* contained in a motion to dismiss. *Exhibit B at 12.* That the recent First Department decision herein repeated that *dicta*, in its own *dicta* in a mere footnote that had nothing to do with the issues before that court, does not make it anything other than *dicta*, any more than double hearsay creates anything more than hearsay.

The complaint in *Facebook* contained mere conclusory allegations, which were based on what other lawyers knew and did, not what the defendant lawyers knew and did. *Exhibit C.* The *Facebook* complaint contained no factual allegation of any actual personal wrongdoing or deceit by any of the lawyers involved. The *dicta* in *Facebook* in reality referred to the mere conclusory nature of the allegations.

The Complaint herein consists of 49 pages and 183 numbered allegations, and 84 exhibits. *Exhibit D.* The exhibits render it uncontradictable that, among other things, when Mr. Melcher moved to get the original of the phony amendment for forensic testing (at a time when no one knew of the "tea-making accident" but the Greenberg lawyers), the lead Greenberg lawyer personally misled Hon. Herman Cahn by representing that he was holding the document safely "in escrow," when he personally knew that all he was holding was the scorched remnant thereof.

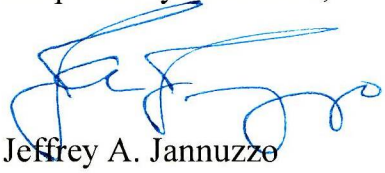
A man who lies to a judge will lie about other things, and Mr. Melcher is entitled to have a jury decide what that man "knew." Many people have broken out laughing when they saw the scorch-marked phony document, and heard the story of a tea-making accident. *Exhibit E.* The jury is entitled to determine the preposterous excuse that the Greenberg lawyers "knew" nothing.

Even more importantly, from the formerly-privileged documents produced in 2014, it is uncontradictable that within the first days of the case, the Greenberg lawyers personally knew that the law firm which their client Fradd swore had prepared the phony amendment, disclaimed any knowledge of it, in writing, to the Greenberg lawyers. *Exhibit F (S/J memo & material facts).* The jury is entitled to determine whether lawyers who uncontradictably knew that, "knew" they were purveying phony evidence. And those are just a small sample of what Mr. Melcher will prove at trial.

Greenberg's recent letter speaks of the cost and expense of a trial. By my reckoning, Greenberg has paid its counsel in excess of $9,000,000 during the eleven years of this case. Greenberg does not fear the expense of a trial. It fears the trial because it fears a jury verdict.

Jim Melcher will turn 79 in a few weeks. He was 64 years old when this case began. This Court knows well that Justice Delayed Is Justice Denied. Mr. Melcher's case should proceed promptly to trial.

Respectfully submitted,



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cc: James Montgomery, Esq.
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Via NYSCEF and PDF

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