Office of the Bar Counsel
99 High Street
Boston, Massachusetts 02110

October 2015

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"In order for the investigation to proceed, it will be necessary that you provide as many facts and as much documentation as possible. Although you may feel certain that the acts complained of constitute misconduct, a simple statement that misconduct has occurred is not enough. You should set forth the facts surrounding your complaint. Include dates, the nature of the legal matter, and specific information about what you feel the lawyer did wrong. If you have documents, including a fee agreement, court papers, letters or notes, that you think are helpful to understand the complaint, send copies.."

Complaint by Robert Fontaine of Professional Misconduct by Counsel for Cape Cod Times:

To the Commonwealth of Massachusetts:

I do not file this complaint lightly, this has been an extremely difficult ordeal. I consider these very serious accusations. I do not find myself at this point by choice. I do not casually expose myself to the threat of retaliatory actions by wealthy corporations, affluent, respected, local executives and world class lawyers, who have shown total disregard for the courts, whose actions alone have caused the courts to err, and who have more money and legal resources than they know what to do with. I file this complaint because Lawyers have committed a fraud upon the court. As evidenced by their affidavits.

If the Board finds this Complaint too lengthy, too burdensome, Fontaine would inform the Board that the record he brings forth is extensive, it encompasses a 13+ year old conspiracy to commit fraud, under the ownership tenure of three successive wealthy corporations, and 8 years of litigation misconduct, perpetrated on the court by two successive law firms, with over 1300 combined lawyers globally.

In litigation accusing my local paper, The Cape Cod Times, of Fraud & Inducement, Breach of Contract and other Mass 93a causes of action, in the 2002 purchase of Fontaine's dominant internet advertising portal, CapeCodRealEstate.com, CCT portrayed Fontaine to the Court as a greedy seller, unhappy with the fair results of a mutually negotiated deal. But this was not a negotiated sale, it was a planned theft.

After 5 years of litigation, Fontaine was left to represent himself pro se in 2012 with days remaining to file his appeal of the Barnstable Summary Judgment Ruling. He had to learn facts, evidence, process, rules and the law, as best he could, quickly. He had much bigger problems in his life, he didn't have space for this endless, pressure filled, ordeal. But he knew the facts exposed CCT's scam completely.

It's not going to hurt anyone to read through Fontaine's complaint. Let him stick his foot in his mouth.

For the benefit of expediency, and to ensure this complaint is not ignored, assumed to be frivolous, pro se Fontaine has isolated seventeen (17) specific statements of Counsel (see page #15 of Complaint), which collectively demonstrate that Counsel's own signed affidavits of fact simply cannot be true.

This complaint will detail the underlying fraud, the case within the case. I use CCT's own documents, records, and depositions, to precisely identify the evidence that establishes their rather surprisingly complex conspiracy to acquire Fontaine's valuable business, and establish a fake, yet absolute defense.

Counsel's false statements served to blind the court from the legitimate evidence, by explicitly backing what is clearly bad "evidence", saying my claims are "bald", without merit. After all, the company, its executives, and its lawyers are certainly more trustworthy than Fontaine. Until you look closer!

The CCT lawyer listed on the October 31, 2002 P&S (Dalton) had his license suspended By This Body in 2015, for filing FALSE documents with the court, as noted in the Cape Cod Times. Chief Counsel for Dow Jones (Langhoff), who personally approved the 2002 sale, according to CCT, quit parent News Corp amid a circulation SCAM to induce advertising contracts, playing with numbers, false projections.

And both law firms representing this wealthy entity during 8+ years of litigation, the 1st team listed a retired Barnstable superior court judge, the 2nd in a firm of 1100+ lawyers globally, have filed false affidavits, which counsel used to impugn pro se Fontaine's credibility. Don't take MY word for it, take THEIR SIGNED AFFIDAVITS! These are experienced lawyers, familiar with the law.

The central issue in this dispute is well defined in CCT Counsel's 2014 "**Motion Seeking Protection**" from Fontaine (Attached, along with the Barnstable SJ Ruling, where ½ the pages in the opinion refer to Bundles beginning in 2003). If CCT had hidden Bundles in 2002, the fraud becomes obvious.

Counsel's Motion: "***Fontaine's summary judgment opposition and appellate briefs focus, almost exclusively, on the following argument: That the CCTimes secretly intended to market "bundled" print and internet real estate advertising products prior to the execution of the Purchase and Sale Agreement, and that CCTimes concealed this bundling strategy from Fontaine in order to fraudulently induce him to sign the Purchase and Sale Agreement***". That is exactly what the evidence shows.

Fontaine will use the record to establish that ALL legitimate evidence confirms CCT's 2002 Plan to "Bundle" advertising for this deal, was indeed in place before Jan 9, 2003, as CCT Counsel has sold the Court. The deposition of CCT Management, the records of the company, and Counsel itself is on record confirming the legitimacy of the "Smoking Gun", CCT's hidden plan for the deal, which includes 2002 Bundles. CCT Did Not as they Can Not, have conceived of Bundles per the planted Jan 9, 2003 Email.

Yet, In a 16 page 5/2/12 decision, The Barnstable Court ERRONIOUSLY relied on Counsel's FALSE assertions that CCT hadn't even "contemplated" bundling until After the P&S, as per the Jan 2003 Email:

P2."***In January 2003, Kempf sent the following email to certain CCT staff, on which he copied plaintiff "I am proposing a bundle real estate product and price***"..

P3. "***In his affidavit, Meyer states that such product bundling began in early 2003***".

pg5. ***"Indeed, contrary to plaintiffs assertion, documentary evidence indicates that CCT did not propose - much less implement, a bundled print and online advertising strategy, until 2003."***

P5. "***Thus, CCT could not have misrepresented to Plaintiff an advertising program that did not exist during the 2002 negotiations***".

pg8."***In sum, Plaintiff has not offered evidence that the topics allegedly misrepresented to him were even contemplated by CCT at the time the P&S was executed, much less actively concealed from him.***

Rather, plaintiff admits that bundling was not discussed during negotiations, and the record reflects this concept was not formally proposed until January 2003".

P11."***the record does not support Plaintiffs allegation that CCT executives had expressed or implemented bundle advertising, prior to 2002. To the contrary, the record reflects that Robert Kempf did not propose the concept until January 2003***". (The court must have meant "prior to 2003").

P12."***Indeed, Plaintiff's own allegations confirm that Bundling was never discussed during negotiations***".

The court has fallen for Counsel's Summary Judgment Memo, which asserts: ***"the bald allegation that Fontaine reasonably relied on any such statement is squarely contradicted by the uncontested evidence in the record that the bundling plan wasn't even hatched until months after contract execution***". If "uncontested" means proven and admitted to, Counsel's affidavit is correct.

THIS IS EASY: Counsel's affidavits require you to conclude CCT Conceived of Bundles in 2003, but were disclosed to Fontaine in 02. Once Fontaine proved CCT's 2002 Bundle, Counsel's affidavits were perjury.

Considering the record includes a 2002 CCT "Smoking Gun" document that projects Bundle revenue for year 2002, and an abundance of other evidence establishing CCT's 2002 Bundle, the fact lawyers deceived two courts to hold that CCT hadn't even conceived of Bundles until early 2003 is a problem!

The 'Smoking Gun" is CCT's 2002 hidden Plan for the sale, named after Fontaine's business, CapeCodRealEstate.com, and Lists Bundles to the dollar, for the entire 2002-2006 deal. **THEY HAVE A SECRET 2002 DOCUMENT THAT PRICES OUT THE ENTIRE DEAL, WITH BUNDLES. Jan 9 is impossible.**

|NOTICE THIS IS A COPY|
(Fontaine Underlines Bundle 3/23/13)

Confidential

Real Estate Merger Analysis, Attachment C

CapeCodRealEstate.com Product Mix and Revenue Projections 2002-2006

MLS Studio

Ad Type	2002	2003	2004	2005	2006
Photo Ads	7800	15600	17000	18000	20000
Sponsorship	6000	12000	18000	18000	24000
MLS Search, Cape-wide	7800	26000	31200	39000	52000
MLS Search, regions	10400	20800	31200	31200	36400
Realtor Directory	18000	48000	50000	55000	60000
Banner Rotation	2700	10800	12000	14000	15000
Tile Rotation	1350	5400	6000	8000	10000
Real Estate Book Bundle	7300	8500	10000	12000	14000
Rental Database	10000	20000	30000	40000	45000
Interstitials		9000	12000	12000	12000
Ad Revenue	**71350**	**176100**	**217400**	**247200**	**288400**
Development	**25000**	**25000**	**25000**	**25000**	**25000**
IDX Platform	**15000**	**30000**	**40000**	**45000**	**50000**
Total Revenue	**111350**	**231100**	**282400**	**317200**	**363400**

- Photo Ads:
  1 large @ $100/wk - property of week
  small @ $50/wk
- Sponsorship: Skyscraper @ $1000/month exclusive
- MLS Search: Main Cape Cod MLS search box @$300/wk- '02; $500/wk -'02-'03
- ~~MLS Search, regions: $100/wk~~
- Realtor Directory: $300/yr x 90 customers
- Banner Rotation: max 6 @150/month
- Tile Rotation: max 6 @$75/month
- Rental Directory Listings @ $100/season
- Interstitials (transitional pop-ups, 4 @ $250/month
- Price Increases: '04-'06
- 2002 for 6 months

Perhaps both law firms can explain CCT SOF Reply #52, signed on June 14, 2011, a mere 4 Months after same firm filed THEIR false Memo in Support of SJ, asserting Bundles began in 2003?

<u>**Plaintiff's Response #52**</u>: "*Real Estate Merger Analysis" showed the amount of revenue the Internet expected to receive each year from the bundle concept as follows: **2002-$7,300**, 2003-$8,500, 2004-$10,000, 2005-$12,000, 2006-$14,000*".

<u>Cape Cod Time's Reply #52 signed June 14, 2011</u>: "*CCT does not dispute Plaintiff's Response 52*".

The document Expects Bundle Revenue for 2002, the entire sale. It was named after MY Business "***Real Estate Merger Analysis — CapeCodRealEstate.com Product Mix and Revenue Projections 2002-2006***".

The two prestigious law firms representing CCT had forgotten a rather important factor when vouching for CCT's Bundle conception on Jan 9, 2003, 70 days after the p&s, they forgot that ALL the evidence, all CCT depositions, CCT's records, and even Counsel's own admission, confirmed that CCT planned Bundles for the sale in 2002, LONG BEFORE the planted 2003 Email. CCT's absolute defense is absolute perjury.

Both the Barnstable 5/3/12 SJ Decision and the Appeals Court 12/23/13 Ruling, affirming the lower court decision, expressly held CCT's "Bundle" program began AFTER the 10/31/02 p&s, in "Early 2003".

Counsel swore that CCT could not have withheld a Bundle plan from Fontaine during 2002 negotiations, which enabled CCT to reallocate millions of dollars in potential revenue that should have been subject to our Revenue Share terms, as lawyers "substantiated" CCT had not even conceived of Bundling till 2003.

This is false. This wasn't a mistake, this was a calculated conspiracy to commit fraud. Fontaine will use CCT records to prove they had a plan in 2002 to Bundle during this deal, to directly compete with Fontaine instead of "share" with him, as the contract anticipates. **Counsel Continues** to hide from the Court the very 2002 CCT Bundle Plan they were forced to concede on 6/14/11 in CCT SOF Reply #52.

This Board, The Courts, defendant Cape Cod Times, and the implicated lawyers of Nutter McClennen and Fish as well as Holland & Knight, are given more than ample opportunity here, through pro se Fontaine's extensive recitation of facts and evidence, wholly contained within the record, to establish EITHER the Factual OR Legal flaw in Fontaine's very specific accusations**. But these lawyers, advocates for the huge corporation, can't be allowed to assert BOTH sides a given fact, as they have.**

At a minimum, CCT's Memo in Support of Summary Judgment, signed by **Nutter McClellan and Fish** on 2/1/11, asserting that CCT's Bundles were not conceived until January 2003, is contradicted by Nutter's signature on CCT SOF Reply #52, 4 months LATER on 6/14/11, acknowledging CCT's own record (RE Merger) established CCT expected "Bundle Revenue" in 2002.

These material facts, remaining in dispute (among CCT Counsel nonetheless), rendered the 2/1/11 SJ Memo deficient and unsuitable for this Motion under Mass Rule 56e, which states:

"*Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*". Nutter claims bundles were conceived in 2003, yet admits CCT expected 2002 bundle revenue.

We later have a **Holland & Knight** lawyer claim (absurdly) in 2013 Appeal Brief that "*The cited Real Estate Merger analysis makes no reference to any bundled products, and was simply a revenue*

projection used in the negotiation of Fontaine's Net Revenue Share baseline in connection with the proposed "merger" of Fontaine's websites and the CCTimes."

"*To the contrary, the only substantiated evidence establishes that the CCTimes conceived of the print and internet bundling strategy in early 2003, after the execution of the Purchase and Sale Agreement, and that no representations concerning internet bundling were made to Fontaine whatsoever during the negotiations of the Purchase and Sale Agreement*".

The H&K lawyer apparently missed the 2002 Bundle concession of the Nutter lawyers (SOF #52), failed to even recognize the 2002 "Real Estate Book Bundle" listed on the "Smoking Gun" (RE Merger), and continues the frivolous argument that CCT innocently thought up Bundles immediately after the sale.

After Fontaine placed "RE Merger" atop his 2013 Reply Brief, pointing out the ridiculousness of H&K's Appellate brief assertions that "***Real Estate Merger analysis makes no reference to any bundled products***", Counsel attempted to file a Sur-Reply brief (Denied), in which he NOW tries to claim RE Merger was "***disclosed to Fontaine prior to the p&s***", but will have trouble explaining his years of affidavits that boasted *"**no representations concerning internet bundling were made to Fontaine whatsoever during the negotiations of the Purchase and Sale Agreement**".*

How POSSIBLY can Counsel know the Document listing 2002 Bundles was "disclosed" to Fontaine prior to the p&s, when CCT prevailed by convincing the Court that CCT "conceived" of Bundling in 2003?

President and Publisher Meyer didn't know in his 2010 deposition when Bundles began. Yet 6 months later, in Memo In Support of SJ, CCT is unequivocal that Bundles were not conceived until Jan 2003?

And the Barnstable Ruling credited Corporate rep Meyer's knowledge: **"*In his affidavit, Meyer states that such product bundling began in early 2003*".**

Even as CCT's Ad Manager Evans and Internet Manager Kempf had admitted in their 2010 Depositions that CCT's Bundles were in place in 2002, Meyer and the lawyers went back and looked it up, and gave the Court the WRONG answer, subject to 56e. The court expected Fontaine to provide prima fascia evidence of disputed material fact, but CCT was hiding facts. These people had no fear of the court!

Again, the elephant in the room is HOW COULD CCT Begin Bundling in Early 2003 (the fake Jan 9 Email), when CCT had to admit on 6/14/11 they expected Bundle revenue for year 2002, for the entire deal?

Who was going to believe lowly Bob Fontaine under that equation, all these trusted affidavits and all? Counsel's vouching for the planted Jan 9 2003 Email served to make Fontaine's OTHER evidence of CCT's conspiracy to commit fraud appear frivolous or immaterial to the Court. For Instance;

*On Aug 9, 02, in anticipation of the closing, Fontaine agreed to transfer the domain assets to CCT's Admin Control, but that he was doing so upon reliance on CCT's repeated instance they were already doing $100,000 in 2002, and expected to do $150,000 in 2003 on their own (making the $100,000 yearly deductible sound reasonable). CCT says nothing, accepts the assets, but discovery shows an email on August 9 between Kempf, Evans and Meyer where Kempf relays Fontaine's reliance to them, and it is obvious the 3 of them know the $100,000 is wrong. CCT's records show they contributed NOTHING during the entire sale. "***Additionally though, [Fontaine] seems to be operating under the assumption that our '02 revenues will be $100k+. He's also beginning to indicate that he wants us to show exactly what those are***." (See pg 34).

CCT's draft p&s had an Aug_____2002 closing at this point. The Court credits CCT with informing Fontaine CCT was only going to do $75,000, on September 25, 2002, something CCT would have known in August. But the $75,000 admission wasn't disclosure, it was Fontaine hounding CCT to explain facts.

Significantly, Had CCT "disclosed" RE Merger, as attorney Mitchell asserts in his affidavit, The 3 CCT Execs surely wouldn't need to share "***he wants us to show exactly what those are***" the day after they accept (upon reliance of $100k) the valuable domain name assets of Fontaine's business, because RE Merger would have shown Fontaine EXACTLY "**what those are**", for the entire 2002-2006 deal.

And what they show is Bundles, for 2002, at the hidden 90% allocation Policy. They show perjury!

October 16, 2002. Two weeks before the October 31 p&s, **CCT Commits Contract Fraud! (pg 23)
Two months past the proposed Aug____ 2002 Closing, Fontaine is STILL attempting due diligence, trying to tie up the loose ends, as CCT is for some reason being evasive with terminology. Fontaine emails CCT on Oct 16 (Fontaine Exhibit #13), simply seeking honest answers, protect himself from any type of mixed advertising CCT might attempt to sneak through.

CCT writes (6 of 7) "***net revenue objection we've eliminated the word "expenses" from the net revenue calculation language, more precisely defining it***".

Fontaine asks them (4 of 7) "***P&S ITEM #1. 1.3 b 111) While i'm clearly in agreement that some revenue should be excluded, I don't understand why CCT can't simply define what is excluded? To remove the word "expenses" and leave in this term: "various costs and charges, including but not limited to" Tell, me what IS IT LIMITED TO? What other factors effect the net? That is a BIG TIME legitimate question for me to ask. If you can define it, is there some reason you can't define it in the agreement?".***

CCT's Replies: "***We have deleted "but not limited to" from the language here. See attached revision***".

CCT (2 of 7) "***Also attached is a new revision of the P&S with the words "but not limited to" deleted from 1.3b(111)".***

<u>Two takeaways from this exchange, long after the expected p&s, as they now want to close in a week</u>:

#1. CCT alone knew on October 16 that their RE Merger plan included full year 2002 Bundles, applicable to the entire sale. CCT alone knew their "policy" would allocate 90% away from sale price. And CCT alone knew this language they were trying to sneak into the p&s would have a singular relevant implication on the deal, it would allow them to allocate away millions in revenue, once they feign "conceiving" of Bundles in "Early 2003". This plan to do $1.3 million, as they tell Fontaine $4.3.

#2. Because Bundle's were not "ported" from some other CCT product, and the Internet version of RE listings were placed in the CapeCodRealEstate.com "Directory", an add unit included as applicable revenue (1.1.3b 111), CCT ALONE understood they NEEDED that "But Not Limited To" language in the p&s, if they wanted the contractual right to account for the cost of Print, which is their reasoning before the court for 90%/10% split. Naturally CCT needs to account for costs, ruled the court.

So can ANYONE explain how "but not limited to" made its way back into the signed p&s, enabling CCT to deduct the very Bundles, and use the very allocation policy, they failed to disclose on October 16, and which Fontaine complains of? Counsel answers this in appellate briefs by suggesting many terms were in flux, and this may not have been the final word on this matter. Sure, a term CCT alone knew would be precisely the contract right they would argue after feigning the Jan 2003 Bundle, which gave them

COMPLETE rights to allocation and consideration, and Fontaine simply acquiesced. Perhaps we can ask Attorney Dalton if HE reinserted that key term, if and when you give him back his license to practice?

There isn't a SINGLE item of evidence or statement in controversy that is attributable to Fontaine. Fontaine was in the leading medical institutions throughout Boston and New York, fighting multiple advanced cancers, while these lawyers are back home painting me to be a liar. It's unacceptable.

The profound cost to Fontaine and his family directly attributable to the extensive and pervasive litigation misconduct of experienced counsel is incalculable. CCT should have settled on 6/14/11.

He asks this Body to take an honest look at the record, and ask yourself how it is that two Courts, four honorable justices, have ruled in CCT's favor that this wealthy corporate litigant had not "planned", "introduced", "hatched", "developed", "conceived" or "begun" Bundling until AFTER the P&S, in 2003.

CCT had the 2002 Bundle Plan in its back pocket during the entire 2002 negotiations. Jan 9, 2003 was planted evidence, and is now evidence of fraud. And Lawyers assured the Courts that CCT's records prove it is legitimate. Except when they are confronted with the Smoking Gun, "RE Merger Analysis".

Therefore, for the sake of equal justice, the rule of law, the rules of the court, the duties of professional responsibility, of fairness and decency, good faith & fair dealing, Mass 93a, or any measure you care to use, the Bar needs to hold these lawyers accountable for their signed, demonstrably false, affidavits. The 7th Circuit has stated "***a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final".*** All courts ruled Bundles began in 2003, and Counsel admits 2002 Bundles.

In MT. IVY PRESS v DEFONSECA, The Honorable Massachusetts Appeals Court Justice Wolohojian wrote that Pro Se litigants are not insulated from committing fraud on the court:

"***Although fraud on the court typically involves officers of the court, we are unprepared to say that pro se litigants are in all circumstances insulated from committing fraud on the court. Pro se litigants are generally required to comply with the same rules as represented parties and their attorneys, see, e.g., Pandey v. Ralston, 419 Mass. 1010 , 1011 (1995); Kyler v. Everson, 442 F.3d 1251, 1253- 1254 (10th Cir. 2006), and there is no reason to immunize them from the consequences of the most egregious forms of misconduct." 78 Mass. App. Ct. 340. MT. IVY PRESS, vs. DEFONSECA. Middlesex, Present: KAFKER, WOLOHOJIAN, & MILKEY, JJ."***

Justice Wolohojian was on the 3 member Appeals Court Panel that ruled in its Dec 23, 2013 decision, AFFIRMING the Barnstable ruling, by Holding that: "***After the agreement was executed, CCTimes began to sell Internet advertising in a "bundle" with print advertising, charging a discounted price for the Internet advertising***". CCT is on record admitting CCT expected full year 2002 Bundle revenue.

The terms "Bundle" and/or "90%/10% allocation Policy" never referred to a single time prior to the p&s. Only one litigant had the requisite knowledge in 2002 to include the terms in the P&S, to avoid ambiguity, prevent the obvious and inevitable controversy that results from this hidden CCT "policy", which allowed the feigned innocent reallocation of millions in applicable revenue, while claiming to try.

If Her Honor is satisfied with the misinformation and deception perpetrated on the court, and which permeates her Ruling, then Fontaine will concede defeat. The wise court was deceived just as Fontaine had been before it. He doesn't believe the court recognized Bundles were in place in 2002, when it repeatedly ruled Bundles were not hatched until early 2003! 4 judges signed factually erroneous rulings.

And implicit in Her Honor's Finding that Bundles began in 2003, is the conclusion that Fontaine's accusations are without merit, are "bald". Fontaine doesn't deserve that, and neither does the Court.

Just as Fontaine before it had trusted that company, executives and counsel would be fair and honest in their transactions and affidavits, the court too could not expect such unethical and illegal behavior. But that was the only defense CCT had to work with, deception, because the truth substantiates their guilt.

Had Fontaine defrauded these corporations out of the amounts of money they have stolen from Fontaine and his family, had he brazenly made false and frivolous arguments to the court, he'd already be behind bars. And we all know that is true.

The idea that I have perused this matter for all these years, at profound cost, out of greed, is insulting. I cannot afford to be afraid of telling the truth to my government. Few could be expected to sustain this prolonged period of injustice. It cannot be condoned. It cannot be sanctioned.

Respectfully, and under the penalties of perjury,

Robert Fontaine
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