

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

MAXIM INC. and
SARDAR BIGLARI,

Plaintiffs,

v.

JASON FEIFER and WAYNE GROSS,

Defendants.

Index No.: 654137/2015

AMENDED COMPLAINT

Plaintiffs, Maxim Inc. (“Maxim”) and Sardar Biglari (“Biglari”), by and through their counsel, Latham & Watkins LLP, as and for their Amended Complaint against Defendants Jason Feifer (“Feifer”) and Wayne Gross (“Gross”), hereby allege the following:

NATURE OF THE ACTION

1. This action arises from Defendants’ malicious false statements, and is for defamation, breach of contract, and/or fraudulent inducement of contract.
2. Defendant Feifer is a terminated and disgruntled former Maxim employee who, by the recent admission of his own counsel, has hidden behind the camouflage of a December 2, 2015 *New York Post* article (the “Post Article”) describing him as an “insider,” and who has made false statements to the *Post* about a photograph shoot of a prominent model, Alessandra Ambrosio, for *Maxim* magazine that took place at a hotel suite on or about July 26, 2015 (the “Photo Shoot”). Maxim is owned by Biglari Holdings Inc. (“Biglari Holdings”), the CEO of which is Sardar Biglari. Biglari is also the sole director of, and the creative force behind, Maxim.
3. Feifer was terminated from Maxim on or about December 1, 2015, and was not even present at the Photo Shoot. But his lack of any knowledge about the Photo Shoot

did not stop his misconduct, and he made false statements regarding the Photo Shoot to the *New York Post*.

4. Defendant Gross was the only Maxim employee present at the Photo Shoot, and upon information and belief, made false statements regarding the Photo Shoot to Feifer, another Maxim employee. Like Feifer, Gross is no longer employed at Maxim.

5. The Post Article, published on or about December 2, 2015, set forth the following false statements regarding the Photo Shoot, Ms. Ambrosio and Biglari, all the while citing an “insider” or “insiders”:

- “The 34-year-old brunette did not like that 38-year-old investor Sardar Biglari, whose Biglari Holdings purchased Maxim in 2014, stuck around for every minute of the two-day shoot last summer in Monte Carlo, an insider said.”
- “At one point, insiders said, the Victoria’s Secret stunner reluctantly agreed to pose in a photo with Biglari on a balcony of the Hotel de Paris — with the express understanding it was not for publication.”
- “Alessandra ‘was creeped out by Biglari, who hung around on the set,’ said the insider.”
- “‘That’s not going to run, right?’ an insider said she asked Fashion Director Wayne Gross after the photo with Biglari was taken. She was assured it was not for publication, the insider said.”
- “[A]n insider said the Iranian-born investor, who fancies himself a mini-Warren Buffett, spends a lot of time in Monte Carlo and was boasting to staffers about the photo shoot for weeks.”

6. Defendants made these, or materially similar, false statements (collectively, the “False Statements”) knowing or otherwise disregarding the fact that they were untrue, and they formed the basis for the critical and false Post Article, which has since been disseminated worldwide. Indeed, as set forth below, Gross has now signed an affidavit stating, among other things, that the Post Article was false in material respects.

7. In addition to being defamatory, Defendants' False Statements breached the terms of their employment agreements with Maxim. Thus, Feifer breached the terms of a non-disclosure agreement that he entered into with Maxim, as well as representations in an employment release in which he falsely and fraudulently stated to Maxim that he had not engaged in any conduct injurious to Plaintiffs' reputation and interest, that he had not disparaged them, and that he had not disclosed confidential information. Similarly, Gross, by making the False Statements to Feifer, breached the terms of a release agreement that he entered into with Maxim.

8. Through their conduct and False Statements, Defendants have injured Maxim and its goodwill. Biglari has been actively involved in re-branding *Maxim* magazine, which is Maxim's flagship publication. Moreover, through Biglari, Maxim has expended considerable effort to re-invigorate *Maxim* magazine and to attract high-quality photographers and well-known models, figures and actors to provide their services to it.

9. Through their False Statements, Defendants have also caused Biglari reputational and professional harm. Moreover, Defendants acted with actual malice, and so Plaintiff Biglari is entitled to an award of punitive as well as compensatory damages.

PARTIES

10. Plaintiff Maxim is a wholly-owned subsidiary of Biglari Holdings, a company which lists its common stock on the New York Stock Exchange. Maxim is a brand management company, with a business in print and digital media, including *Maxim* magazine, and in licensing products and services. Its headquarters are in New York County, New York.

11. Plaintiff Sardar Biglari is an individual residing in Bexar County, Texas, and is the Chairman of the Board and Chief Executive Officer of Biglari Holdings. Biglari is also the sole director of, and the creative force behind, Maxim.

12. Upon information and belief, Defendant Wayne Gross is a citizen of the State of New York, working and/or residing in New York County, New York.

13. Upon information and belief, Defendant Jason Feifer is a citizen of the State of New York, residing in Kings County, New York.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to New York Civil Practice Law and Rules (“CPLR”) Section 301 because Defendants consented and submitted to jurisdiction under the employment agreements that they entered into with Maxim. Additionally, this Court has jurisdiction because each of the Defendants made the False Statements in New York County. Further, Maxim is headquartered in New York County, New York, and Defendant Gross works and/or resides in New York County.

15. Venue is proper in New York County pursuant to CPLR Section 501 because Defendants consented to it under the employment agreements that they entered into with Maxim. In addition, venue is proper pursuant to CPLR Section 503 because Defendant Gross resides there, or otherwise because Plaintiffs designate New York County as the place of trial pursuant to CPLR Sections 503 and 509.

FACTUAL ALLEGATIONS

Defendants Make the False Statements About the Photo Shoot

16. Defendant Gross was a Fashion Director at Maxim from on or about November 24, 2014 until on or about September 18, 2015, when he left his employ because of

certain personnel changes that Biglari and Biglari Holdings instituted with the goal of making Maxim profitable after Biglari Holdings acquired it in or around February 2014.

17. Defendant Feifer was an employee at Maxim from on or about March 1, 2015 until on or about December 1, 2015, when his employment was terminated.

18. Feifer, according to the recent admission of his counsel, is a direct source for the Post Article.

19. Feifer was Gross's colleague at Maxim, and Gross was the only Maxim employee present at the Photo Shoot. Upon information and belief, Gross made the False Statements to Feifer.

20. Feifer, either repeating what he had been told by Gross or otherwise, made the False Statements to the *New York Post*. In an email dated December 27, 2015, Feifer's counsel stated that, "Not only was Mr. Feifer a source for the New York Post article ('Post article'), but we are reasonably certain that he was the only direct source."

21. Defendants, or each of them, made the False Statements, as alleged above, and provided an incorrect foundation for the Post Article.

**The New York Post Article
Contained the False Statements of Fact**

22. On or about December 2, 2015, the *New York Post* published the Post Article, entitled, "Maxim owner was really creepy toward Alessandra Ambrosio during shoot." A true and correct copy of the online version of the Post Article is attached hereto as Exhibit A, the content of which is incorporated by reference herein.

23. The Post Article contained untrue statements about the Photo Shoot, at which the world-renowned photographer, Gilles Bensimon, specifically requested to take, and did take, a short series of photographs of Biglari with Ms. Ambrosio (the "Biglari-Ambrosio

Photos”) for publication in *Maxim* magazine, culminating in one such photograph being published there.

24. Citing an “insider” or “insiders,” the Post Article set forth the False Statements.

25. The Post Article published the False Statements, which were factually false when made.

26. Contrary to the Post Article, the Photo Shoot lasted only one day, not two.

27. Contrary to the Post Article stating that Biglari “stuck around for every minute of the two-day shoot,” Biglari was only at the Photo Shoot for a limited time. Indeed, Defendant Gross has now confirmed in an affidavit that Biglari was present only “for a short time.” *See* Gross Aff. ¶ 4. A true and correct copy of the Gross Affidavit is attached hereto as Exhibit B, the content of which is incorporated by reference herein.

28. The Post Article omitted to state that it was the photographer, Gilles Bensimon, not Biglari, who asked to take the Biglari-Ambrosio Photos. In fact, according to Mr. Bensimon, the Biglari-Ambrosio Photos were taken at his request and direction.

29. Not surprisingly, as the Post Article noted, “Bensimon this week denied there is any rift between Ambrosio and Biglari.”

30. An email that Gross wrote on or about July 27, 2015 (the “July Email”) referred to the hotel suite where the Photo Shoot took place, and stated, among other things, “Suite was super cheesy. Gilles was using ring flash and insisted on doing a shot with Mr B and Alessandra for the story.” Gross then continued, “Hopefully, we can kill the Suite stuff and just used (sic.) the boat as it is much stronger and more cohesive.” Gross’s July Email thus demonstrated that he had disliked the Photo Shoot and that, for reasons of his own, was

motivated to “kill” the photographs from the Photo Shoot. Importantly, it also reflected that it was Mr. Bensimon, not Biglari, who had insisted on the Biglari-Ambrosio Photos, further underscoring the falsity of the Post Article.

31. Gross has since stated that “[d]uring the Photo Shoot, Bensimon suggested that Ambrosio pose for a series of photographs with Biglari, which she did” Ex. B, Gross Aff. ¶ 5.

32. Contrary to the Post Article and its title, Ms. Ambrosio had no issue with Biglari’s presence at the Photo Shoot. Indeed, the Post Article omitted to state that after the Photo Shoot took place, Ms. Ambrosio sent multiple tweets and Instagram messages “hash-tagging” both Biglari and Mr. Bensimon, thereby demonstrating her approval of the Photo Shoot and of Biglari. In fact, Ms. Ambrosio has communicated her approval of the Photo Shoot, both after it took place and after the pictures from it were published in *Maxim*, underscoring the untrue nature of the False Statements in the Post Article.

33. Defendant Gross has since stated in a sworn affidavit that “Mr. Biglari’s behavior during the Photo Shoot was entirely professional.” Ex. B, Gross Aff. ¶ 8.

34. Contrary to the Post Article, Ms. Ambrosio placed no conditions on the publication of the Biglari-Ambrosio Photos, or any similar photograph.

35. As Chief Executive Officer of Maxim’s parent corporation – and the sole director of, and the creative force behind, Maxim – Biglari simply discussed the aesthetic quality of Mr. Bensimon’s work, and did not talk about or comment on Ms. Ambrosio’s presence or participation in the Photo Shoot for any reason unrelated to Maxim’s business. Moreover, contrary to the Post Article, Biglari was not “boasting” about the Photo Shoot to staffers after it took place.

36. Upon information and belief, Ms. Ambrosio has stated that the False Statements relating to her and to the events during the Photo Shoot are factually untrue.

37. Upon information and belief, Mr. Bensimon has similarly stated that the False Statements relating to Ms. Ambrosio and to the events during the Photo Shoot are factually untrue.

38. Defendants, or each of them, made the False Statements with actual malice, knowing that they were false or with reckless disregard for whether they were false.

39. Further, Defendants omitted relevant facts necessary to make their statements truthful, as stated in paragraphs 28 and 32 above, and thereby knowingly or with reckless disregard created the False Statements on which the Post Article relied.

40. Since the publication of the Post Article, many other newspapers, news organizations or media have disseminated it or otherwise used it for their own articles about the Photo Shoot, and the False Statements have therefore been published to and by third-parties beyond the *New York Post*.

The Revised Post Article

41. On or about December 8, 2015, the *New York Post* published a revised article online (the “Revised Article”) with the new title, “Maxim publishes photo of owner with Alessandra Ambrosio despite objections.” A true and correct copy of the Revised Article is attached hereto as Exhibit C, the content of which is incorporated herein.

42. The Revised Article made minor deletions and revisions to the Post Article, but remained false with respect to the Photo Shoot. Moreover, the Revised Article still relied on one or more “insider” or “insiders” – as alleged above, Defendants Gross and/or Feifer,

disgruntled former employees who had hostility toward Maxim and Biglari, as well as a desire to “kill” photographs from the Photo Shoot, as demonstrated by Defendant Gross’s July Email.

43. The Revised Article was also contrary to the statements of both Ms. Ambrosio and Mr. Bensimon, as alleged above.

44. Even though the changes in the Revised Article were minor and inconsequential to the overall content, they were telling. In the Revised Article, the *New York Post* removed the following incorrect content, previously attributed to an “insider”:

- That Biglari purportedly “stuck around for every minute of the two-day shoot . . .”; and
- That “Alessandra ‘was creeped out by Biglari . . .’”

45. Similarly, the Revised Article also removed the word “creepy” that previously had been in the title of the Post Article.

46. Despite these changes, the thrust of the Revised Article remained the same and false. Nonetheless, the fact that the Revised Article made these changes at all just served to demonstrate that the original Post Article lacked foundation and required correction.

47. In sum, the Revised Article highlighted the flaws of the original Post Article, but remained false with respect to the Photo Shoot.

**Maxim Inc.’s Non-Disclosure and/or Release Agreements
With Defendants Gross and Feifer**

48. Defendant Feifer was under a duty of confidentiality pursuant to an Employee Non-Disclosure Agreement that he executed with Maxim on or about March 12, 2015 (the “Feifer NDA”). Pursuant to the Feifer NDA, this duty of confidentiality continued to apply to Feifer after his employment ended. A true and correct copy of the Feifer NDA is attached hereto as Exhibit D, the content of which is incorporated by reference herein.

49. In addition, Feifer executed an Agreement and Release on or about December 4, 2015 (the “Feifer Release”), which likewise set forth a duty of confidentiality, as well as of non-disparagement. A true and correct copy of the Feifer Release is attached hereto as Exhibit E, the content of which is incorporated by reference herein.

50. Defendant Gross similarly executed an Agreement and Release on or about September 17, 2015, which set forth duties of confidentiality and non-disparagement (the “Gross Release” and, together with the Feifer Release, the “Releases”). A true and correct copy of the Gross Release is attached hereto as Exhibit F, the content of which is incorporated by reference herein.

51. The Feifer NDA and the Releases each constituted valid legal contracts.

52. Under the Feifer NDA, Feifer acknowledged that during the course of his employment, he “may acquire knowledge of confidential or proprietary business information not available to the general public pertaining to Employer and its affiliated companies . . . concerning Employer’s mode and method of operation . . . , sources of material to be included in MAXIM Inc. publications . . . and other information considered by Employer to be confidential or valuable (the ‘Trade Secret Information’).” Ex. D, Feifer NDA ¶ 1.

53. The Feifer NDA also provided that “Employee shall keep all such information in confidence and shall not at any time during or after Employee’s employment disclose or divulge any part of the Trade Secret Information to any individual or entity, or use the Trade Secret Information, except as authorized in writing by Employer.” *Id.* ¶ 2.

54. The Feifer NDA further provided that, “Employer may pursue all other remedies available to Employer for such breach or threatened breach of this Employment

Agreement, and shall be entitled to recover actual and exemplary damages from Employee as well as attorneys' fees, for any enforcement action hereunder." *Id.*

55. The Feifer Release also set forth a duty of confidentiality, as well as of non-disparagement, as follows:

6. (a) Employee agrees that (s)he has not and will not engage in any conduct that is injurious to the Company's or the Releasee's reputation or interest, including but not limited to (i) divulging, communicating or in any way making use of any confidential or proprietary information acquired in the performance of his or her duties at the Company; and (ii) publicly disparaging (or inducing or encouraging others to publicly disparage) the Company, its employees or the Releasees.

...

(c) Employee further agrees that (s)he will maintain the confidentiality of all client and Company confidential information, unless and until such information is made public through no actions of Employee.

Ex. E, Feifer Release ¶¶ 6(a), 6(c).

56. Similarly, the Gross Release set forth a duty of confidentiality, as well as of non-disparagement, as follows:

6. (a) Employee agrees that (s)he has not and will not engage in any conduct that is injurious to the Company's or the Releasees' reputation or interest, or any conduct that would reasonably be expected to lead to unwanted or unfavorable publicity to the Company, including but not limited to (i) divulging, communicating, or in any way making use of any confidential or proprietary information acquired in the performance of his or her duties at the Company; and (ii) publicly disparaging (or inducing or encouraging others to publicly disparage) the Company, its employees or the Releasees.

...

(c) Employee further agrees that (s)he will maintain the confidentiality of all client and Company confidential information, unless and until such information is made public through no actions of Employee.

Ex. F, Gross Release ¶¶ 6(a), 6(c).

57. Defendants, as the “Employees” subject to the Releases, were covered by them.

58. Pursuant to the Releases, the definition of “Company” encompassed Maxim. Moreover, Maxim and its parent corporation, as well as their officers and directors, were encompassed as “Releasees.” Accordingly, the duties of confidentiality and non-disparagement pursuant to the Releases pertained to the benefit of Biglari, as CEO of Biglari Holdings and the sole director of Maxim, in addition to Maxim itself.

Breaches of Contract and/or Fraudulent Inducements

59. In breach of the Feifer NDA, Defendant Feifer spoke about the Photo Shoot to the *New York Post*, and disclosed confidential information about it that he had gained in his capacity as a Maxim employee. In fact, counsel for Feifer has admitted that “Not only was Mr. Feifer a source for the New York Post article, . . . but we are reasonably certain that he was the only direct source.”

60. Maxim considered the information that Defendant Feifer disclosed to the *New York Post* to be confidential, valuable and non-public.

61. In addition, by the time that Defendant Feifer entered into the Feifer Release on or about December 4, 2015, Feifer had already made the False Statements to the *New York Post*, and, thus, he made false and fraudulent representations to Maxim. Defendant Feifer falsely and fraudulently represented to Maxim as part of the Feifer Release that he had “not engage[ed] in any conduct that [was] injurious to the Company’s or the Releasee’s reputation or interest” See Ex. E, Feifer Release ¶ 6(a).

62. Defendant Feifer also falsely and fraudulently represented to Maxim that he had not “divulge[ed], communicat[ed] or in any way [made] use of any confidential or proprietary information acquired in the performance of his or her duties at the Company” and had not engaged in conduct “publicly disparaging (or inducing or encouraging others to publicly disparage) the Company, its employees or the Releasees.” *Id.*

63. Defendant Feifer’s representations were false when made, and fraudulently induced Maxim to enter into the Feifer Release.

64. Feifer’s conduct and False Statements further, and/or in the alternative, constituted a breach of the representations in the Feifer Release.

65. Gross’s conduct and False Statements constituted a breach of contract. In breach of the Gross Release, upon information and belief, Defendant Gross made the False Statements to Feifer.

66. Defendants’ breaches of contract, and/or Defendant Feifer’s fraudulent inducement of contract, have directly and proximately injured and damaged Plaintiff Maxim, which, because of Biglari, has invested substantial resources and efforts in attracting high-quality photographers and well-known models, figures and actors to provide their services to *Maxim* magazine, with the goal of making it successful.

FIRST CAUSE OF ACTION
(Breach of Contract)
(Plaintiff Maxim Against Defendants)

67. Plaintiff Maxim hereby repeats and realleges each and every allegation in paragraphs 1 through 66 as if fully set forth herein.

68. Defendant Feifer entered into the Feifer NDA.

69. Defendants Feifer and Gross entered into the Releases.

70. The Feifer NDA and the Feifer Release were valid and binding legal contracts between Plaintiff Maxim and Defendant Feifer.

71. The Gross Release was a valid and binding legal contract between Plaintiff Maxim and Defendant Gross.

72. Defendant Feifer has breached the terms and/or representations in the Feifer NDA and the Feifer Release, through his actions, as alleged above, including by disclosing confidential information about the Photo Shoot to the *New York Post*.

73. Defendants have also breached the terms and/or representations in the Releases through their actions and False Statements.

74. In breach of the terms and/or representations in the Releases, Defendants' False Statements were injurious to Plaintiffs' reputation or interest.

75. In breach of the terms and/or representations in the Releases, Defendants made the False Statements, and thereby publicly disparaged, or induced or encouraged others, to publicly disparage, Plaintiffs or each of them.

76. Defendants' breaches of contract have directly and proximately injured and damaged Plaintiff Maxim, which, because of Biglari, has invested substantial resources and efforts in attracting high-quality photographers and well-known models, figures and actors to provide their services to *Maxim* magazine, with the goal of making it successful.

77. Defendants' breaches of contract have directly and proximately injured and damaged Plaintiff Maxim's goodwill.

78. Pursuant to the Feifer NDA, Plaintiff Maxim is also entitled to exemplary damages, as well as attorney's fees, against Feifer.

SECOND CAUSE OF ACTION
(Fraudulent Inducement of Contract)
(Plaintiff Maxim Against Defendant Feifer)

79. Plaintiff Maxim hereby repeats and realleges each and every allegation in paragraphs 1 through 78 as if fully set forth herein.

80. Before executing the Feifer Release, Defendant Feifer made the False Statements to the *New York Post*, in a manner that was injurious to Plaintiffs' reputation and interest.

81. Before executing the Feifer Release, Defendant Feifer made the False Statements to the *New York Post* to disparage, or to induce or encourage the *New York Post* and others, to disparage, Plaintiffs and each of them.

82. Before executing the Feifer Release, Defendant Feifer divulged confidential information to the *New York Post* that he had acquired in the performance of his duties at Maxim.

83. Defendant Feifer's employment with Maxim was terminated, effective December 1, 2015, and he was given 21 days to consider the terms, conditions and representations in the Feifer Release.

84. Notwithstanding these actions and False Statements, Defendant Feifer entered into the Feifer Release on or about December 4, 2015, in which he made false and fraudulent misrepresentations to Plaintiff Maxim to induce it to enter into the contract. Specifically, Defendant Feifer misrepresented that he had "not engage[ed] in any conduct that [was] injurious to the Company's or the Releasee's reputation or interest." See Ex. E, Feifer Release ¶ (6)(a). This representation was false and material when made.

85. In addition, Defendant Feifer misrepresented that he had not “divulge[ed], communicat[ed] or in any way [made] use of any confidential or proprietary information acquired in the performance of his or her duties at the Company” and had not engaged in conduct “publicly disparaging (or inducing or encouraging others to publicly disparage) the Company, its employees or the Releasees.” *See id.* This representation was false and material when made.

86. Defendant Feifer knew these representations were false when made.

87. Defendant Feifer made these material misrepresentations with the intent to induce Plaintiff Maxim to enter into the Feifer Release.

88. Plaintiff Maxim did not know, and could not have known, that the representations were false.

89. Plaintiff Maxim would not have entered into the Feifer Release with Defendant Feifer had it known that he had materially misrepresented the fact that he had not, prior to executing the Feifer Release, engaged in the conduct and made the False Statements alleged above.

90. In reasonable reliance on the material misrepresentations, Plaintiff Maxim entered into the Feifer Release with Defendant Feifer.

91. The Feifer Release was a binding legal contract.

92. As a direct and proximate result of the fraudulent inducement, Defendant Feifer has directly and proximately injured and damaged Plaintiff Maxim and its goodwill.

93. As a result of Defendants’ misconduct, Plaintiff Maxim is entitled to compensatory and punitive damages in an amount to be determined at trial, together with interest thereon.

THIRD CAUSE OF ACTION
(Defamation)
(Plaintiff Biglari Against Defendants)

94. Plaintiff Biglari hereby repeats and realleges each and every allegation in paragraphs 1 through 93 as if fully set forth herein.

95. The Post Article, published on or about December 2, 2015, set forth the False Statements regarding the Photo Shoot. The Post Article cited an “insider” or “insiders” as the source of the False Statements.

96. By the recent admission of his own counsel, “Not only was Mr. Feifer a source for the New York Post article . . . but we are reasonably certain that he was the only direct source” of the False Statements published in the Post Article regarding the Photo Shoot.

97. Feifer was not present at the Photo Shoot, but made the False Statements to the *New York Post*.

98. Defendants, or each of them, were the “insider” or “insiders” cited in the Post Article.

99. Defendants made the False Statements knowing or otherwise disregarding the fact that they were untrue, and they formed the basis for the critical Post Article, which has since been disseminated worldwide.

100. The False Statements, and the omissions in paragraph 28 and 32 above, were concerning Plaintiff Biglari.

101. The False Statements alleged above purported to be of fact.

102. The False Statements alleged above were false, or omitted relevant facts necessary to make the statements truthful.

103. The False Statements and omissions alleged above were made in a negligent manner.

104. The False Statements and omissions alleged above were made in a grossly irresponsible manner.

105. The False Statements and omissions alleged above were made with knowledge that they were false or with a reckless disregard that they were false.

106. The False Statements and omissions alleged above were made with ill-will or spite toward Plaintiff Biglari constituting or with a reckless disregard of the injury that they would cause, and thus were made with malice.

107. The False Statements and omissions alleged above were defamatory.

108. The False Statements and omissions alleged above constituted defamation *per se* because they falsely impugned Plaintiff Biglari's trustworthiness, integrity, dependability and professional fitness.

109. As a direct and proximate result of the defamation alleged, Plaintiff Biglari has incurred, and continues to incur, loss of standing in the professional and business community.

110. The defamatory statements and omissions alleged above were made intentionally, willfully, wantonly, and maliciously.

111. Upon information and belief, the defamatory statements and omissions were motivated by Defendants' loss of employment at Maxim, or other animus that arose during their employment at Maxim.

112. As a result of Defendants' misconduct, Plaintiff Biglari is entitled to compensatory and punitive damages in an amount to be determined at trial, together with interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray the Court to enter judgment in their favor containing the following relief:

A. On the first cause of action, against both Defendants an award of damages to Plaintiff Maxim in an amount to be determined at trial, together with prejudgment interest thereon, as well as exemplary damages and attorney's fees with respect to Defendant Feifer;

B. On the second cause of action, against Defendant Feifer an award of compensatory and punitive damages to Plaintiff Maxim in an amount to be determined at trial, together with prejudgment interest thereon;

C. On the third cause of action, against both Defendants an award of compensatory and punitive damages to Plaintiff Biglari in an amount to be determined at trial, together with prejudgment interest thereon; and

D. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: New York, New York
January 4, 2016

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