UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Anderson News, L.L.C. and Anderson Services, L.L.C. Plaintiffs, v. American Media, Inc. et al., Defendants.	:	09 CIV. 2227 (PAC)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT HUDSON NEWS DISTRIBUTORS L.L.C.'s MOTION TO DISMISS PLAINTIFFS' COMPLAINT

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Defendant Hudson News Distributors L.L.C. ("Hudson News") submits this Memorandum of Law in support of its Motion to Dismiss the Complaint of plaintiffs Anderson News, L.L.C. and Anderson Services, L.L.C. (collectively "Anderson") for failure to state a claim under Fed. R. Civ. P. 12(b)(6).[1]

[1] Hudson hereby incorporates by reference the arguments for dismissal set forth in the joint Memorandum of Law submitted by defendants American Media, Inc. ("AMI"), Bauer Publishing Co., LP ("Bauer"), Hachette Filipacchi Media, U.S. ("Hachette"), Rodale, Inc. ("Rodale"), Curtis Circulation Company ("Curtis"), Kable Distribution Services Inc. ("Kable"), and Distribution Service, Inc. ("DSI").

I.
PRELIMINARY STATEMENT

Hudson News, the only defendant that is a wholesale magazine distributor, does not belong in this litigation. This lawsuit reflects a facially deficient effort by a former competitor to apply conclusory language and the loose use of the collective term "defendants" to wrap Hudson News into an alleged scheme – a scheme that is entirely implausible and lacking in any factual basis. Simply put, Anderson's Complaint must be dismissed under the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), because it does not set forth a single fact that would permit the Court to infer that Hudson News entered into an agreement in violation of Section 1 of the Sherman Act. *See* 15 U.S.C. § 1. The Complaint, in fact, says very little about Hudson News and its role in the alleged conspiracy to "eliminate Anderson" by "cut[ting] off the life blood of Anderson's business – 80% of its magazine supply." Cmplt. ¶ 58. That is not surprising; Hudson News, as a fellow wholesaler and competitor of Anderson's, does not control the supply of magazines to wholesalers. Rather, Hudson News fulfills the same functions that Anderson did: "ship[ping] the magazines to retailers" and "picking up, tabulating and destroying copies of magazines that remain unsold." *Id.* ¶¶ 29, 30.

At most, the allegations against Hudson News in the Complaint amount to the following: (1) Hudson News attended a meeting with another wholesaler and two national distributors that supplied it with magazines (*id.* ¶ 55); (2) Hudson News has begun to supply magazines to Anderson's former customers at reduced discount rates (*id.* ¶ 72); (3) "the wholesaler

defendants,"[2] a category that presumably includes Hudson News, purportedly hired Anderson's former employees (*id.* ¶ 57); and (4) defendants "intended" for Hudson News to purchase Anderson's assets at "fire sale" prices (*id.* ¶ 58). That is it. Even read in the light most favorable to plaintiffs, the allegations against Hudson News fall far short of establishing the requisite "plausible grounds to infer an agreement" to restrain trade. *Twombly*, 550 U.S. at 556. All claims against Hudson News should be dismissed with prejudice.

II.
STATEMENT OF ALLEGED FACTS

The theory of conspiracy described in Anderson's Complaint boils down to the following: in January 2009, Anderson announced "an additional $.07 per copy distribution surcharge for all magazine copies it received" from magazine publishers (Cmplt. ¶ 39), and indicated it "would pass on to the publishers the carrying costs of inventory in retail chains where it had negotiated scan-based trading terms" (*id.*). This attempt by a distributor to reduce the publishers' margins was, perhaps not surprisingly, rejected by the defendant-publishers. Cmplt. ¶ 39. According to the Complaint, "defendants" in response "seized on Anderson's $.07 surcharge . . . as the pretext for effecting a massive conspiracy to destroy Anderson." *Id.* ¶ 46. Anderson asserts that the "indisputable goal" of the defendants' conspiracy was to "destroy Anderson's business and that of another wholesaler, non-party Source Interlink Distribution . . . so that defendants – through Hudson and News Group, the two remaining wholesalers – could monopolize the wholesale market and use that monopoly power to shift to retailers and consumers – and away from publishers – the entire financial burden resulting from worsening

[2] Wholesaler The News Group, LP was also named as a defendant but was voluntarily dismissed from the lawsuit. *See* Dckt. No. 3.

market conditions and publisher-induced inefficiencies in the magazine distribution system." *Id.* ¶ 4.

Such a conspiracy, according to Anderson, can be inferred from parallel conduct by the publisher and national distributor defendants – a group that does not include Hudson News – who allegedly "act[ed] in concert" to "cut off Anderson from its supply of magazines."[3] *Id.* ¶ 47. Thereafter, the Complaint casually lumps all defendants together. The Complaint alleges that, in furtherance of the conspiracy, "defendants launched a campaign in which they spread false rumors to Anderson's customers and others that Anderson was in critical financial trouble," and "poach[ed] Anderson's employees and the proprietary intellectual property that those employees had used to run Anderson's business." *Id.* ¶ 48.

According to Anderson, this conduct amounted to a "coordinated boycott" (*id.* ¶ 5), which purportedly forced Anderson to suspend its business operations in February 2009 (*id.* ¶ 66).[4] Anderson claims injury to competition, asserting that defendants' "collusive conduct" led to the creation of an "anti-competitive monopoly in the [wholesale] magazine distribution business" (*id.* ¶ 63), which allowed "defendants" to "achiev[e] their ultimate and anti-competitive goal of raising the prices paid by magazine retailers, and forcing those retailers to abandon their efforts to introduce efficiencies into the market" (*id.* ¶ 6).

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[3] The specific allegations against the publisher and national distributor defendants (or lack thereof) are described in more detail in the Joint Memorandum in Support of the Motion to Dismiss. *See* pgs. 5-10.

[4] As noted in the Complaint, in March 2009, certain creditors of Anderson filed an involuntary bankruptcy proceeding against Anderson. Cmplt. ¶ 68.

III.
ARGUMENT

"When we look for plausibility in this complaint . . . plaintiffs' claim of conspiracy in restraint of trade comes up short." *Twombly*, 550 U.S. at 564. This deficiency presents in starkest relief with respect to Hudson News. There is not a single factual allegation in Anderson's Complaint from which the Court can infer that Hudson News entered into an agreement to "purge" Anderson from the magazine industry. Cmplt. ¶ 2. Anderson's economically irrational theory of conspiracy is wholly implausible and cannot be predicated on allegations of parallel conduct. Anderson's common law causes of action are similarly deficient because Anderson has failed to plead any facts supporting its defamation, tortious-interference, and civil-conspiracy claims against Hudson News.

A. Pleading Standard Under *Twombly* and its Progeny

The U.S. Supreme Court has repeatedly instructed that, in order to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility exists only "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949.

Twombly and *Iqbal* require more than a complaint comprised of "'naked assertions' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal alteration omitted). Thus, a pleading that rests upon "'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action'" will not suffice. *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). Further, courts "are not bound to accept as true a legal

conclusion couched as a factual allegation." *Twombly*, 550 U.S. 555 (internal quotation marks omitted).

The Supreme Court has established a two-step approach for evaluating a complaint under *Twombly*: (1) "identif[y] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth"; and (2) "determine whether [the remaining, well-pleaded factual allegations] plausibly give rise to an entitlement to relief." *Iqbal*, 129 S.Ct. at 1950. "[W]hen the allegations in a complaint, however true, [cannot] raise a claim of entitlement to relief, 'this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Twombly*, 550 U.S. at 558 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 233-34 (3d ed. 2004)).[5]

The "crucial question" in a Section 1 case, like that alleged here, "is whether the challenged anticompetitive conduct stems from [an] independent decision or from an agreement, tacit or express." *Twombly*, 550 U.S. at 553 (internal quotation marks and alteration omitted). A complaint pleading an antitrust conspiracy under Section 1 accordingly must "contain 'enough factual matter (taken as true) to suggest that an agreement [to engage in anticompetitive conduct] was made.'" *In re Elevator Antitrust Litig.*, 502 F.3d 47, 50 (2d Cir. 2007) (quoting *Twombly*, 550 U.S. at 556) (alteration in original). "[C]onclusory allegation[s] of agreement at some unidentified point d[o] not supply facts adequate to show illegality." *Twombly*, 550 U.S. at 557.

Allegations of an antitrust conspiracy that are merely consistent with an unlawful agreement do "not plausibly suggest an illicit accord," particularly where such conduct is also

[5] The Supreme Court has cautioned that courts must not "forget that proceeding to antitrust discovery can be expensive. . . . '[A] district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.'" *Twombly*, 550 U.S. at 558.

compatible with "lawful, unchoreographed free-market behavior." *Iqbal*, 129 S.Ct. at 1950. "[P]roof of a § 1 conspiracy," therefore, "must include evidence tending to exclude the possibility of independent action." *Twombly*, 550 U.S. at 554. Given this rule, a simple showing of parallel business behavior "falls short of conclusively establishing agreement or itself constituting a Sherman Act offense." *Id.* at 553 (internal quotation marks and alterations omitted). Bare assertions of conspiracy and allegations of parallel conduct "without some further factual enhancement [] sto[p] short of the line between possibility and plausibility of entitlement to relief." *Id.* at 557 (internal quotation marks and alterations omitted).

B. Anderson's Complaint Fails To Allege That Hudson News Entered Into An Agreement To Restrain Trade

As in *Twombly*, here "the complaint leaves no doubt that plaintiffs rest their § 1 claim on descriptions of parallel conduct and not on any independent allegation of actual agreement" among defendants. *Twombly*, 550 U.S. at 564. With the above-described pleading standards in mind, it is clear that Anderson's vague and conclusory allegations of parallel action are woefully deficient, particularly vis-à-vis Hudson News, in at least two respects: First, Anderson's sweeping claims that the undifferentiated "defendants" engaged in conspiratorial behavior do not contain the specificity required to support a Section 1 claim. *See id.* at 555-57; *see also In re Elevator Antitrust Litig.*, 502 F.3d 47, 50-51 (2d Cir. 2007). Second, the few fleeting references to Hudson News cannot support an inference that it entered into an agreement in restraint of trade. *See Hinds County, Miss. v. Wachovia Bank N.A.*, 620 F. Supp. 2d 499, 513 (S.D.N.Y. 2009) ("To state a claim against each Defendant, Named Plaintiffs must make allegations that plausibly suggest that each Defendant participated in the alleged conspiracy.") (internal quotation marks omitted).

As a preliminary matter, the nub of Anderson's conspiracy claim involves conduct that has nothing to do with Hudson News. As noted, Anderson claims that the conspiracy was effectuated when national distributor and publisher defendants simultaneously "cut off" Anderson's supply of magazines. *See* Cmplt. ¶¶ 3, 47. It is of course wholly implausible that Hudson News – a rival wholesaler, not a supplier to Anderson – could have made and/or implemented any decision to refuse to ship magazines to Anderson. The joint memorandum in support of dismissal explains why such allegations of parallel conduct fail to provide plausible grounds to infer a conspiracy as to the publishers and distributors; *a fortiori*, there is no possible basis for inferring that Hudson News participated in any such agreement.[6]

Once the broad allegations are swept aside, the Complaint contains only two allegations specific to Hudson News, and two allegations pertaining to the collective category of "wholesaler defendants":

1. Alleged Meeting in Furtherance of the Conspiracy

Anderson contends that "defendants Curtis and Hudson met with their respective competitors, TWR and News Group, in January 2009 at Hudson's offices in North Bergen, New Jersey." Cmplt. ¶ 55. Without the most basic elaboration about what was discussed at the meeting, Anderson claims that this meeting was "in furtherance of their conspiracy to cut off supply to Anderson and Source." *Id.* The Complaint also contains other generalized references to conspiratorial meetings – "defendants . . . held numerous meetings" in late January and early

[6] *See* Joint Memorandum at pgs. 18-23. As the joint Memorandum discusses in more detail, the theory of the alleged conspiracy is economically implausible. *See id* at 17-18. The notion that suppliers would conspire with each other to deny retailers access to their products is dubious, at best. Reducing the output of magazines and increasing the buyer power of the wholesalers is inconsistent with the economic interests of publishers and distributors. *See id.*

February "during which they discussed dividing the U.S. distribution territory into two regions – one controlled by Hudson and the other controlled by News Group." *Id.*

The claim that Hudson News may have met with other industry participants in January 2009 fails to provide any basis for inferring a conspiracy. Allegations that defendants participated in meetings, conversations, and communications during which they were said to have reached agreement "do not state facts sufficient to nudge plaintiffs' claims across the line from conceivable to plausible." *All Star Carts and Vehicles, Inc. v. BFI Can. Income Fund*, 595 F. Supp. 2d 630, 640 (E.D.N.Y. 2009) (internal quotation marks and alteration omitted); *see also In re Elevator Antitrust Litig.*, 502 F.3d at 50-51 & n.5 (dismissing conspiracy claim where plaintiff alleged, among other things, that defendants participated in meetings in furtherance of the conspiracy). At most, such allegations suggest that the defendants had the "opportunity for conspiratorial action." *Interborough News Co. v. The Curtis Publ'g Co.*, 225 F.2d 289, 294 (2d Cir. 1955). Hudson News' mere presence at an alleged meeting does not support an inference of illegal collusion. *See In re Elevator Antitrust Litig.*, 502 F.3d at 50.

In addition, the general assertions that unspecified defendants met numerous times to discuss dividing the distribution territory lack any detail, and are nothing more than conclusions. As in *Twombly*, conclusory allegations that fail to identify a "specific time, place, or person involved" are inadequate to show illegality. *Twombly*, 550 U.S. 564 n.10. Such general assertions are not even entitled to a presumption of truth under *Iqbal*, 129 S.Ct. at 1951. *See In re Elevator Antitrust Litig.*, 502 F.3d at 51 ("conclusory allegations of agreement at some unidentified point do not supply facts adequate to show illegality") (internal quotation marks and alterations omitted).

2. Wholesaler Supply Agreements with Retailers

Anderson also seems to suggest that Hudson News' participation in the conspiracy can be inferred from its alleged negotiation of distribution agreements with Anderson's former retailer customers. Anderson alleges that "Hudson and News Group, which have begun to serve retailers previously served by Anderson, have demanded and obtained from them reduced discounts for approximately 80% of the new business. Such increases have ranged as high as 12% or more over the prior rates." Cmplt. ¶ 59.

Even accepted as true for the purposes of this facial challenge to the Complaint, this allegation does nothing more than indicate that Hudson News entered into agreements with former Anderson customers – who were presumably in need of a wholesale distributor after Anderson's exit – at prices higher than "the prior rates." But it does not create a factual predicate for inferring a conspiracy. It is in fact entirely unsurprising given Anderson's exit from the business. Retailers still needed magazines. Entering into agreements with retailers formerly serviced by Anderson – even at higher prices – appears to reflect the normal working of a market, not an illicit accord. *Cf. Pacific Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 129 S.Ct. 1109, 1118 (2009) ("As a general rule, businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing."). Indeed the allegations in the Complaint, when joined with common sense, suggest that Hudson News independently pursued opportunities to expand its wholesale operations in response to changing market conditions. Such conduct is the very hallmark of competitive, economically rational conduct and cannot be the basis for inferring conspiracy. *See Twombly*, 550 U.S. at 566 (stating "there is no

reason to infer that the [defendants] had agreed among themselves to do what was only natural anyway.").[7]

3. Alleged Employee "Poaching"

Retreating yet again to "labels and conclusions" (*Twombly*, 550 U.S. at 557), Anderson contends that the "wholesaler defendants" "poach[ed] Anderson's employees." Cmplt. ¶ 57. This allegation merits little discussion. Any specific allegations related to the "poaching" pertain expressly and only to News Group. *See id.* Even assuming *arguendo* that Hudson News did hire Anderson's former employees, nothing in the Complaint creates a reasonable inference that the hiring was the result of a preceding agreement.

4. Sale of Anderson Assets

Anderson contends that the "[d]efendants also intended that, as a result of the conspiracy, Anderson would be forced to sell at a 'fire sale' its business infrastructure – including its

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[7] Anderson makes a conclusory allegation that "News Group's ability to charge these higher prices is not the result of any inherent or earned competitive advantage, but has instead arisen solely as a result of the increased market power" obtained through the alleged group boycott. Cmplt. ¶ 75. Anderson makes this allegation *only* as to the News Group. Indeed, the Complaint charges only that Hudson News "stand[s] to acquire monopolistic market power." *Id.* ¶ 76.

In any event, the suggestion that either Hudson News and/or the News Group acquired monopoly power by virtue of the alleged conspiracy is nonsense for a reason the Complaint makes clear: the alleged conspiracy failed and Source Interlink, with 31% market share (Cmplt. ¶ 30), remains in the market as an active, non-conspiratorial wholesaler – indeed the largest wholesaler in the United States. *See, e.g.*, Cmplt. ¶¶ 23 (stating "Source . . . *is* a major magazine wholesaler) (emphasis added), 76 (stating "*[i]f* their conspiracy had succeeded in eliminating Source . . . .") (emphasis added). Not surprisingly, there is no suggestion in the Complaint that Hudson News and the News Group have colluded to raise prices or otherwise sought to exercise alleged monopoly power.

trucking fleet, distribution equipment and distribution centers – to its wholesaler competitors, Hudson and News Group." Cmplt. ¶ 58. Neither this allegation nor any allegation in the Complaint alleges that Hudson News purchased any specific asset; it merely asserts that was an *intended* goal of the alleged conspiracy among the "defendants." Even if Anderson alleged that that Hudson News purchased Anderson's assets at below market value, it is not reasonable, under *Twombly*, to draw an inference of conspiracy from such a transaction absent additional facts suggesting Hudson News acted pursuant to a preceding agreement.[8] *See Twombly*, 550 U.S. at 556 (lawful conduct "fails to bespeak unlawful agreement").

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Simply stated, the allegations do not place Hudson News' conduct in a "context that raises a suggestion of a preceding agreement." *Twombly*, 550 U.S. at 557. Generously construed, the conduct complained of – participating in meetings, entering new service agreements, hiring employees, and purchasing business assets – is, at best, consistent with Anderson's implausible theory of conspiracy. It is clear, however, that allegations "merely consistent with a defendant's liability" fall short of stating a claim. *Iqbal*, 129 S.Ct. at 1949 (internal quotation marks omitted); *see also Twombly*, 550 U.S. at 556-57; *In re Elevator Antitrust Litig.*, 502 F.3d at 50. Because Hudson News' alleged conduct is equally consistent with independent competitive business behavior in the face of a competitor's departure, Anderson must affirmatively negate lawful explanations for the conduct before a court can draw

[8] Anderson also alleges that the collective defendants "spread false rumors to Anderson's customers and others that Anderson was in critical financial trouble and had ceased operations or was exiting the magazine wholesale business." Cmplt. ¶ 48. As described in more detail below, the Complaint contains neither a specific allegation that Hudson News made a defamatory statement nor a factual basis for inferring that such a statement was made as part of a larger agreement.

an inference that Hudson News entered an agreement in restraint of trade. *See Twombly*, 550 U.S. at 554. Anderson has not made any attempt to exclude the possibility that Hudson News acted independently in response to changing market conditions. The Complaint accordingly cannot plausibly suggest that Hudson News entered into a conspiracy. Thus, Anderson's Section 1 claim against Hudson News must be dismissed.

C. None of Anderson's Common Law Causes of Action States A Claim Against Hudson News

1. Defamation (Claim III). "[M]ere conclusory statements that the claimant was disparaged by false statements are insufficient to state a defamation claim." *Ello v. Singh,* 531 F. Supp. 2d 552, 576 (S.D.N.Y. 2007) (internal quotation marks and alteration omitted). Anderson's allegations lack sufficient detail about the content, form, source, and recipient of the allegedly defamatory communications. The Complaint states only that undifferentiated "[d]efendants" have "both orally and in writing, told third parties false statements regarding Anderson's financial status and continued existence as a magazine wholesaler." Cmplt. ¶ 93. Anderson does not identify a single purported defamatory communication allegedly made by Hudson News—let alone pinpoint when or to whom any such communication was made. Such conclusory allegations fail to give Hudson News "sufficient notice of the communications complained of to enable [it] to defend [itself]." *Ello*, 531 F. Supp. 2d at 576 (internal quotation marks omitted). The claim therefore must be dismissed. *See id.* at 578.

2. Tortious Interference (Claim II). Anderson does not allege that Hudson News procured the breach of any contract. Anderson alleges that its "retail customers have terminated their retail supply and retail service agreements," (Cmplt. ¶ 89), but it does not contend that its customers unlawfully terminated their contracts, a required element of a tortious interference claim. Nor could it, given that the most obvious explanation for the

termination was the fact that Anderson ceased operations as a wholesaler. *Id.* ¶ 5. Anderson's allegations do not amount to a claim that a third party violated the terms of a contract. *See Kirch v. Liberty Media Corp.*, 449 F.3d 388, 402 (2d Cir. 2006); *Williams v. Citigroup, Inc.*, 2009 WL 3682536, *9 (S.D.N.Y. 2009) (slip copy). As Anderson has failed sufficiently to allege any breach of a contract, it follows that it cannot allege that Hudson News (or any other defendants) *procured* a third-party's breach. *Kirch*, 449 F.3d at 402 n.6. That failure is fatal to its tortious-interference cause of action. *See e.g.*, *Lama Holding Co. v. Smith Barney,* 88 N.Y.2d 413, 424-25 (N.Y. 1996) (affirming dismissal of claims of tortious interference with contract and advantageous business relations because plaintiffs failed to allege intentional procurement of breach of contract or even breach of contract).

To the extent Anderson attempts to allege tortious interference with business relations, that claim also fails. Anderson has not proffered facts demonstrating that Hudson News maliciously, dishonestly, unfairly, or improperly interfered with Anderson's business relationships, which is an essential element of a tortious interference with business relations claim. *See State Street Bank and Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 171 (2d Cir. 2004). Anderson contends that the defendants (and not Hudson News specifically) "intentionally and unjustifiably" interfered with Anderson's business relationships (1) "by making false statements regarding Anderson's financial status and continued existence as a magazine wholesaler," (Cmplt. ¶ 86), and (2) "by boycotting the distribution of single-issue magazines to Anderson," (*id.* at 87). That claim of wrongdoing is predicated upon the same conduct that underlies Anderson's Section 1 and defamation claims. As explained *infra*, Anderson has not provided the factual matter to plausibly substantiate its claim that Hudson News entered an agreement to boycott the distribution of single-issue magazines. Moreover,

Anderson's bare assertions that its business was harmed by false statements do not establish that it was defamed. These scant allegations cannot serve as a basis for inferring that Hudson News improperly interfered with Anderson's business relations. *See Williams v. Citigroup, Inc.*, 2009 WL 3682536, *10 (S.D.N.Y. 2009) (slip copy) (plaintiff failed to allege tortious interference with business relationships when she could not plead a Sherman Act violation or defamation claim). Anderson's failure to plead wrongful means dooms its claim for tortious interference.

3. Civil Conspiracy (Claim IV). Anderson's civil-conspiracy claim (Claim IV) must also be dismissed. "New York does not recognize civil conspiracy to commit a tort as an independent cause of action." *Pappas v. Passias,* 707 N.Y.S.2d 178, 178 (N.Y. App. Div. 2000). "[A] cause of action sounding in civil conspiracy" therefore "stands or falls with the underlying tort." *Romano v. Romano,* 767 N.Y.S.2d 841, 842 (N.Y. App. Div. 2003). Because Anderson's tort causes of action must be dismissed for failure to state a claim, the civil-conspiracy claim also fails.

IV.
CONCLUSION

For each of the foregoing reasons, Hudson News respectfully request that this Court enter an Order dismissing the Complaint with prejudice.

Dated: December 14, 2009
New York, New York

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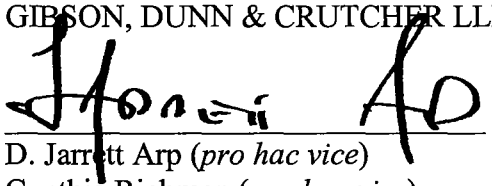

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