

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

SAMUEL KELLNER

Plaintiff,

-against-

THE FORWARD ASSOCIATION, INC.,
FORWARD PUBLISHING COMPANY, INC.,
THE JEWISH DAILY FORWARD and PAUL BERGER,

Defendants.

Index No.
Date Purchased:

Plaintiff designates
NEW YORK COUNTY
as the place of trial.

The basis of venue is the
residence of the corporate
defendants.

SUMMONS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a Notice of Appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 14, 2014



NIALL MAC GIOLLABHUÍ
LAW OFFICES OF MICHAEL G. DOWD
Attorneys for Plaintiff
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SAMUEL KELLNER,

Plaintiff,

Index No.

-against-

COMPLAINT

THE FORWARD ASSOCIATION, INC.,
FORWARD PUBLISHING COMPANY, INC.,
THE JEWISH DAILY FORWARD and PAUL BERGER,

Defendants.

Plaintiff, by and through his attorneys, MICHAEL G. DOWD and NIALL
MACGIOLLABHUÍ, complaining of Defendants, hereby alleges as follows:

INTRODUCTION

1. The history of The Jewish Daily Forward is a distinguished one, according to its website, beginning over a century ago as a defender of trade unionism and moderate, democratic socialism. It came to be known as the “as the voice of the Jewish immigrant and the conscience of the ghetto” and “fought for social justice.” In November 2013, Paul Berger led it in a different direction, as the propaganda wing of a criminal conspiracy to pervert the course of justice for victims of a notorious and serial rapist of children. It became *Pravda* for pedophiles. This is an action for defamation.

THE PARTIES

2. Plaintiff Sam Kellner is a resident of Borough Park, Brooklyn whose son was abused in 2008 by a pedophile named Baruch Lebovits.

3. Defendant THE FORWARD ASSOCIATION, INC. is and, at all relevant times alleged herein, was, a not-for-profit New York corporation authorized to do business in the

State of New York whose principal office in the State of New York is located at 125 Maiden Lane, New York, NY 10038.

4. Defendant FORWARD PUBLISHING COMPANY, INC. is and, at all relevant times alleged herein, was, a New York corporation authorized to do business in the State of New York whose principal office in the State of New York is located at 125 Maiden Lane, New York, NY 10038.

5. Defendant FORWARD PUBLISHING COMPANY, INC. is a wholly owned subsidiary and the English division of Defendant THE FORWARD ASSOCIATION, INC.

6. Defendant THE FORWARD ASSOCIATION, INC. and Defendant FORWARD PUBLISHING COMPANY, INC. publish Defendant THE JEWISH DAILY FORWARD, a weekly newspaper.

7. Defendant PAUL BERGER is a staff writer for Defendant THE JEWISH DAILY FORWARD.

FACTUAL BACKGROUND

A serial pedophile is exposed

8. Sam Kellner's ordeal began in early 2008, when his son was molested by Baruch Lebovits. His son reported the incident to his yeshiva teacher, Rabbi Chaim Hager, who instructed him that Lebovits was a respected person and that he was forbidden from speaking further of the incident. Rabbi Hager also threatened to expel him from the yeshiva. He confided in his father, who decided to report the incident to the police with the permission of Rabbi Chaim Flohr, a highly respected rabbi who presides over a rabbinical court in Monsey, after Rabi Flohr

learned that Baruch Lebovits was known for decades in Sam's community as a notorious pedophile.

9. Shortly afterwards, Sam met with a prosecutor in the Brooklyn District Attorney's office, who interviewed Mr. Kellner's son, but informed him that the District Attorney would not proceed with a prosecution, primarily because the alleged offense was a misdemeanor and there were no other known victims. Unhappy with this outcome, Sam spoke to Henna White, the District Attorney's liaison to his community, who put him in contact with Detective Steve Litwin, a longtime investigator of sexual abuse of children. Detective Litwin interviewed Sam's son and concluded that Baruch Lebovits was a serial offender. He told Sam that a case against him would be viable if other victims could be found and encouraged to report their abuse. Thus began a working relationship that would last several years.

10. Sam was soon given the name of "MT" – a victim of Baruch Lebovits who had reported being repeatedly raped by him as a child – by the Williamsburg Va'ad HaTznius (modesty committee). Sam met MT and encouraged him to report his abuse to Detective Litwin, which he did. In March 2008, MT and Sam's son testified before a Grand Jury, and Baruch Lebovits was indicted. MT described how Lebovits started following him when he was 12 years old, and then, for the next four years, perpetrated countless horrific acts of oral and anal rape upon him.

11. Subsequently, Sam was given the name of another victim of Lebovits, YR, whom he also helped to report his abuse to Detective Litwin. In September 2008, under Detective Litwin's supervision, YR recorded a conversation he had with Lebovits, in which he tells Lebovits that he was contacted by a member of Dov Hikind's office who found out he was a victim of abuse. He further tells him that he believes a witness to the abuse may have spoken

about it. Lebovits instructs him as follows: “You’ll say you were alone, you had nobody with you”; “You’ll deny it”; [The witness] “didn’t see anything.”

12. In November 2008, MT testified a second time before a Grand Jury, along with YR, which resulted in a superseding indictment being filed against Baruch Lebovits.

Attempts to pay off Sam

13. By this time, Sam was experiencing severe harassment and intimidation in his community for “informing” on Baruch Lebovits. Substantial monetary offers were also being made to him by various people to drop his son’s case. He rejected all of them. The pressure then took a different form whereby it was demanded that he submit to adjudication in a Beit Din, or rabbinical court. One rabbi in particular, Rabbi Yisroel Makavetzky, who presides over a Beit Din in Monroe, was relentless in his pursuit of Sam, demanding that his son’s case against Baruch Lebovits be adjudicated before him. Sam, knowing that to live in his community means to live according to its rules, agreed in principle to go the Beit Din but set two pre-conditions: Rabbi Flohr (who had given him permission to report his son’s abuse) and Michael Dowd, Esq., would be allowed to attend, and he would not be responsible for any expenses or legal fees charged by the court and Mr. Dowd. An associate of Lebovits, Wolf Wertzberger, became involved and promised to pay Sam’s share of the expenses and fees. However, Sam’s other pre-conditions were rejected. Sam then received a bill from Makavetzky in the amount of \$1,800 for the Beit Din’s work “in the matter between Shlomo Aaron Kellner and the Lebovits family related to damages to his son.” When Sam asked Wertzberger to honor his promise to pay the bill, Wertzberger told him that he was merely a front for Baruch Lebovits’s son, Meyer, whom he would need to ask directly.

14. Before Sam met Meyer Lebovits, he received another payoff offer from Moshe Friedman, a first cousin through marriage of Baruch Lebovits. For decades, Friedman was the right hand man of Rabbi Moshe Teitelbaum, the leader of the Satmar Hasidic community until his death in 2006. Friedman is someone of huge power and influence, both inside and outside of his community. In 2009, a profile of him described “many senators and politicians flocking to his door throughout the year, especially before elections.” He is also the editor of the main Satmar newspaper, Der Yid. Friedman contacted Sam offering him a job selling advertising for Der Yid, which Sam accepted, and began making calls on the paper’s behalf. Friedman demanded that Sam drop his son’s case against Baruch Lebovits, and told him that the family was willing to offer \$250,000. Sam refused the offer, and the job ended.

15. Throughout this time, Sam kept Detective Litwin apprised of the various attempts to buy him off. He also met with prosecutors Rhonnie Jaus and Miss Gregory – Chief and First Deputy Chief of the Sex Crimes Bureau, respectively – and Christopher Laline, and informed them about what was taking place.

Tape recorded meeting

16. In May 2009, Sam met with Meyer Lebovits concerning the Beit Din bill from Makavetzky. Meyer secretly recorded the meeting. At the outset, he insists to Sam that had he approached him instead of reporting the matter to the police, “[t]he problem would have been taken care of,” and “[w]e would have handled the [problem], we would have done everything.” Meyer continues: “If somebody did what was done to your child, I would have wanted to kill him.” Nonetheless, he stresses, Sam was wrong to report the matter to the police: “Why didn’t you call me, “Meyer, I heard your father is going to be in trouble. We should have seen what could have been done.”” According to Meyer, Sam violated the command of the

Torah by not warning him about his father in advance of the police report, and states indignantly: “There is no justification for that. In this crime I don’t forgive anything. Nothing. Am I some bum? Should such things be done?”

17. Sam tells Meyer he asked that his father be told “to leave my child alone,” meaning that Baruch Lebovits should not force him to testify. Sam believes his son “went through enough.” Later, Sam speaks about being pressured and threatened to attend the rabbinical court proceedings presided over by Rabbi Makavetzky. Meyer is initially evasive about these proceedings: “I wasn’t told anything. It’s not coming from me.” However, when Sam reminds him that he was directly involved – “[j]ust a minute. I spoke with you on the phone. You called me on the phone ... [Makavetzky] told me, ‘I’m transferring you to Meyer’ – Meyer admits he was there: “I remember I was talking from Makavetsky’s.” Sam describes Makavetzky as follows: “Here is Rabbi Makavetsky who’s been chasing me so long, telling me I should drop the case...” Meyer Lebovits takes a very different view of him: “He is a good man, Makavetsky.”

18. Later in the conversation, Sam states the origin of the issue between them: “After all, my child was hurt”; “True,” Meyer responds. Meyer says that he “thought we’ll settle it, we’ll settle the matter....” Sam expresses his objection to the threats he was receiving to force him into dropping his son’s case, by analogy with a person who breaks into the home of another, and then, after being arrested, threatens the person whose home he broke into that “if you don’t back off, I’ll fix you.” Meyer pleads ignorance of the threats – “Who wants to fix you?” – but then justifies his actions: “I must defend myself.”

19. Sam points out that had Baruch Lebovits pleaded guilty in the case of his son, he would not have faced time in jail. Meyer responds: “He wanted to plead guilty.”

However, it is then clarified that Baruch Lebovits wanted to plead guilty in both Sam's son case and the case of MT, but only if he was given an overall non-jail disposition; Meyer concludes: "They didn't give him what he wanted." At the end of the conversation Meyer reiterates that he can't forgive Sam, though "not because you put [Baruch Lebovits] in jail," asking instead: "Why didn't you come to us?"

Betrayal of MT and Sam's son by the District Attorney

20. By November 2009, MT's case had been severed from that of YR. In an affidavit submitted by the lead prosecutor, ADA Gregory, she states that she spoke to MT on November 4, 2009, informed him that his case was scheduled to begin on December 3, 2009, and was told by MT in return that he would be ready to testify against Baruch Lebovits. Later that month, she received a call from attorney John Lonuzzi, informing her that MT was no longer cooperating with the prosecution, because, Lonuzzi claimed, the case was causing MT "severe stress" and "he was suffering from a variety of psychological issues." Lonuzzi also claimed that MT would plead the Fifth Amendment privilege against self-incrimination if called to testify, because parts of his "grand jury testimony "might" have been embellished." ADA Gregory arranged multiple appointments to meet with MT and Lonuzzi; all of them were cancelled by Lonuzzi. On March 3, 2010, counsel for Baruch Lebovits represented to the court in YR's case that he had been contacted by Lonuzzi and told that Lonuzzi had been retained by MT's family, who heard that Lebovits was willing to plead guilty to abusing MT (but only if he didn't go to jail), and that the family was no longer willing for MT to continue his cooperation with the prosecution. In response, ADA Gregory told the court that Lonuzzi had told her no such thing. Already, the collusion between Lebovits and Lonuzzi in tampering with MT was in plain view. Yet, there was more. According to an affidavit from Detective Litwin, he was also contacted by

Lonuzzi in November 2009 and instructed to have no further contact with MT. Subsequently, however, he was contacted by MT. MT told him that he had not retained Lonuzzi, that some unknown person had retained him, and that his family could not know he contacted Detective Litwin, with whom his father did not want him to speak. They arranged to meet the following day, when MT reiterated that he had not retained Lonuzzi, “had been pressured and was afraid to say what had happened,” and “had been told not to talk to [Detective Litwin] or to go to the District Attorney’s Office.” Meyer Lebovits later told the District Attorney’s office that Lonuzzi was paid by Zalmen Ashkenazi.

21. Faced with such clear evidence of witness tampering by the family of a pedophile and his associates with a victim, who had been raped by the pedophile for years as a child, one would expect an uncompromising response. Instead, ADA Gregory claims that her concerns were brought via ADA Jaus to the then District Attorney’s Chief Assistant, Amy Feinstein, and that they were told by Ms. Feinstein that the District Attorney was not going to do anything. ADA Gregory attempted unsuccessfully to subpoena the testimony of MT. In August 2010, she capitulated and dismissed his case against Lebovits. It is unknown on whose authority dismissal was sanctioned. It is also unknown and inexplicable why prosecutors supposedly dedicated to the protection of children – namely ADA Gregory and ADA Jaus – would simply dismiss the case without as much as a whimper of protest. It was nothing less than abandonment and betrayal.

22. In October 2010, the case of Sam’s son met the same fate. ADA Gregory and ADA Jaus did not inform Sam’s son that his case had been dismissed. If he came from a different community, he surely would not been denied this most basic of decencies. He had the courage to come forward and report his abuse. He and his father had the courage to persist when

they were turned away by the District Attorney. The suffering and courage of a victim, however, meant nothing to the District Attorney when his case was dismissed behind his back. His misfortune was that he is a child not of Park Slope but of Borough Park. His misfortune was that he sought justice and placed his trust in an office that regarded the children of his community as children of a lesser God.

Lebovits trial

23. The Lebovits family and their associates were unable, though, to stop YR from testifying against Baruch Lebovits. Because of that testimony, in March 2010, Lebovits was convicted; he was sentenced the following month to a term of 10 2/3 – 32 years in prison. Counsel for Lebovits argued that YR had fabricated the allegations as part of an extortion plot. The truth was obvious to the jury, which needed only a few hours to reach its verdict.

24. During the trial, the jury heard of efforts by the sole defense witness, Berel Ashkenazi (brother of Zalmen Ashkenazi, who paid for MT's lawyer, Lonuzzi) to pay off YR – a former pupil of his – and stop his testimony. Contemporaneous notes from Detective Litwin detail these efforts, as well as Sam's counter-efforts to assure YR – who suffered from a serious drug addiction and was in dire financial straits – that he would receive support and compensation without having "to sign anything" – i.e. without agreeing to drop the case. YR later reported being similarly advised by ADA Gregory, that he was entitled to pursue a civil case separate from the criminal one. When Berel Ashkenazi took the stand, he was confronted with a rabbinical court ruling that forbade YR from reporting Ashkenazi's attempts to bribe him and stop him from testifying, while allowing Ashkenazi to "help" YR if he removed "himself

altogether from the courts of the goyim.” Ashkenazi had no answer to what was blatant evidence of witness tampering and attempted bribery. Regardless, he faced no sanction.

25. Following the conviction, Baruch Lebovits and his supporters began an intensive campaign to overturn it by any means possible. In their quest, they found an ally in the last place imaginable: the same office that sent Lebovits to jail.

Simon Taub

26. Help was also forthcoming from Simon Taub, a prominent member of Sam’s community whom he had asked for assistance in the past with regard to the harassment and intimidation faced by him and his family. Later, Sam told him that one of Taub’s sons had reported being molested by Meyer Lebovits. Instead of going to the police, however, as Sam had done, Taub used the information to demand money. In a recorded phone call on April 23, 2010, Taub tells Meyer that he was willing to treat him as a person who “made a mistake and would like to straighten it out.” He asks for “doctor’s fees” for his son, while Meyer presses him to accept \$400,000. In another recorded conversation later that day, Meyer states to Taub: “I never touched your son.” Taub responds that he was “not getting into this point now.” Meyer persists, asking: “You don’t care whether it’s true or not?” Taub responds: “Listen, I don’t care at all. I know everything. I know more than you think. Let me tell you one thing, I know a lot more than you think. Right now, I don’t want to go into...” Lebovits presses again: “I’m telling you clearly, I never touched your children.” Taub responds: “In that case good bye.” However, Meyer demurs when given the opportunity to follow through on his claim of innocence: “Let’s talk. You won’t let me speak for a minute.” He again presses the figure of \$400,000, but Taub insists: “I never told you \$400,000.” Meyer concedes the point: “All right. Who did say?

What's the difference?" (The difference is that Meyer was trying desperately to concoct a claim that Sam demanded the same \$400,000 for his son through Taub.)

27. Later in the conversation, Meyer returns to the topic of whether or not he abused Taub's son and Taub again responds: "I don't want to get into it. If you want to do it, you'll have to go and explain yourself before the DA, not before me." (Meyer claims to have submitted to a lie detector test before the investigation into Taub. It is unknown whether the District Attorney's office asked for the result. Certainly, it never investigated the alleged molestation, appearing instead to have proceeded, at least with regard to Sam's community, according to the biblical principle that the sins of fathers – real in the case of Taub, and wholly imaginary in the case of Sam – should be visited upon their children.)

28. In the same conversation, Meyer complains about the publication of the molestation allegations by Sam and Rabbi Nuchem Rosenberg, a prominent community activist against the sexual abuse of children who maintains a "hotline" providing information on topics of concern to the community. Taub assures Meyer that he will take care of Sam and Rabbi Rosenberg. In fact, when Sam learned of Taub's plan, he reported it to Detective Litwin and to Rabbi Rosenberg, who broadcast on his hotline that Taub was attempting to extort money from Meyer, and that both would be arrested. The effort to deter Taub was successful. On April 27, 2010, Taub contacted Meyer Lebovits and told him that he was no longer pursuing him for money.

29. The Lebovits family, on the other hand, was undeterred. On April 27, 2010, counsel for Baruch Lebovits, Athur Aidala, met with ADA Michael Vecchione, Rackets Bureau Chief, in the Brooklyn District Attorney's office. A meeting was arranged in counsel's office that night at 9 p.m. with Assistant Chief Investigator George Terra and Detective

Investigator Stephanie Green-Jones of the District Attorney's office, and Chaim Lebovits, another son of Baruch Lebovits. Chaim had taken the place of Meyer, without the messiness of molestation allegations and lie detector tests. DI Green-Jones notes that Meyer claimed that Taub initially accused him of molesting Sam's son, by reference to a transcript of a conversation in which Taub refers repeatedly to "my child" – a glaring discrepancy seemingly unnoticed by the so-called investigators, except that it may have led them to question why Sam was being falsely implicated and whether the supposedly successful lie detector test related to a non-existent allegation. She further notes that Taub desisted in his effort to obtain money after Sam caused his plan to be publicized by Rabbi Rosenberg. According to DI Green-Jones, Chaim "requested that we assist him in trying to bring justice for his family." It was a remarkably brazen request, considering that little more than a month has passed since Baruch Lebovits had been convicted of raping a child.

30. Even more remarkable (to the point where it can scarcely be believed), within 45 minutes of the meeting having begun, the effort by the District Attorney to assist the Lebovits family and the convicted child rapist was underway, with a direction that Chaim re-institute contact with Simon Taub. On June 4, 2010, a lengthy meeting ensued between Chaim and Taub, recorded by DI Green-Jones ("I'm with Stephanie," Chaim breezily tells someone that calls him as the recording begins). Chaim complains that Rabbi Rosenberg sat behind him during a recent court appearance and kept loudly announcing to Sam that Taub was planning to "take money, \$250,000 from Chaim Lebovits. The nut who's sitting here in front of me." Chaim begs Taub to involve Sam in their transaction: "[W]hy can't you try...At least try to bring him, just try." But Taub responds: "He won't come." Chaim returns to what Rabbi Rosenberg was saying to him in court: "Simon [Taub] can open up bank accounts, receive a quarter million

dollars. I just stick with Kellner. Kellner isn't here. Kellner is not going to come."

Nonetheless, Chaim insists to Taub: "I want to be able to sit down with him.... Try to call him now." Taub says no. Chaim continues: "Try. You can try him one more time. Tell him that my mother requested." The answer remains no. After discussing the first payment to Taub, Chaim tries a different approach: "After the first payment though, there will be no second payment if you don't bring Kellner." Only then does Taub agree, but states that he doesn't want Kellner to be present for the exchange of money: "No, no. I don't want to do it this way, for him to see that." Chaim responds that Sam "doesn't have to see it" and suggests that "he'll come half an hour later, concluding: "You don't have to tell him. He doesn't have to be told anything." Chaim is puzzled by Sam's approach to the prosecution of his father and his refusal to accept a settlement: "Okay, we lost. But he didn't win anything either. What does he have now? ... What did he gain from it?"

31. The conversation next turns to MT, who by then had been forced to end his cooperation with the prosecution of Baruch Lebovits but whose case had not yet been dismissed. He "is a good boy," Chaim remarks. After discussing whether the case against his father will be dismissed if MT doesn't appear on the next court date, Chaim confidently states: "He's not coming even with the subpoena." He then praises Lonuzzi: "He has a good lawyer, thank God."

32. On June 18, 2010, Chaim calls Taub and asks him repeatedly whether he was "bringing [Kellner] to the meeting." Taub equivocates: "I told him yesterday. I don't know myself what's going on." On June 29, 2010, Taub comes up with an excuse, telling Chaim that Sam will not be there for the first meeting because "he's afraid, he tells me he's shaking with fear," but that he will be present at a second meeting if "the first time goes well." Taub then

assures Chaim that he “surely can’t lose ... [b]ecause if he doesn’t come the second time, you’re released the first time.” (In other words, Taub can be paid the first time with only an empty promise that Sam will come the next time, and, when he doesn’t, no further payment by Chaim will be required.) The meeting ultimately occurs on July 7, 2010, around 4 p.m. Sam is not present. Taub claims again that he is afraid to come to the meeting and claims to call him, telling him to come to his home at 8 p.m. It is unclear if Taub in fact called Sam, in that the conversation is a few seconds in length, and one-sided apart from an opening “Hello,” but whoever answered the phone was certainly not expecting a call from Taub, who states: “[D]on’t you recognize my voice, are you crazy?” Shortly afterwards, Taub is arrested. By 5.20 p.m., he is sitting in a conference room on the 17th floor of the District Attorney’s office, without an attorney, facing the following cast: Rackets Bureau Chief Michael Vecchione, Deputy District Attorney Joseph Petrosino, Assistant Chief Investigator George Terra, Deputy Chief Investigator Gregory DeBoer, Assistant Deputy Chief Investigator Anthony Nelson, Detective Investigator Stephanie Green-Jones, and ADA Nicholas Batsidis. The level of commitment to securing the freedom of a convicted pedophile is breathtaking in its dark corruption. Taub was told that if he implicated Sam, he would be home within an hour. Unable to implicate Sam, he is prosecuted and ultimately pleads guilty to attempted extortion.

Sam is framed & Lebovits is released

33. By July 2010, the Lebovits family had already manufactured an affidavit from a person named Sholem Weisner, claiming to be a friend of YR. According to Weisner, YR told him that he had been paid off by Sam, that he was making it “big time” financially, and that he had perjured himself at the Lebovits trial. Next, an affidavit signed by Moshe Friedman originated from the same source and, a week later, yet another one, signed by MT and faxed to

the District Attorney by counsel for Baruch Lebovits, in which MT stated that he had been “brainwashed” and paid \$10,000 by Sam to make his complaint. MT was interviewed in September 2010. Nobody asked why he had not made these claims when he stopped cooperating less than a year earlier. Nor did anyone question why Baruch Lebovits had offered repeatedly to plead guilty with respect to heinous sexual offenses against a child of which he was now supposedly innocent.

34. The real prize, however, for the Lebovits family and the District Attorney, was YR. In December 2010, he was interviewed by the District Attorney’s office, and stated unequivocally that he did not lie and was not paid for his testimony. Weisner was encouraged by the District Attorney to continue in his efforts to make him crack. According to Meyer Lebovits, the District Attorney conspired with his family to “arrange” a trip to Florida, on which YR would be lured with the pretense of making a movie about his life. YR agreed, and, after being first plied with drugs, gave a number of video-recorded interviews. In the interviews, Weisner tries repeatedly, but in vain, to make him implicate Sam. It is very obvious from the recordings that Weisner is speaking to him for the first time about Sam; in particular, there is no reference to the statements that Weisner claimed in his affidavit YR had previously made to him, about being paid off by Sam, making it “big time” financially, or lying at trial.

35. YR, entirely oblivious to the malign forces plotting against him, simply tells the truth throughout the interviews. When he is asked why MT “g[o]t out” of the Lebovits case, he replies that “[t]hey scared him, they scared him,” that the “Lebovitses” did this.” He continues: “They, they terrorized him. You have no idea what they did to him.” More specifically, “they came to tell him that, “If you’re coming to court to testify against my father

you're going to be arrested for the cases in which you molested two children." YR also states that "they" paid for Torenheim's lawyer – John Lonuzzi - and promised him money.

36. When asked whether Sam ever tried to "shut him up," or offer him money to drop the case, YR responds, "No ... [Sam] always told me, [YR], go to court, you're going to tell the truth, tell the truth." Sam, he says, "let me go the truthful way. I proceeded truthfully and honestly." He also recounts Baruch Lebovits attempting "to manipulate [his] father" along with numerous attempts to pay him off, including a payment of \$50,000 in "forgiveness" money, and his initial reaction: "Wow, I don't know, \$50,000, and I don't have a penny to my name." He didn't accept it, nor would he accept any amount: "My blood is not for sale ... my blood has no price."

37. The attempt to turn YR inside out had failed, but the Lebovits family persisted nonetheless. They claimed to the District Attorney that YR had implicated Sam in Florida but refused to disclose the recordings; appellate counsel, Alan Dershowitz demanded to be allowed testify instead before the Grand Jury about their contents. This demand was too farfetched for even Michael Vecchione and the Rackets Bureau ("What law school did Dershowitz go to?" someone remarked with grim irony). Yet, ADA Vecchione still decided to push forward; the patience of Lebovits family was spent, the need to secure the release of the convicted pedophile couldn't wait any longer, and the effort to crack YR would continue after Sam was indicted.

38. The case against Sam before the Grand Jury had just three witnesses: MT, Meyer Lebovits, and Moshe Friedman (ADA Gregory also provided background information about the cases against Baruch Lebovits). Friedman's testimony was largely superfluous.

Nonetheless, it served a very important purpose. When the chief “fixer” and political liaison within Sam’s community came to give testimony against him, it meant the fix was in.

39. On April 12, 2011, Sam was arrested. A news conference held personally by the District Attorney followed, and Sam was paraded in front of the media. The next day, Lebovits was released on \$250,000 bail pending the appeal of his conviction and placed under house arrest.

40. In March 2012, the District Attorney tried one last time to turn YR around. Present at the meeting were ADA Batsidis, ADA Monique Ferrell (chief counsel to the Rackets Bureau), and DI Green-Jones. Also present were ADA Anthea Bruffee, who was handling the Lebovits appeal, and Detective Litwin. What ADA Bruffee and Detective Litwin thought of this effort to destroy the conviction of a notorious pedophile that they were in the middle of defending on appeal is unknown. That one part of a prosecutor’s office was defending an appeal by a convicted pedophile while another part was simultaneously coordinating with that pedophile in order to get his victim to recant is grotesque, unbelievable, bizarre and surely unprecedented. Thankfully, once again, the effort proved unsuccessful.

41. On April 25, 2012, Lebovits’ conviction was overturned by the Second Department (because of the prosecution’s untimely disclosure of certain Rosario material), meaning that YR would be required to testify at a retrial. By now, the Sex Crimes Bureau just wanted the case to go away. Without Sam to protect him, he was thrown to the wolves.

The case against Sam falls apart

42. Surprisingly, events took a different turn within the Rackets Bureau. As a result of information he received in March 2012 from YR, ADA Batsidis interviewed a woman named Natalie, described as MT’s best friend, who told him that MT fled to Israel “out of fear”.

She also “recalled the conversation she and [MT] had prior to the [Lebovits] trial when he told her that [Lebovits’s] oldest daughter called [MT] and told him that if he testifies against her father, he [MT] would immediately be arrested for molestation.” According to Natalie, Lebovits’s “daughter said they would bring in the two little boys Torenheim molested as witnesses against him.”

43. In September 2012, ADA Batsidis obtained travel and bank records that showed MT did in fact go to Israel and that his flights were being paid for by a felon, convicted a number of years ago of bank fraud, named Zalmen Ashkenazi – the same person who paid for Lonuzzi to end MT’s cooperation and the brother of Berel Ashkenazi, the sole defense witness at the Lebovits trial who tried to pay YR off (and faced no sanction for doing so). Records of monthly payments by Ashkenazi to MT’s father were also obtained.

44. The Lebovits family reacted furiously, demanding that ADA Batsidis be removed from the case. ADA Vecchione tried to replace him with ADA Joseph Alexis, but ADA Alexis only agreed to be assigned on condition that ADA Batsidis remain. Later, a prosecutor from the Sex Crimes Bureau tried to investigate Sholem Weisner, prompting a call from counsel for Lebovits to ADA Vecchione, and a confrontation with the prosecutor.

45. In May 2013, a recording surfaced of conversations with MT made by an acquaintance. On the tape, MT states that he first disclosed his abuse by Baruch Lebovits to people within his community around the time he was 16 or 17, several years before he ever met Sam. He also reveals that Zalmen Ashkenazi “got him out” of testifying against Lebovits, hired Lonuzzi, and “made him” go against Sam. On June 26 and July 1, 2013, respectively, MT was re-interviewed by the District Attorney’s office. In the interviews, MT, though he would not name those threatening him, conceded that he fled to Israel for fear of possible child molestation

charges. He initially denied knowing Zalmen Ashkenazi, before claiming he barely knew him, and then admitting that he has known him and his family, including Berel, since childhood. Moreover, he stated that “Zalmen Ashkenazi has supplied funds for [MT]’s attorney, his airfare to and from Israel, his apartment in Israel, and his school fees,” and that he “needs Zalmen Ashkenazi’s permission to return to the US when he’s in Israel.” He no longer claimed that Sam had paid him \$10,000, claiming now that he had either not paid him an agreed-upon fee or not fulfilled a promise to finance his wedding. Bizarrely, he stated that he “had never seen Baruch Lebovits in his life,” that Lebovits “could have molested me. [I] can’t really say,” and that he told others that Lebovits “really molested him.”

46. In August 2013, after Sam made a motion to dismiss the charges against him related to MT, ADA Batsidis and ADA Alexis refused to defend them. ADA Ferrell took over. The District Attorney was then voted out of office. A review of the case followed, and on March 7, 2014, it was dismissed in its entirety. ADA O’Donnell told the presiding judge that the indictment of Sam resulted from fabricated Grand Jury testimony given by Meyer Lebovits and witness tampering and intimidation of MT.

47. However, by this time, while the Sex Crimes Bureau and the new prosecutor assigned to the Baruch Lebovits prosecution, ADA Anna-Sigga Nicolazzi, stood idly by, the Lebovits family had successfully paid off YR and his family. They stood meekly by for months while counsel for Lebovits made representations to the court as to what YR supposedly wanted – a slap on the wrist for Lebovits. In May 2014, Baruch Lebovits pled guilty and got what he wanted, serving a paltry 86 days in prison.

PAUL BERGER'S ARTICLE

48. By November 2013, the case against Sam was effectively dead. The Lebovits family was desperate to resurrect it; into the breach stepped Paul Berger, a staff writer for The Jewish Daily Forward. Since 2008, the Lebovits family had been illegally recording Sam's conversations and peddling excerpts from these recordings to various reporters on condition of no further distribution (in case they were obtained by law enforcement). Reputable reporters refused to accede to this condition; conversely, Berger rushed in, putting himself and his paper at the service of a notorious, decades-long, pedophile who was desperately trying to avoid retrial and the justice his evil deeds deserved.

49. Berger's purpose was not to examine the evidence in the then pending cases of either Sam or Baruch Lebovits (non-existent in the former, overwhelming in the latter), or to get closer to the truth. It was, instead, an entirely squalid one: low grade character assassination of Sam. Fuelled by resentment of what he regarded as the media narrative portraying Sam as a "wounded father simply trying to get justice for his abused son," Berger set out on his quest for the alternative narrative – Sam is not "as innocent as he claims to be" – that no-one else but him could find. The inconvenient obstacle he faced in this quest is that there was no actual evidence in the case against Sam. Undaunted, Berger took a different route; unable to marshal evidence, he threw mud.

50. His article was published online on November 14, 2013 – <http://forward.com/articles/187610/sam-kellners-tangled-hasidic-tale-of-child-sex-abu/?p=all> – and in print on November 22, 2013. The centerpiece of the attempted character assassination consisted of a number of recordings given to him by the patrons of his misguided and malignant quest, the Lebovits family. According to Berger, the recordings paint Sam as "a man with ethical and legal

standards that would make a true advocate for abusers blanch.” Presumably, Berger did not mean to describe Sam as an advocate for abusers, rather than victims, or to qualify the description by stating that he was not a “true” advocate for abusers. Whatever he meant, this sentence would surely make a true editor for shoddy reporters blanch.

51. Berger describes a supposed conversation in one of the recordings by means of the following defamatory statements:

In one recording — which has been verified by the Forward — Kellner tells the family of a child molester who had pleaded guilty that he can help get the man off and that, citing the Hasidic bloc vote, they should tell the DA, “Hey, you took a Jewish man, you railroaded him into a deal... and we won’t forget it.”

During the conversation, which was longer than one hour and held on the street in Boro Park, Kellner counseled the family on how the self-confessed molester might avoid jail time. He told them that they must appeal to leading rabbis to “put the squeeze” on the Brooklyn DA, who is beholden to the rabbis for communal votes. The goal, Kellner said, “is, he shouldn’t spend one day in jail.”

....

Kellner also told the family they can buy off prosecutors with meals, New York Yankees tickets and other gifts to have the case thrown out.

52. In his article, Berger also discusses the case of Simon Taub, and his attempt – described above in paragraphs 26 to 32 – to extort money from the Lebovits family. The following defamatory statement is made: “In a wiretapped conversation conducted in Yiddish, Taub implicated Kellner in the extortion plot by saying that Kellner will appear at a second handover of money only if the first drop-off goes according to plan.”

53. Supposed excerpts from the conversation outlined in paragraph 51 above were posted online and, on November 16, 2013, the following defamatory statement was made on a “Twitter” account operated by the Defendants: “Hear convicted extortionist Sam Kellner in his own words.”

FIRST CAUSE OF ACTION - DEFAMATION

54. Plaintiff realleges and incorporates by reference paragraphs 1 through 53 of the Complaint as if fully alleged herein.

55. Defendant THE FORWARD ASSOCIATION, INC., Defendant FORWARD PUBLISHING COMPANY, INC., Defendant THE JEWISH DAILY FORWARD, and Defendant PAUL BERGER (collectively hereinafter “the Defendants”) published to a third party without privilege or authorization – online on the website of The Jewish Daily Forward on November 14, 2013, in Berger’s article headlined “Sam Kellner’s Tangled Hasidic Tale of Child Sex Abuse, Extortion and Faith,” and in print on November 22, 2013 – the following defamatory statements about a recording in their possession:

In one recording — which has been verified by the Forward — Kellner tells the family of a child molester who had pleaded guilty that he can help get the man off and that, citing the Hasidic bloc vote, they should tell the DA, “Hey, you took a Jewish man, you railroaded him into a deal... and we won’t forget it.”

During the conversation, which was longer than one hour and held on the street in Boro Park, Kellner counseled the family on how the self-confessed molester might avoid jail time. He told them that they must appeal to leading rabbis to “put the squeeze” on the Brooklyn DA, who is beholden to the rabbis for communal votes. The goal, Kellner said, “is, he shouldn’t spend one day in jail.”

....

Kellner also told the family they can buy off prosecutors with meals, New York Yankees tickets and other gifts to have the case thrown out.

56. The above statements are false. The recording resulted from an illegal listening device in Sam's vehicle. It was doctored by the Lebovits family to change the context in which Sam's words were spoken. General, non-specific accounts given by Sam of how his community interacts with the District Attorney's office were doctored to make them applicable to the "molester." Extracts of conversations conducted with other people in his vehicle were inserted into the recording. All of these conversations were illegally recorded, and the present recording was given by the Lebovits family to Berger on condition of no further distribution because of its illegal provenance, and their fear of prosecution. Excerpts from the same recording were previously posted online – <http://samkellner.blogspot.com/2013/09/breaking-recording-of-alleged-mafia.html> – under the heading "Breaking! Alleged Leaked Recording of Alleged Mafia ringleader - Shlome Aron Kellner briefing his gang on the strategy to get his case dismissed." In support of his false statement that Sam proposed the bribing of prosecutors in the molester's case, Berger provided to his counsel an excerpt made by the Lebovits family with its content in the title: "There is a lot of ways how to do it, buy her (judge) a nice little car if the case gets thrown out she has her interest" – referring again to Sam's own case. Somehow, the same recording concerns both Sam's case and the molester's case. Berger was fully informed prior to publication of the illegal nature of the recording and the fact that a complaint had been made by Sam to the Brooklyn District Attorney's office arising from the excerpts that had previously been posted online. Berger claimed to have verified the recording by speaking to one or more family members of the molester, who were coerced by the Lebovits family into falsely claiming that one of them made the recording. Following publication, counsel for Sam asked

counsel for the Defendants if they would be willing to disclose the recording upon receipt of a confidentiality release from the molester's family, and was told that such a release could not be accepted at face value because of the possibility that it was not voluntarily given. (It will be interesting to see if such a release will now be forthcoming because it serves Defendants' purposes; of course, it is highly ironic that the actual coercion by Lebovits family was deliberately disregarded by Berger in advance of publication.)

57. The Defendants also published to a third party without privilege or authorization – online on the website of The Jewish Daily Forward on November 14, 2013, in Berger's article headlined "Sam Kellner's Tangled Hasidic Tale of Child Sex Abuse, Extortion and Faith," and in print on November 22, 2013 – the following defamatory statement:

In a wiretapped conversation conducted in Yiddish, Taub implicated Kellner in the extortion plot by saying that Kellner will appear at a second handover of money only if the first drop-off goes according to plan.

58. As set forth above in paragraphs 26 to 32, this statement is false. Taub never implicated Sam in his extortion plot. The reason Sam's name was mentioned is that Chaim Lebovits demanded that Taub bring Sam to their meeting and, when Taub refused, Chaim told him that Taub would not receive any money unless he complied with the demand. Taub and Chaim discuss at length the necessity to hide the purpose of the meeting from Sam, if they want him to appear. Even then, Taub knows that Sam will not appear and concocts a transparent excuse so that he can receive the money.

59. Berger, unlike Sam, had full access to the recordings of Taub and Chaim's conversations when he published his article. Sam was subsequently given access to them. Nonetheless, prior to publication, counsel for Sam provided Berger with a report from DI Green-

Jones of the meeting on April 27, 2010 (paragraph 29 above), in which reference was made to the fact that, when Sam learned of Taub's plan, he reported it to Rabbi Rosenberg, who broadcast on his hotline that Taub was attempting to extort money from Meyer Lebovits, and that both would be arrested. The effort to deter Taub was successful. "Obviously," it was pointed out to Berger in advance of publication, "Sam was no part of Taub's plan." Yet, despite access to the recordings and the report, Berger deliberately made the false accusation that Sam was implicated by Taub in his extortion plot.

60. Finally, the Defendants published to a third party without privilege or authorization – online on November 16, 2013, on a "Twitter" account operated by the Defendants using the handle [@jdforward](#) – the following false statement: "Hear convicted extortionist Sam Kellner in his own words."

61. Sam was not convicted of extortion. (In fact, he was subsequently acquitted and fully vindicated.) The Defendants belatedly removed this defamatory statement, after it was brought to their attention by counsel for Sam, and published a retraction. Nonetheless, it exemplifies the warped perspective and disregard for truth that permeates the Defendants' other false statements, and remains actionable.

62. Each one of Defendants' above-specified false statements was made by them with knowledge of its falsity or with reckless disregard of whether it was true or false. Each one was also made by them in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

63. Each of the above-specified false statements constitutes defamation per se, in that Sam is accused of soliciting the commission of bribery, of conspiring to commit extortion

(in the case of Taub), and of having committed and been convicted of extortion (in his own case), respectively.

64. The amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) Compensatory damages;
- (b) Punitive damages;
- (c) Interest;
- (d) Attorney's fees;
- (e) Costs and disbursements; and
- (f) Such other relief as to this Court may be just and proper.

Dated: New York, New York
November 14, 2014

Yours, etc.



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