

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

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JONATHAN REICH,

Index No. 156787/16

Plaintiff,

- against -

**AFFIRMATION IN
SUPPORT OF MOTION**

CHARLES C. HALE, WARREN ST. JOHN, JESSICA L. SAWYER,
DMEP CORPORATION d/b/a HALE GLOBAL, PLANCK, LLC
d/b/a PATCH MEDIA and PATCH MEDIA CORP.

Defendants.

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JOEL G. MACMULL, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under penalties of perjury pursuant to CPLR § 2106:

1. I am a counsel with the law firm of Archer & Greiner P.C., attorneys for Charles C. Hale, Warren St. John, Jessica L. Sawyer, DMEP Corporation d/b/a Hale Global, Planck, LLC d/b/a Patch Media, Patch Media Corp. (collectively, “defendants”) in the above-captioned action.

2. I submit this affirmation in support of defendants’ motion to dismiss the Complaint in its entirety pursuant to CPLR §§ 3016(a) and 3211. (A true and correct copy of plaintiff’s Summons and Complaint dated August 10, 2016 and filed on August 13, 2106 using the New York State Courts Electronic Filing System (“NYSCEF”) (Dkt. No. 1) (hereinafter the “Complaint”) is attached hereto as Exhibit “A”.)

3. On August 29, 2016, I telephoned plaintiff’s counsel at the number which appears below his signature in the Complaint. No one answered my call and an outgoing voice message indicated that I had reached Nick Wilder and the offices of the Wilder Law Firm, P.C. I left a

voicemail identifying the parties, the index number, and county in which the matter is pending, as well as who I represent and that he should call me back.

4. After leaving a voicemail with the Wilder Law Firm on August 29, 2016, I sent an email to plaintiff's counsel on August 30, 2016 utilizing the email address — nwilder111@gmail.com — which appears on the “Notice of Commencement of Action Subject to Mandatory Electronic Filing,” NYSCEF Form EFM-1 which accompanied the Complaint. (A true and correct copy of my email to Nick Wilder on August 30, 2016 is attached hereto as Exhibit “B”.)

5. On September 1, 2016, having not received a response to either my voicemail or email of August 30, 2016, I emailed Mr. Wilder a letter concerning the allegations set forth in the Complaint (the “Letter”). (A true and correct copy of the Letter, as well as my cover email which accompanied it, are attached hereto as Exhibit “C”.)

6. The Letter sets forth in detail the fatal defects associated with each of the four causes of action set forth in the Complaint. The Letter also demanded, in view the deficiencies articulated, that plaintiff “voluntarily dismiss this action on or before the close of business on **Tuesday, September 6, 2016.**” (emphasis in original).

7. As noted in Exhibit C, a hard copy of the Letter also followed via overnight delivery. A hard copy of the Letter was delivered at 9:44 a.m. on September 2, 2016. (A true and correct copy of FedEx's tracking information confirming delivery of the Letter on September 2, 2016 is attached hereto as Exhibit “D”.)

8. Mr. Wilder did not respond to the Letter.

9. On September 12, 2016, having not received a response to any of my prior communications of August 29th, 30th or September 1st, 2016, I again telephoned Mr. Wilder at the number which appears below his signature in the Complaint. Once again no one answered, and once

again I left a voicemail explaining who I was, the matter about which I was calling, and that he should call me back.

10. Immediately thereafter I sent an email to Mr. Wilder indicating that (i) I had just left him another voicemail; (ii) I had not heard back from him in connection with my Letter; and (iii) he should call me back at his earliest convenience. (A true and correct copy of my email to Nick Wilder dated September 12, 2016 is attached hereto as Exhibit "E".)

11. At no time from August 29, 2016 until today, and notwithstanding that I attempted to contact Mr. Wilder on no less than **five separate occasions** between August 29 and September 12, 2016 has he responded to either my voicemails, emails or hard copy correspondence.

12. Attached hereto as Exhibit "F" is a true and correct copy of the New York State Bar Association's Committee on Professional Ethics Opinion No. 833 dated December 15, 2009, which I printed from the webpage located at <https://www.nysba.org/CustomTemplates/Content.aspx?id=5281> on September 22, 2016.

WHEREFORE, and for the reasons set forth herein as well as in the accompanying memorandum of law, it is respectfully requested that defendants' motion to dismiss the Complaint be granted in its entirety together with such other and further relief the Court deems just and proper, including, but not limited to, awarding defendants all costs, fees and expenses, including their reasonable attorneys' fees incurred in connection with their motion.

Dated: New York, New York
September 22, 2016


JOEL G. MACMULL