

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

HICHAM ABOUTAAM,

Plaintiff,

-against-

DOW JONES & COMPANY,

Defendant.

AMENDED COMPLAINT

Plaintiff Hicham Aboutaam, for his amended complaint, alleges:

AN OUTRAGEOUS LIBEL

1. This is an action for libel.
2. Plaintiff Hicham Aboutaam is a highly respected, world-renowned antiquities dealer whose career, profession, and business rely on his integrity and honesty, particularly with respect to his representations concerning the provenance of the precious works he buys and sells.
3. Plaintiff has a long-established track record of integrity and, in particular, a demonstrated commitment to establishing the bona fides of pieces that he buys, sells, and represents on consignment.
4. Plaintiff has never knowingly purchased or sold any looted items—much less any items looted by terrorists—nor has any item he has ever bought or sold later been determined to have been looted by terrorists, let alone, The Islamic State of Iraq and Syria (“ISIS”).

5. For months in early 2017, *The Wall Street Journal* made clear that it was relying on false information and non-existent or unreliable sources to cobble together a story purporting to link Plaintiff's business activities to ISIS. After ignoring months of assiduous attempts to guide and correct the reporters' misconceptions, misunderstandings, and incorrect assumptions, the *Journal* published a prominently featured article that—though it revealed no links between Plaintiff and any antiquities that were bought or sold to support ISIS—nonetheless made effective use of innuendo to craft an article that would link Plaintiff with ISIS funding in a reasonable reader's mind. The *Journal* accomplished this feat through defamatory statements and manipulative juxtaposition of information about Plaintiff with unrelated information about ISIS funding activities.

6. Any doubt that the *Journal* succeeded in defaming Plaintiff by implication is erased by the results of a recently conducted survey, attached as Exhibit A. The survey results demonstrate that a reasonable, objective *Wall Street Journal* reader would conclude based on Defendant's article that Plaintiff in fact helped to fund ISIS by selling looted antiquities, and that the *Journal* affirmatively endorsed that falsehood about Plaintiff through the manner and methods it used to publish the Article.

7. As a result, Plaintiff's business and reputation have been severely and immediately damaged. Customers and major antiquities institutions have withdrawn from ongoing, immediately profitable and long-standing relationships with Plaintiff. Plaintiff's personal and professional reputation and business opportunities have been decimated.

PARTIES

8. Plaintiff Hicham Aboutaam (“Plaintiff” or “Hicham”) is a citizen of the United States and of the State of New York, and a resident of New York County.

9. Plaintiff is a world-renowned dealer in rare and exquisite antiquities. He is the sole owner and president of Electrum, a Manhattan-based antiquities gallery and brokerage. In addition to brokering antiquities sales, since March 2002 Electrum has served as the exclusive U.S. agent for Phoenix Ancient Art (“Phoenix”), a Geneva, Switzerland-based antiquities gallery wholly owned and operated by Plaintiff’s brother Ali Aboutaam (“Ali”).

10. Plaintiff specializes in works dating from the Neolithic period to the fourteenth century. He and his business—*i.e.*, Electrum—have developed extremely stringent procedures for establishing the provenance and chain of ownership for the objects they buy and sell. These procedures include extensive research, cross-referencing objects against lost art registries, and seeking out documentation of prior ownership, including publications, affidavits, dated photographs, invoices, and customs and insurance documents.

11. Plaintiff has been repeatedly recognized for his industry-leading due diligence standards. For example, a 2007 *New York Times* article noted Plaintiff’s support for bans on excavated antiquities and quoted him lamenting “the dark cloud that hangs over the field” as a result of looted objects entering the market.¹ In 2008, Mr. Aboutaam sponsored a conference of academics, museum representatives, archaeologists, law enforcement officials, and antiquities dealers and collectors to explore market-based

¹ Ron Stodghill, *Do You Know Where That Art Has Been?*, N.Y. TIMES, (Mar. 18, 2007), <https://mobile.nytimes.com/2007/03/18/business/yourmoney/18Art.html>.

solutions for “halting the devastating effects of looting,”² resulting in a report issued on the subject by the Milken Institute, an independent think tank.

12. Defendant Dow Jones & Company (“Defendant”) is, on information and belief, a corporation organized under the laws of Delaware, which does business and maintains its principal executive office in New York County, New York. Defendant is the publisher of the daily newspaper *The Wall Street Journal*.

FACTUAL BACKGROUND

THE WALL STREET JOURNAL SPENDS A YEAR STRAINING TO SUBSTANTIATE UNATTRIBUTED ACCUSATIONS OF WRONGDOING BY PLAINTIFF AND HIS FAMILY AND BUSINESS

January-February 2017

13. On January 31, 2017, *Wall Street Journal* reporter Benoit Faucon contacted Phoenix by email. Faucon’s email, addressed to Plaintiff and Ali, stated that Faucon was “writing a news article on trading of artifacts looted by ISIS” that he anticipated would mention “scrutiny over your operations and whether artifacts looted under ISIS’ watch could have ended up in your hands.”

14. The email included a series of inflammatory questions based on the false premise that Phoenix, Plaintiff and/or Ali were involved in smuggling or selling artifacts looted from territories under the control of the Islamic State. Many of the questions sought comment on unattributed, vague, and false accusations. Several of them were introduced with statements like “We hear...” or “We understand...,” making it

² Caitlin MacLean & Glenn Yago, *Financial Innovations for Developing Archaeological Discovery and Conservation* at 3 & App’x 1 (Milken Institute, Nov. 2008), <http://milkeninnovationcenter.org/wp-content/uploads/2008/11/Developing-Archaeology-FIL-ENG-2008.pdf>.

impossible to ascertain the source of the allegations or to clarify whatever misunderstanding resulted in the line of inquiry.

15. Faucon claimed he had a deadline of Friday, February 3, 2017.

16. On February 2, Phoenix responded with detailed answers to Faucon's questions, correcting inaccuracies in his written questions.

17. For example, Faucon connected the 2016 seizure by Belgian customs of two Phoenix pieces that had been sent to Brussels from Geneva for exhibition at an art fair to an allegation that "the pieces were looted in Mari after it came under ISIS control." Phoenix explained that one of the pieces was purchased publicly at a European auction in 2010, and had previously been auctioned in Paris in 2007, while the other had a provenance pre-dating the Syrian conflict and carries an Art Loss Register report dated in 2012. Given this timeline, the pieces could not have been looted from Mari after it came under ISIS control.³ Faucon did not ask to review any of this provenance documentation, and on information and belief he never reviewed it.

³ According to the American Association for the Advancement of Science ("AAAS"), "[t]he Albu Kamal region, where Mari is located, came under the control of ISIS in June 2014." American Association for the Advancement of Science, *Ancient History, Modern Destruction: Assessing the Status of Syria's Tentative World Heritage Sites Using High-Resolution Satellite Imagery* (2014), <https://www.aaas.org/page/ancient-history-modern-destruction-assessing-status-syria-s-tentative-world-heritage-sites-7>.

18. Faucon also claimed to have “heard” that “some of the antiquities you have been selling came from the areas of Manbij in Syria and Mosul in Iraq and are suspected to have been excavated at the time when these areas were under ISIS control.” Phoenix explained that any such allegations were completely false and asked for an opportunity to correct the misimpressions of whomever had provided such inaccurate information. Faucon did not follow up.

19. Likewise, Faucon claimed to have “heard” that “you are also being scrutinized for possibly selling artifacts excavated from ISIS territories to [a specific individual, referred to by name] in New York.” Phoenix responded unequivocally: “We have never sold anything to [that individual] and we are unaware of any such scrutiny. We can strongly confirm that what you heard is false and we would like to be given the chance to defend ourselves from this slander.” Again, Faucon never followed up.

20. Faucon also wrote that Ali had been arrested in Bulgaria in 2008 in connection with an accusation of smuggling Egyptian artifacts. Phoenix explained that the false accusations had been dismissed and Ali had been exonerated. Faucon later followed up to ask which court had dismissed the charges; Phoenix explained that the relevant court was the Sofia High Court in Bulgaria, proceeding under European Community Law.

21. Faucon’s supposed deadline of February 3 came and went, and no story appeared in the *Journal*.

March-May 2017

22. On March 3, 2017, Faucon again contacted Phoenix by email, again posing extremely slanted questions seeking “comment” about unattributed accusations of

wrongdoing. In this email, Faucon explicitly accused Phoenix, Ali, and Plaintiff of working with specific, named individuals and entities known to be participants in the trade of ISIS-looted goods.

23. Phoenix responded on March 9, 2017, noting that Faucon's questions "are completely misguided," that the accusations were "completely untrue," and that Phoenix and the Aboutaams had "never dealt with any person or company that is suspected of anything related to these horrors."

24. On March 21, 2017, Faucon spoke with Ken Frydman, a media representative for Phoenix and Plaintiff. During the conversation, Frydman explained that neither Phoenix, Ali, nor Plaintiff had done business with the individuals or entities referenced in Faucon's March 3 email. Frydman explained that one of the names mentioned in the March 3 email was familiar to Plaintiff and Ali because they had known someone with that name 20 years earlier, but that the name was very common.

25. In a later email, Faucon falsely denied that Frydman told him that the name was familiar only because Plaintiff and Ali knew someone with that name 20 years prior.

26. During the March 21 conversation, Faucon told Frydman he had been investigating the Aboutaams since mid-2016.

27. Faucon also stated that he was relying in his reporting on multiple high-level sources from multiple countries, and on documents referring to Plaintiff and Ali by name. Faucon refused to identify any of these sources or to provide Plaintiff, Ali, Phoenix, or their representatives with copies of any of the documents on which he purported to rely.

28. On March 29, 2017, Faucon sent yet another email to Phoenix and to Frydman with an additional list of questions.

29. Again, many of the questions presumed wrongdoing by Phoenix, Ali, and/or Plaintiff and proceeded from false or deeply misleading premises.

30. After initially declining to respond to this new set of questions, Phoenix responded in writing through counsel on or about April 20, 2017.

31. In its written responses to Faucon's March 29 questions, Phoenix again corrected a number of inaccuracies from Faucon's reporting.

32. For example, in response to a question asserting that U.S. Immigration and Customs Enforcement was investigating Plaintiff and Ali "on suspicions they may be handling objects looted in Syria and Iraq," Phoenix explained that it was "unaware of any such investigation or suspicions," and that Plaintiff and Ali "are vigilant in their efforts not to purchase or sell looted objects and have never knowingly bought or sold such items."

33. Phoenix also explained that Faucon's assertion that Ali's driver had been arrested by Swiss law enforcement after a traffic stop in early March 2017 was incorrect.

34. Another of Faucon's questions asserted that Ali's driver "had travelled several times to New York's John F. Kennedy International Airport, carrying small antiquities in his hand luggage" and that "a representative of the Aboutaam's [sic] New York gallery was there to greet him at JFK." In its response, Phoenix wrote: "We note that it is common practice to transport small, high-value objects by hand-carry in order to avoid the risks associated with shipping items via air cargo (mishandling of the crate, theft, loss, delays, etc.). All exports/imports conducted by Phoenix Ancient Art by hand-

carry have been fully documented, processed appropriately through Swiss customs, declared at US customs, and then processed by an independent customs broker who is not employed by the New York gallery.”

35. One of Faucon’s questions also referred to Phoenix’s previous statement that one of the names mentioned in Faucon’s March 3 email was familiar to Plaintiff and Ali because they had known someone with that name 20 years earlier. One of Faucon’s March 29 questions asserted the existence of “documents that detail your relationship with a dealer of this name in more recent years.” Phoenix explained that “neither Ali or Hicham Aboutaam have heard from or seen that man for approximately 20 years” and asked Faucon to provide copies of the documents upon which he was purporting to rely “so we can address them specifically.”

36. Faucon never provided copies of any such documents nor followed up on any alleged association between Plaintiff, Ali and/or Phoenix and the individual in question.

37. Faucon’s questions also referred again to the seizure by Belgian customs of two Phoenix objects in 2016. Faucon once again asserted that the objects were “Syrian” and stated (without attribution) that Belgian authorities were investigating whether the pieces had been excavated since the outbreak of the war in Syria. In its response, Phoenix explained: “It is not a ‘fact’ that the objects in question are of Syrian origin. One of them is a Byzantine table that easily could have originated from anywhere in the Byzantine Empire and most likely came from Rome. This work was auctioned in Paris in 2007 and was purchased at another European auction in 2010.” The response

also explained that the second work had an Art Loss Registry report dated prior to ISIS gaining control of the relevant territory.

38. On or about April 28, 2017, Defendant responded to Phoenix's letter through counsel. The April 28 letter stated that "the *Journal* is committed to reporting that is careful, accurate, and fair, and it should go without saying that the *Journal* has no intent or desire to publish any article pertaining to Phoenix that 'is predicated on misinformation and false assumptions.'" The letter further stated that "Mr. Faucon and Dow Jones's other reporters are committed to reporting in an honest and forthright manner" and that Faucon's questions "accurately reflect the information provided by reliable sources in which the *Journal* is fully confident." Defendant committed to "fully consider whatever information your client provides in connection with any future article that discusses it or its principals."

39. Phoenix's counsel responded to the letter from Defendant's counsel in writing on or about May 10, 2017. The May 10 letter noted that many of Mr. Faucon's questions were underlain with "the implication that Phoenix has knowingly trafficked in antiquities looted by the Islamic State in Iraq and Syria" and that "[a]ny article making such an allegation would be defamatory."

40. The May 10 letter further noted that Phoenix had "given Mr. Faucon documentation of its leading role in industry groups" aimed at furthering standards for establishing the provenance of objects traded on the international antiquities market, and that "by publishing works on its websites, in catalogues, and in scholarly articles, Phoenix provides notice to the antiquities community of its most meaningful holdings, and thus the opportunity to assert claims."

41. In response to Defendant's claims about the reliability of its sources, the May 10 letter explained that it was impossible to assess the quality of unidentified sources, noting that "Phoenix has not been contacted by any law enforcement agency in any jurisdiction regarding alleged dealing in ISIS-looted artifacts, and Phoenix is unaware of any such investigation."

42. The May 10 letter noted that Faucon's March 29 questions referred to "documents that purportedly detail Phoenix's relationship with a specific individual," *i.e.*, the dealer with the same name as someone Plaintiff and Ali had known 20 years earlier. The May 10 letter stated: "In its response, Phoenix noted that it is unaware of any such documents and requested copies in order to address them directly. Mr. Faucon's unwillingness to share any such documents confirms our doubts regarding their existence, the reliability of his sources, and the *Journal's* commitment to 'careful, accurate, and fair reporting.'"

43. Defendant did not respond to the May 10 letter.

***THE WALL STREET JOURNAL PUBLISHES A DEFAMATORY STORY
JEOPARDIZING PLAINTIFF'S LIVELIHOOD***

44. On May 31, 2017, the *Wall Street Journal* published on its website an article authored by Faucon and Georgi Kantchev with the headline "Prominent Art Family Entangled in Investigations of Looted Antiquities." The sub-heading read: "Long-time dealers Ali and Hicham Aboutaam are under scrutiny as authorities in multiple countries look into how Islamic State finances itself by trafficking in ancient objects." A color photograph of Plaintiff and Ali appeared directly underneath the sub-headline.

45. The online headline was later changed to read “Prominent Art Family Entangled in ISIS Antiquities-Looting Investigations,” and remains available on the *Journal*’s website with this headline. A copy of the online version of the article is attached as Exhibit B.

46. On June 1, 2017, the *Wall Street Journal* published on the front page of its “Life & Arts” section an article, authored by Faucon and Kantchev, with the headline: “Antiquities Dealers Probed.” The sub-headline read: “Ali and Hicham Aboutaam are under scrutiny as authorities in multiple countries look into looting by Islamic State.” A color photograph of Plaintiff and Ali, measuring approximately six inches by eight inches, appeared directly underneath the sub-headline. A copy of the print version of the article is attached as Exhibit C.

47. The article’s title was intended to lead readers to draw the false inference that Plaintiffs are being investigated for direct participation in looting by the Islamic State, and would likely cause a reasonable reader to draw such an inference.

48. Defendant also placed a large color photograph of damaged ruins from the ancient city of Palmyra in present-day Syria directly underneath the photograph of Plaintiff and Ali. The images were jointly captioned: “Ali Aboutaam, above front, and brother Hicham Aboutaam. Below, the damaged Roman amphitheater in Palmyra, Syria.” Thus, a casual reader browsing the front page of the “Life & Arts” section of the *Journal* would be presented immediately with a headline and sub-headline alleging that Plaintiff and Ali are being investigated for “looting by Islamic state”; a large color photograph of Plaintiff and Ali; and a photograph of a “damaged Roman amphitheater”

in Syria. This layout was intended to cause a reasonable observer to falsely conclude that Plaintiff and Ali were involved (or alleged to be involved) with the damage of Palmyra.

49. The text of the article (hereinafter “the Article”) was substantively identical online and in print.

50. The primary premise of the Article was that Plaintiff, Ali, and Phoenix are currently being investigated by multiple law enforcement agencies in multiple jurisdictions in connection with suspicions that they have participated in the trade of ISIS-looted antiquities.

51. Not a single piece of information about any such investigation was attributed to an identified source or document.

52. Not a single piece of information about any such investigation was presented in a direct quotation from any law enforcement official or anyone else.

53. The Article contained a number of false and/or misleading assertions concerning Plaintiff.

54. The Article was presented—through layout, sequencing, and choice of language—to affirmatively suggest that its authors intended and/or endorsed the false and defamatory inference that Plaintiff is a knowing participant in the trade of ISIS-looted antiquities.

55. For example, the Article begins with an anecdote about a driver employed by Ali whose vehicle was pulled over in Geneva in early March. The Article claims, without quoting any sources or attributing the information to anyone in particular, that Swiss law enforcement, “after a search, discovered an ancient oil lamp” in the car and

then arrested the driver after he “failed to provide documentation proving the object’s provenance.”

56. In fact, the driver was not arrested on site, but rather went home after the vehicle was searched.

57. The Article omits that the oil lamp in question belonged to a passenger in the car who was not an employee of Phoenix or a member of the Aboutaam family and who stated that the lamp was his.

58. This omission is glaring in the context of an anecdote about an Aboutaam employee being stopped and searched by law enforcement, who found an “ancient oil lamp” in his car—particularly because the anecdote appears immediately under a headline connecting Plaintiff with ISIS-looted antiquities and is accompanied by a false claim that the driver was immediately arrested. This omission was intended to cause readers to falsely infer that the oil lamp belonged to Plaintiff, Ali, and/or Phoenix and had been looted by ISIS.

59. The Article then alleges, again without quoting any sources or attributing the information to anyone in particular, that Swiss authorities are investigating Ali and Plaintiff in connection with suspicions that “they have handled Syrian and Iraqi objects looted under the auspices of the extremist group Islamic State, or ISIS.” The Article omits that Phoenix, Ali, and Plaintiff have never been contacted about any such investigation and had specifically disclaimed any knowledge of such an investigation. This omission is intended to convey to readers the false implication that Plaintiff admits that such an investigation exists targeting him, and to steer readers away from any doubt that such an investigation is occurring.

60. The source for this allegation is identified only as “the Swiss.” Such a vague attribution for a serious allegation of criminal wrongdoing connected to extremist political violence and international terrorism violates broadly accepted standards of journalistic ethics.

61. For example, the Society of Professional Journalists’ (“SPJ”) Code of Ethics directs reporters to “[i]dentify sources clearly. The public is entitled to as much information as possible to judge the reliability and motivations of sources.”⁴ National Public Radio’s Ethics Handbook similarly stresses the importance when relying on anonymous sources of providing “as detailed a description as possible of who they are and their motivation (if any) to use in our reports. Our goal is to tell listeners and readers as much as we can about why this person is being quoted. So, for example, ‘a senior White House official who was at the meeting and heard what the president said,’ is the type of language we use. ‘An official’ is not.”⁵ Similarly, the NYU Journalism Handbook states that reporters should “offer as much detail as possible about who the source was and explain the reason anonymity was given. For instance, identify a source as ‘a police detective close to the investigation who requested anonymity because her superiors had ordered her not to speak publicly on the matter.’”⁶

62. The Article next claims—again without named sources—that “law enforcement in Belgium and security services in France are also looking at the brothers in connection with the ISIS looting.” The Article attributes this information to “officials,”

⁴ Society of Professional Journalists, *SPJ Code of Ethics* (rev. Sept. 6, 2014), <http://www.spj.org/ethicscode.asp>.

⁵ National Public Radio, *NPR Ethics Handbook: Anonymous Sourcing*, <http://ethics.npr.org/tag/anonymity/>.

⁶ NYU Journalism, *NYU Journalism Handbook: Ethics, Law & Good Practice: Human Sources* (Aug. 30, 2007), <https://journalism.nyu.edu/publishing/ethics-handbook/human-sources/>.

directly violating the applicable journalistic standards. Again, the Article omits that Plaintiff and Ali have never been contacted or interviewed by law enforcement in these countries in connection with any inquiry into ISIS-related looting. The Article thereby deliberately deprives readers of context that would cause a reasonable reader to question whether the information about supposed investigations is accurate and reliable, and intentionally conveys to readers the false implication that Plaintiff admits to being the subject of such investigations.

63. The Article also omits the information provided in the April 20, 2017 letter that one of the objects at issue in the Belgian inquiry had been traded in Europe, in well-documented transactions, since 2007, while the other had a provenance pre-dating the Syrian war and at Art Loss Register report dated prior to ISIS gaining control of the relevant territory. The Article thus fails again to provide the relevant context or to explain that the objects in question have provenance pre-dating the outbreak of the Syrian conflict. The reporters never asked to review any documents regarding these pieces to fact check whatever anonymous source provided this incorrect information.

64. Next, the Article claims—*again* without quoting anyone or attributing the information to any particular source—that “U.S. Immigration and Customs Enforcement, or ICE, is scrutinizing the Aboutaam brothers as part of an investigation into a number of U.S.-based antiquities dealers to determine whether they trafficked in looted material.” This allegation is attributed only to “people familiar with the matter.” Again, the Article omits that Plaintiff and Ali have never been contacted by ICE in connection with any such investigation or otherwise been made aware of its existence—information that a

reasonable reader would consider inconsistent with a claim that such an investigation was ongoing.

65. After setting forth its unattributed, false, and misleading claims that Plaintiff is under investigation in connection with ISIS-looted antiquities, the Article transitions to several paragraphs about civil forfeiture actions filed by the United States Department of Justice “seeking the forfeiture of objects associated with ISIS, alleging that the group markets and sells antiquities to finance its terror operations.” **The civil forfeiture actions mentioned in the Article having *nothing* to do with Plaintiff, Ali, or Phoenix, and concern objects completely unrelated to them and their business.**⁷ Yet this text, along with a photograph of a gold ring allegedly looted by ISIS (and identified as such in a caption), appears directly next to a large photograph of Plaintiff and Ali. This layout is intended to convey the false inference that an unspecified connection exists between the ISIS-looted objects subject to forfeiture proceedings and Plaintiff and Ali.

66. A casual reader browsing the front page of the “Life & Arts” section would be presented immediately with a headline and sub-headline alleging that Plaintiff and Ali are being investigated for “looting by Islamic state”; a large color photograph of Plaintiff and Ali; and a photograph of a specific ISIS-looted item. This layout was intended to cause a reasonable observer to falsely conclude that Plaintiff and Ali were involved (or alleged to be involved) with the looting of the ring. Later in the Article, the text is accompanied by a large color image of an ISIS-looted gold coin whose forfeiture

⁷ A Justice Department press release concerning the civil forfeiture action in question is available at <https://www.justice.gov/usao-dc/pr/united-states-files-complaint-seeking-forfeiture-antiquities-associated-islamic-state>, while the underlying complaint is available at <https://www.justice.gov/usao-dc/press-release/file/918536/download>. No publicly available information indicates that it is known whether the objects were ever sold by ISIS, let alone where or by whom.

has been sought by the United States Department of Justice. Again, the juxtaposition of this image with the Article, which details supposed investigations of Plaintiff in connection with looted antiquities, would intentionally cause a reasonable observer to falsely conclude that Plaintiff had some real or alleged involvement with the looting of the coin.

67. The Article next claims that New York “is a major destination for stolen antiquities” and paraphrases a retired customs officer as stating that “dealers use courier services and air cargo to smuggle antiques into U.S. airports and are increasingly stashing objects in passenger luggage.”

68. After discussing smuggling of looted objects in the abstract, the Article returns to a narrative about the Aboutaam family, again reinforcing the implication of a connection between smuggling and Plaintiff and his family.

69. The Article claims—once again, without attribution or quotation— that Ali’s wife “moved antiquities out of storage at the Geneva free ports—a maze of armored warehouses in the city’s industrial zone where people can legitimately store high-value items without having to pay tax on them,” and that she was detained in early March of 2017 after “failing to produce the proper documentation of ownership and origin for some objects.”

70. In reality, Ali’s wife was detained after she moved objects from her own storage facility—not located at the Geneva free ports—and declined to respond to questions about where she had relocated them. The Article’s false assertion that she was detained for “failing to produce the proper documentation of ownership and origin” for antiquities falsely suggests—in the context of an article about alleged ties between the

Aboutaam family and ISIS-looted objects—that the detention was the result of a failure to prove that the objects in question had not been looted by ISIS.

71. Several paragraphs later, the Article claims, again without attribution to or quotation of any particular source, that “[a]fter his arrest in Geneva,” Ali’s “driver told investigators that he had traveled several times to New York’s John F. Kennedy International Airport, carrying small antiquities in his hand luggage, and that a person working with the Aboutaams was there to greet him.” This claim is attributed only to “people familiar with the probe.”

72. This assertion is extraordinarily misleading and represents a grave breach of journalistic ethics in several respects.

73. The paragraph completely omits critical context for this statement that Phoenix had provided in its April 20 letter, namely that (a) “it is common practice to transport small, high-value objects by hand-carry in order to avoid the risks associated with shipping items via air cargo (mishandling of the crate, theft, loss, delays, etc.)”; (b) all of Phoenix’s hand-carry exports and imports were fully documented and processed through Swiss customs and declared at U.S. customs; and (c) the individual who met Phoenix’s employee at the airport in New York was an independent customs broker engaged in the regular business of processing hand-carried imports.

74. After Phoenix provided this information, the reporters did not follow up or request any additional information, nor did they undertake any efforts to corroborate or investigate the information Phoenix provided. For example, the reporters did not request an interview with Phoenix’s customs broker, an opportunity to review any documentation from any of Phoenix’s imports or exports at JFK, or a referral to knowledgeable

individuals in the international antiquities community to fact-check Phoenix's claims about the ubiquity of hand-carry importation for small, valuable objects.

75. Instead, the Article reported *almost verbatim* the original assertion contained in Faucon's March 29, 2016 email. That email stated: "the driver confessed to investigators that he had travelled several times to New York's John F. Kennedy International Airport, carrying small antiquities in his hand luggage" and that "a representative of the Aboutaam's [sic] New York gallery was there to greet him at JFK." The Article, in comparison, stated: "the driver told investigators that he had traveled several times to New York's John F. Kennedy International Airport, carrying small antiquities in his hand luggage, and that *a person working with the Aboutaams* was there to greet him" (emphasis added).

76. The Article thus deliberately avoids disclosing to readers that the importation practice being described is commonplace, that the items in question were all appropriately declared and processed, and that the "person working with the Aboutaams" who assisted with Customs paperwork at JFK was an independent broker who was not employed by Plaintiff, Ali, or Phoenix. Instead of writing that the imports in question were processed by an independent broker—the most natural way to convey the relevant facts—the reporters simply changed the language from Faucon's March 29 email identifying the broker from "a representative of the Aboutaam's [sic] New York gallery" to "a person working with the Aboutaams." This language was obviously chosen to evoke the Article's previous discussion of how unnamed "dealers use courier services and air cargo to smuggle antiques into U.S. airports and are increasingly stashing objects in passenger luggage."

77. The Article's deliberate omission of important context and careful choice of words to *avoid* telling readers about the involvement of a legitimate and independent broker, and to instead raise the specter of false similarities between Plaintiff's activities and those of smugglers, shows that the Article's authors intended to falsely imply that the practice described was part of ISIS's illegal smuggling of looted objects by Plaintiff, Ali, and Phoenix.

78. The remainder of the Article is littered with false and misleading claims and strains to manufacture an air of impropriety around Plaintiff's business activities, resting on innuendo where facts are missing.

79. For instance, the Article states that Ali was sentenced by an Egyptian court "in absentia to 15 years in prison after he was accused of smuggling artifacts from Egypt to Switzerland." The Article notes that "the Egyptian conviction led to his arrest in Sofia, Bulgaria, under an international warrant in 2008." Before the Article was published, Phoenix and its representatives explained to the reporters that Ali had been exonerated by the Bulgarian courts. But the Article states only: "A spokesman for Phoenix said a ruling that year in the Sofia High Court had exonerated Ali Aboutaam and deemed the Egyptian accusations as 'false.'" The reporters' choice to attribute this information to Phoenix's spokesman, rather than to the Bulgarian court records from the case—which, on information and belief, the reporters never bothered to obtain or review—intentionally created the false impression that the outcome of the Bulgarian proceedings was somehow a matter of opinion or debate. In reality, the Appellate Court of Sofia, Criminal Division, concluded that "there are no facts or evidence presuming

[Ali's] involvement of any kind whatsoever in transfer of items being cultural monuments across the borders of Egypt.”

80. In addition, the Article describes Plaintiff's New York gallery—which is open to the public—as a “discreetly-lit” den of iniquity “where around 24 unlabeled objects are displayed with prices that are in the hundreds of thousands of dollars.” In reality, the objects displayed at the gallery are always labeled, and many are not priced in the hundreds of thousands of dollars. The gallery always displays more than 24 objects.

81. Despite the fact that the *Journal* and Defendant are based in New York, on information and belief, no reporter ever visited Plaintiff's gallery before printing these false characterizations, which were intended to cause readers to draw the false inference that the gallery is used for the trade of ISIS-looted objects.

82. In sum, the Article was intended to, and did in fact, convey the false implication that Plaintiff is a knowing participant in the trade in ISIS-looted antiquities.

THE ARTICLE'S IMPACT ON READERS

83. After the publication of the Article, Plaintiff engaged a research consultancy to conduct a quantitative survey to measure the Article's impact on readers.

84. The poll surveyed 400 *Journal* Readers from January 19th through 21st 2018 to determine the impact of the Article on readers' attitudes and opinions toward Plaintiff, Ali, and Phoenix.

85. The results of the survey show that the Article strongly suggests to readers that Plaintiff, Ali, and Phoenix are helping to finance ISIS through the sale of looted antiquities.

86. As a result, readers have highly negative perceptions of Plaintiff's character and reputation and are much less likely to consider doing business with Plaintiff or his company.

87. After reading the Article, nearly 3 in 4 readers (73%) agree that the Aboutaam brothers have helped finance ISIS by selling looted antiquities.

88. Seventy-seven percent of readers believe based on the Article that Plaintiff and Ali are involved in running a criminal enterprise. Seventy-one percent believe that they have connections to ISIS.

89. Readers found the article highly convincing (91%), and more than 4 in 5 say that based on how the article was written, the writer and publisher clearly believe that Ali and Plaintiff are both guilty of aiding ISIS (81%), and that it was the intention of the writers and publisher for readers to believe the same (83%).

90. Eighty-one percent of readers now question Phoenix's company history, and more than two-thirds say that it made both Plaintiff and Ali seem less trustworthy (69%).

91. Sixty-eight percent of readers say that, after reading the Article, they would not be willing to do business with Plaintiff or Ali.

PLAINTIFF'S DAMAGES

92. As a proximate result of Defendant's Article, Plaintiff has suffered personal humiliation and has been exposed to public contempt, ridicule, or disgrace, which has induced an evil opinion of him in the minds of many people.

93. Indeed, Internet comments about the Article are replete with vicious harassment and violent threats against Plaintiff.

94. Defendant's publication of this Article has caused tremendous damage to Plaintiff's business and livelihood.

95. Prior to the Article's publication, Plaintiff was widely regarded as a leading dealer in precious antiquities. He had sold important pieces to major public museums, university museums, and private art collectors

96. In the immediate aftermath of the Article—whose contents were republished in several trade publications that are widely circulated within the antiquities world—Plaintiff's business prospects were significantly damaged.

97. The Article has also been cited to a Justice of this Court as the asserted basis for an Order to Show Cause seeking to remove a sculpture from Phoenix's custody pending resolution of an ownership dispute. *See Arnon Ltd (IOM) v. Beierwaltes, et al.*, Index No. 650371/13 (Sup. Ct. N.Y. Cnty.). Exemplifying the severe disruption to Plaintiff's business the Article is causing, the plaintiff in that action, the sculpture's alleged buyer, has contended—on the basis of the Article alone—that “[g]iven the many international investigations to which Phoenix and its principals are subject, the risk that Phoenix's inventory of artworks is seized—either to satisfy a penalty or merely for investigative purposes and audit—is manifest.” *Id.*, NYSECF No. 262, at 6.

98. Plaintiff's standing in the international antiquities world, where he had previously been regarded as a leading dealer with a reputation for integrity, has also been deeply damaged.

FIRST CAUSE OF ACTION

Libel

99. Plaintiff repeats and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

100. The Article was a written statement containing assertions of fact concerning Plaintiff.

101. Defendant published the Article with common-law ordinary malice and with constitutional "actual malice": intentionally, maliciously, wantonly, with knowledge of its falsity or with reckless disregard for its truth or falsity, and with the intent to harm Plaintiff's reputation and/or to undercut the credibility and reliability of Plaintiff.

102. The Article's publication was grossly irresponsible, as the Article was reported without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

103. For example, *all of the allegations* about ongoing investigations into connections between Plaintiff and ISIS looting are anonymously sourced or unattributed. The article does not even attempt to explain why anonymous sources were used or provide any context for the lack of attribution. This violates the Society of Professional Journalists' Code of Ethics, which directs reporters to "[r]eserve anonymity for sources who may face danger, retribution or other harm, and have information that cannot be

obtained elsewhere” and to “[e]xplain why anonymity was granted.”⁸ Similarly, the NYU Journalism Handbook states that reporters should “avoid using unidentified sources whenever possible” and to offer anonymity as “a last resort after repeated attempts to go on the record have failed.”⁹

104. Moreover, Defendant and the authors of the Article knew or should have known that their sources were unreliable. Faucon’s written questions to Phoenix make clear that the reporters’ sources had provided demonstrably false information, including without limitation:

- a. One or more unidentified sources told the reporters that Phoenix Ali and/or Plaintiff had traded antiquities that came from Manbij in Syria and Mosul in Iraq and were excavated while these areas were under ISIS control. Phoenix informed the reporters that this information was untrue, and it was never printed.
- b. One or more unidentified sources told the reporters that the Phoenix pieces seized by Belgian customs in 2016 had been looted from Mari in Syria after the area came under ISIS control. Phoenix informed that reporters that this information was untrue and that the items in question had been sold in Europe before ISIS gained control of the area in which Mari is located. The information was never printed.
- c. One or more unidentified sources told the reporters that Phoenix and/or Plaintiff was being investigated for selling artifacts excavated from ISIS territories to a specific art dealer in New York, whom the reporters identified by name. After being informed that neither Phoenix nor Plaintiff had ever sold anything to this individual, the reporters never printed the claim.

⁸ Society of Professional Journalists, *SPJ Code of Ethics* (rev. Sept. 6, 2014), <http://www.spj.org/ethicscode.asp>.

⁹ NYU Journalism, *NYU Journalism Handbook: Ethics, Law & Good Practice: Human Sources* (Aug. 30, 2007), <https://journalism.nyu.edu/publishing/ethics-handbook/human-sources/>. As examples of situations in which anonymous sourcing may be permissible, the NYU handbook provides the following scenarios: a source admits committing a crime, and publishing his name could land him in prison; a source begs anonymity because public exposure could embarrass the source or jeopardize the source’s job; an illegal immigrant is afraid to speak out for fear of being deported.” *Id.*

- d. One or more unidentified sources told the reporters that Phoenix, Plaintiff and/or Ali had displayed statuettes “in the past 2 years” from Manbij and Mosul, while those areas were under ISIS control. After being informed that this verifiable claim was untrue, the reporters declined to print it.
- e. One or more unidentified sources told the reporters that Ali and/or Plaintiff were suspected of working with a specific logistics operator who transports ISIS-looted goods. After being informed that this information was untrue, the reporters declined to print it.
- f. One or more unidentified sources told the reporters that Ali and/or Plaintiff were suspected of working with a particular dealer who is known to sell ISIS-looted goods, and that documents detailing this relationship existed. After being told that neither Phoenix, Ali, nor Plaintiff had any business relationship with this individual and that Plaintiff and Ali merely recognized the individual in question as having the same name as a person they had known 20 years earlier—and after being asked for copies of the documents allegedly proving a more recent business relationship—the reporters dropped the topic and declined to print anything about it.
- g. One or more unidentified sources told the reporters that a specific enterprise with which Ali is associated buys ISIS-looted goods from a member of the Aboutaam family in Lebanon. After being informed that this information was untrue, the reporters declined to print it.

105. On information and belief, the reporters relied on these same individuals to source the Article, despite knowing that they were unreliable. The reporters also failed to follow up on information provided by Phoenix to refute the claims of their sources, to review documents described by Phoenix in its written responses, to interview knowledgeable persons discussed in Phoenix’s written responses, or to visit Plaintiff’s gallery before describing it falsely in print.

106. The Article contained false statements of fact, including:

- a. The Article states that Ali's driver was arrested immediately after a search of his car turned up an oil lamp for which provenance documentation could not be produced. In fact, the driver was not arrested and went home after the vehicle search concluded.
- b. The Article states that Ali's wife was arrested and detained because she failed to "produce the proper documentation of ownership and origin for some objects" she had removed from a warehouse at the Geneva free ports. In fact, the detention occurred after Ali's wife moved objects from her own storage facility—not located at the Geneva free ports—and declined to respond to questions about where she had relocated it. She was later released and was not charged with any wrongdoing. The Article's false assertion that she was detained for "failing to produce the proper documentation of ownership and origin" for antiquities falsely suggested—in the context of an article about alleged ties between the Aboutaam family and ISIS-looted objects—that the detention was the result of a failure to prove that the objects in question had not been looted by ISIS. In reality, the objects in question had been in the storage unit from which Ali's wife moved them since before the outbreak of the present conflict in Syria.
- c. The Article falsely states that Plaintiff is being investigated by U.S. Immigration and Customs Enforcement in connection with the trade in ISIS-looted antiquities.
- d. The Article describes Plaintiff's New York gallery as a "discreetly-lit" place "where around 24 unlabeled objects are displayed with prices that are in the hundreds of thousands of dollars." In reality, the objects displayed at the gallery are always labeled, and many are not priced in the hundreds of thousands of dollars. The gallery always displays more than 24 objects.

107. These false statements are defamatory.

108. These defamatory statements resulted in injury to Plaintiff, including humiliation, damage to his reputation, and harm to his business and livelihood.

SECOND CAUSE OF ACTION
Defamation by Implication

109. Plaintiff repeats and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

110. The Article contained factual statements that, while substantially true taken separately, can, when taken together and in context, be reasonably read to impart a defamatory inference and to affirmatively suggest that the authors intended or endorsed that inference. Such statements include:

- a. The Article's headline and sub-headline, both in print and online were intended to lead readers to draw the false inference that Plaintiff is being investigated for direct participation in looting by the Islamic State, and would likely cause a reasonable reader to draw such an inference. Indeed, the online comments concerning the Article posted publicly on the *Journal's* website make clear that many readers have already concluded that Plaintiff supports ISIS, which is utterly false.
- b. The layout of the Article, including Defendant's choice to prominently display a large photograph of Plaintiff next to the damaged ruins of Palmyra and a ring and gold coin linked to ISIS looting—despite the absence of any factual connection between these objects and Plaintiff—was intended to cause readers to draw the false inference that Plaintiff is involved in looting by ISIS.
- c. The Article contains an anecdote about the stop and search by Swiss law enforcement of a vehicle, resulting in the discovery of an “ancient oil lamp.” The Article omits that the lamp belonged to a passenger in the car who had nothing to do with Plaintiff and who admitted that the lamp was his. This deliberately incomplete anecdote, appearing directly under a headline connecting Plaintiff with ISIS-looted antiquities and accompanied by a false claim that the driver was immediately arrested, was intended to cause readers to falsely infer that the oil lamp belonged to Plaintiff, Ali, and/or Phoenix and had been looted by ISIS.

- d. The Article refers to investigations of Plaintiff supposedly being conducted by authorities in multiple countries concerning the trade in ISIS-looted antiquities. But the Article omits that Phoenix, Ali, and Plaintiff have never been contacted about any such investigation and had specifically disclaimed any knowledge of such an investigation. This omission is intended to convey to readers the false implication that Plaintiff admits that such investigations exist targeting him.
- e. The Article artfully transitions from describing alleged investigations of Plaintiff connected to looted antiquities into a discussion of civil forfeiture actions against objects associated with ISIS. The civil forfeiture actions mentioned in the Article having *nothing* to do with Plaintiff, Ali, or Phoenix, and concern objects completely unrelated to them and their business. Yet this text, along with a photograph of a gold ring allegedly looted by ISIS (and identified as such in a caption), appears next to a large photograph of Plaintiff. This layout is intended to convey the false inference that a connection exists between the ISIS-looted objects subject to forfeiture proceedings and Plaintiff and Ali.
- f. The Article states that Ali's "driver told investigators that he had traveled several times to New York's John F. Kennedy International Airport, carrying small antiquities in his hand luggage, and that a person working with the Aboutaams was there to greet him." The paragraph completely omits critical context for this statement that Phoenix had provided in an April 20, 2017 letter, namely that (1) "it is common practice to transport small, high-value objects by hand-carry in order to avoid the risks associated with shipping items via air cargo (mishandling of the crate, theft, loss, delays, etc.);" (2) all of Phoenix's hand carry exports and imports were fully documented and processed through Swiss customs and declared at U.S. customs; and (3) the individual who met Phoenix's employee at the airport in New York was an independent customs broker engaged in the regular business of processing hand-carried imports. The Article thus deliberately avoids disclosing to readers that the importation practice being described is commonplace, that the items in question were all appropriately declared and processed, and that the "person working with the Aboutaams" who processed the paperwork for the items at

JFK was an independent customs broker who was not employed by Plaintiff, Ali, or Phoenix. The relevant language was chosen to evoke the Article's previous discussion of how unnamed "dealers use courier services and air cargo to smuggle antiques into U.S. airports and are increasingly stashing objects in passenger luggage." The Article's deliberate omission of important context and careful choice of words to *avoid* telling readers about the involvement of a legitimate and independent broker, and to instead raise the specter of false similarities between Plaintiff's activities and those of smugglers, show that the Article's authors intended to falsely imply that the practice described was part of illegal smuggling of ISIS's looted objects by Plaintiff, Ali, and Phoenix.

- g. The Article states that Ali was sentenced by an Egyptian court "in absentia to 15 years in prison after he was accused of smuggling artifacts from Egypt to Switzerland." The Article notes that "the Egyptian conviction led to his arrest in Sofia, Bulgaria, under an international warrant in 2008." Prior to publication of the Article, Phoenix and its representatives had confirmed the arrest and explained to the reporters that Ali had been exonerated by the Bulgarian courts. But the Article stated only: "A spokesman for Phoenix said a ruling that year in the Sofia High Court had exonerated Ali Aboutaam and deemed the Egyptian accusations as 'false.'" The reporters' choice to attribute this information to Phoenix's spokesman, rather than to the Bulgarian court records from the case—which, upon information and belief, the reporters never bothered to obtain or review—intentionally created the false impression that the outcome of the Bulgarian proceedings was somehow a matter of opinion or dispute.
- h. The Article describes Plaintiff's public New York gallery—which is open to anyone from 9:30 a.m. to 5:30 p.m.—as a "discreetly-lit" den of iniquity where unlabeled, astronomically expensive items are sold to visitors who must be buzzed in. This language was intentionally used to convey the false impression, bolstered by the Article as a whole, that illegal activity, including dealing in ISIS-looted objects, is occurring at Plaintiff's gallery.

111. According to the opinion survey results attached in Exhibit A, more than four in five readers concluded based on the Article that its writers and publisher clearly

believe that Ali and Plaintiff are both guilty of aiding ISIS and that it was the intention of the writers and publisher for readers to believe the same

112. This defamation by implication caused injury to Plaintiff.

WHEREFORE, Plaintiff demands judgment as follows:

- a. On each cause of action, directing Defendant to pay to plaintiff compensatory (including general and special) damages in an amount to be determined at trial;
- b. On each cause of action, directing Defendant to pay to Plaintiff punitive damages in an amount to be determined at trial;
- c. Directing Defendant to publish a retraction in *The Wall Street Journal*; and
- d. Granting to Plaintiff such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York

February 7, 2018

EMERY CELLI BRINCKERHOFF
& ABADY LLP

/s/

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