

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p><i>In Re</i> Third Party Subpoena to Fusion GPS</p> <p>c/o Zuckerman Spaeder LLP</p> <p>1800 M Street, NW</p> <p>Washington, D.C. 20036</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Misc. Case No. _____</p>
<p>Aleksej Gubarev, XBT Holding S.A., and Webzilla, Inc.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Buzzfeed, Inc. and Ben Smith,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 17-cv-60426-UU</p>

**NON-PARTY FUSION GPS’S MOTION TO QUASH THIRD-PARTY SUBPOENA OR,
IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER**

Pursuant to Rules 45 and 26 of the Federal Rules of Civil Procedure, non-party Fusion GPS (“Fusion”), by undersigned counsel, respectfully moves this Court to quash the subpoena compelling its appearance in the District of Columbia on September 6, 2017 for Rule 30(b)(6) testimony and to produce documents.¹ The subpoena was served on Fusion by Plaintiffs, Aleksej Gubarev, XBT Holding S.A., and Webzilla, Inc., in their defamation lawsuit against BuzzFeed, *Gubarev v. BuzzFeed*, Case No. 17-cv-60426 (S.D. Fla.). Alternatively, Fusion moves this Court for a protective order limiting the scope of the subpoena and protecting Fusion from having to respond to questions at a deposition or produce documents, except for documents and testimony to which Fusion has agreed: its pre-publication communications with BuzzFeed concerning the

¹ Pursuant to Federal Rule of Civil Procedure 45(d)(3)(A), Fusion files this motion in this Court as the court for the district where compliance is required.

publication of the Trump Dossier. As grounds therefore, Fusion relies upon the memorandum of points and authorities and the accompanying exhibits filed contemporaneously herewith.

Fusion also requests relief in the form of reasonable attorneys' fees, pursuant to Fed. R. Civ. P. 45(d)(1).

Undersigned counsel communicated with counsel for Plaintiffs, Evan Fray-Witzer, to seek to narrow the discovery requests. Over the course of multiple communications, counsel attempted to resolve the issues presented by the subpoena and thereby obviate the need for this Motion. Although Plaintiffs initially narrowed the subpoena's schedules to some extent, no resolution was reached as to the revised schedules, necessitating the filing of this motion.

Dated: August 31, 2017

Respectfully submitted,

/s/ Steven M. Salky

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2017, the foregoing was served on all counsel of record in *Gubarev v. BuzzFeed*, Case No. 17-cv-60426 (S.D. Fla.) via electronic mail.

/s/ Rachel F. Cotton

Rachel F. Cotton

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Aleksej Gubarev, XBT Holding S.A., and)
Webzilla, Inc.)

Plaintiffs,)

v.)

Buzzfeed, Inc and Ben Smith.,)

Defendants.)

Case No. 17-cv-60426-UU

[PROPOSED] ORDER

Upon consideration of Non-Party Fusion GPS's Motion to Quash Subpoena or, in the Alternative, for a Protective Order, and the entire record herein, it is hereby

ORDERED that the Motion to Quash is **GRANTED**.

It is **SO ORDERED** this ____ day of _____ 2017.

UNITED STATES DISTRICT JUDGE

Appendix to Proposed Order

Pursuant to Local Rule 7(k), the following attorneys are entitled to be notified of entry of this Order:

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
NON-PARTY FUSION GPS’S MOTION TO QUASH SUBPOENA OR, IN THE
ALTERNATIVE, FOR A PROTECTIVE ORDER**

Fusion GPS (“Fusion”) is a strategic intelligence firm headquartered in the District of Columbia founded by experienced investigative journalists. It provides research and investigation into matters of public concern, including “opposition research” on political candidates. Last year, Fusion was engaged to research then-candidate Donald Trump’s qualifications for public office and his ties to Russia—an assignment that went to the heart of protected First Amendment activity. This engagement led to the creation of a series of memoranda that have become known as the “Trump Dossier.” Now, Fusion has been served with a third-party subpoena (for a September 6 appearance in the District of Columbia) in connection with defamation litigation pending in the Southern District of Florida. The subpoena

seeks to compel Fusion to disclose confidential information related to the creation of the Trump Dossier, including sources, client identity, and internal documents and communications.

Fusion seeks an order quashing the subpoena or, in the alternative, granting a protective order against most of its demands. Not only is this information sought privileged under the First Amendment, it is also not relevant to the underlying case. The underlying defamation case turns on BuzzFeed's state of mind when it published the Trump Dossier (*i.e.*, whether BuzzFeed published it negligently or with actual malice) and whether any reporting privileges attach to its publication (*i.e.*, whether the fair report privilege and/or neutral report privilege protected the publication from liability). How the Trump Dossier was created, including Fusion's engagement and involvement, is of no relevance whatsoever. Despite this lack of relevance, the subpoena seeks to burden Fusion—a nonparty—with searching for and producing 11 categories of documents and testifying in a Rule 30(b)(6) deposition about 19 different subjects that are either privileged or unrelated to the issues in the underlying case—or both.¹

I. Background

a. The Trump Dossier

As has been reported extensively in the media, during the 2016 presidential race, Fusion was hired to research and investigate then-candidate Donald J. Trump. As part of the engagement, Fusion hired Christopher Steele to investigate Trump's ties to Russia. In the course of that work, Mr. Steele produced a series of seventeen (17) memoranda on Trump and Russia.

¹ Plaintiffs' subpoena contains two schedules: one listing 11 categories of requested documents and one listing 19 Areas of Inquiry for a Rule 30(b)(6) deposition. The original schedules focused on the Dossier as a whole. *See* Ex. 1 (Subpoena and Original Schedules). After counsel for Fusion spoke to Plaintiffs' counsel on August 21, 2017, Plaintiffs' counsel amended the schedules to focus primarily on the particular memorandum that contains the allegedly defamatory statements about Plaintiffs (the "December Memorandum"). *See* Ex. 2 (Amended Schedules); Ex. 3 (Email from Evan Fray-Witzer to Steven Salky (Aug. 24, 2017)). Subsequently, counsel for Fusion sent specific objections and an explanation of applicable privileges to Plaintiffs' counsel, *see* Ex. 4 (Email from Steven Salky to Evan Fray-Witzer (Aug. 25, 2017)), but Plaintiffs' counsel declined to further revise the amended schedules. *See* Ex. 5 (Email from Evan Fray-Witzer to Steven Salky (Aug. 26, 2017)).

This series of memoranda has become known as the “Trump Dossier” (hereinafter referred to as the “Trump Dossier” or “Dossier”).² All but one of the memoranda in the Dossier are dated prior to the 2016 presidential election. The single post-election memorandum, which is dated December 13, 2017, is the only memorandum to mention Plaintiffs (“December Memorandum”). BuzzFeed published the Trump Dossier on its website on January 10, 2017.

b. Plaintiffs have filed two lawsuits related to the same alleged defamation.

Plaintiffs have filed two parallel defamation lawsuits—one in Florida and one in England—alleging that they were defamed by statements in the December Memorandum. *See* Ex. 6 (S.D. Fla. Compl.); Ex. 7 (Claim, High Court of Justice, Queen’s Bench Division). In the Florida lawsuit, from which this subpoena arises, Plaintiffs have sued BuzzFeed and its editor-in-chief for the publication of the Dossier, particularly two allegedly defamatory sentences in the December Memorandum. Those sentences state that an unnamed source claimed that “XBT/Webzilla and its affiliates” had used “botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct ‘altering operations’ against the Democratic Party leadership. Entities linked to one Aleksei GUBAROV were involved and he and another hacking expert, both recruited under duress, by the FSB, Seva KAPSUGOVICH, were significant players in this operation.” *See* Ex. 6 (Compl. ¶ 26).³ Plaintiffs allege that BuzzFeed published these statements

² In their subpoena, Plaintiffs define the Dossier as follows:

[T]he term ‘Dossier’ shall mean both the individual memos and the compilation of said memos as a unified whole. The ‘Dossier’ refers to those memos and the compilation of such memos which were prepared by, for, at the direction or behest of, or for the benefit of Fusion GPS and which related to alleged connections between Donald Trump and Russia. For the avoidance of confusion, the term ‘Dossier’ is intended to mean those materials widely-referred to as the ‘Trump Dossier,’ which was published by BuzzFeed

See Ex. 2.

³ The full paragraph from the December Memorandum is as follows:

with the knowledge that at least certain portions of the Trump Dossier were untrue, thereby entitling them to recover substantial damages. *See id.* (Compl. ¶¶ 2, 29-32, 51).

In a separate claim brought in the High Court of Justice in London, England, Plaintiffs⁴ sue Christopher Steele and his company, Orbis Intelligence LTD, who they allege authored and prepared the memoranda that comprise the Trump Dossier, including the allegedly false sentences about Plaintiffs. *See Ex. 7* (Claim ¶ 8.2).

- c. In the Florida litigation, BuzzFeed defends primarily on the basis of fair and neutral reporting privileges.

Buzzfeed and Smith admit that they published the Trump Dossier on January 10, 2017, and defend primarily on the basis that the fair report and neutral report privileges protect their accurate and disinterested publication as either an official report or a report of a responsible organization on a matter of public interest about a public figure. *See Ex. 8* (Am. Answer of Def.'s BuzzFeed, Inc. and Ben Smith to Pls.' Compl. for Damages at 9, *Gubarev v. BuzzFeed, Inc.*, No. 17-cv-60426-UU (S.D. Fla. June 29, 2017)). Relatedly, they also defend on the basis

[redacted] reported that over the period March-September 2016 a company called XBT/Webzilla and its affiliates had been using botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct 'altering operations' against the Democratic Party leadership. Entities linked to one Aleksei GUBAROV were involved and he and another hacking expert, both recruited under duress, by the FSB, Seva KAPSUGOVICH, were significant players in this operation. In Prague, COHEN agreed contingency plans for various scenarios to protect the operations, but in particular what was to be done in the event that Hillary Clinton won the presidency. It was important in this event that all cash payments owed were made quickly and discreetly and that cyber and other operators were stood down/able to go effectively to ground to cover their traces. (We reported earlier that the involvement of political operatives Paul MANAFORT and Carter PAGE in the secret TRUMP-Kremlin liaison had been exposed in the media in the run-up to Prague and that damage limitation of these also was discussed by COHEN with the Kremlin representatives.)

See Ex. 6 (Compl. ¶ 26).

⁴ Webzilla B.V. and Webzilla Limited appear as plaintiffs in the England case. Webzilla, Inc. appears in the Florida case.

that they lacked the requisite malice to be held liable, as the plaintiffs are public figures. *See id.* at 10.

II. Legal Standards

Federal Rule of Civil Procedure 45(d)(3) requires the Court to quash or modify a subpoena when the subpoena either “requires disclosure of privileged or other protected matter, if no exception or waiver applies” or “subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(iii)-(iv). Rule 45 also requires that nonparties be protected “from significant expense resulting from compliance” with a subpoena. Fed. R. Civ. P. 45(d)(2)(B)(ii).

Rule 26(b)(2) requires a court to limit discovery if the discovery sought is “unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive” or if the discovery is not “relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(2)(C)(i), (iii). A court may also issue a protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: forbidding the disclosure of discovery, specifying terms including time and place or the allocation of expenses for the disclosure of discovery, forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters.” Fed. R. Civ. P. 26(c)(1).

III. Plaintiffs’ Subpoena Imposes an Undue Burden and Expense on Fusion

Plaintiffs have a responsibility to “avoid imposing undue burden or expense on” a nonparty subject to a subpoena. Fed. R. Civ. P. 45(d)(1). In assessing whether a burden is undue under Rule 45, the court looks to the factors articulated in Rule 26(b) of the Federal Rules of Civil Procedure. *Watts v. S.E.C.*, 482 F.3d 501, 509 (D.C. Cir. 2007). Rule 26 generally limits discovery to “any nonprivileged matter that is relevant to any party’s claim or defense and

proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). In evaluating discovery requests, a court must consider “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” *Id.*; *see also Dell Inc. v. DeCosta*, 233 F. Supp. 3d 1, 3 (D.D.C. 2017) (noting the “undue burden” analysis requires the court to “balance the interest served by demanding compliance with the subpoena against the interests furthered by quashing it” and “courts should consider relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed” (internal quotation marks omitted)). A Rule 45 subpoena that seeks information that is not relevant to the underlying case or that is overbroad imposes an “undue burden” on a party. *See, e.g., Singletary v. Sterling Transp. Co.*, 289 F.R.D. 237, 241 (E.D. Va. 2012); *see also U.S. v. Kellogg Brown & Root Servs., Inc.*, 284 F.R.D. 22, 36-37 (D.D.C. 2012) (noting that “[c]ourts may deny motions to compel if they find that the information requested is irrelevant” or deny discovery on “issues that stray too far away from the core facts of the case”). Courts may also consider whether compliance with a Rule 45 subpoena implicates privacy interests and whether the sought-after evidence is more readily available from another source. *See, e.g., Nw. Mem’l Hosp. v. Ashcroft*, 362 F.3d 923, 927-32 (7th Cir. 2004).

a. Plaintiffs’ subpoena primarily seeks discovery that is not relevant.

The underlying case is about BuzzFeed’s publication of the Dossier, and, particularly, the two allegedly defamatory sentences in the December Memorandum. At issue will be whether Plaintiffs can establish that BuzzFeed published the December Memorandum negligently or with malice (depending on whether they are considered public figures) and that no reporting privilege

protects the publication from liability. Most of the discovery sought by the subpoena is not relevant to these issues and instead seeks only to discover Fusion's activities, which are not at all germane to Plaintiffs' claim. For instance, the subpoena seeks discovery about Fusion's ownership and operation as well as its engagement or hiring (Ex. 2, (Areas of Inquiry 1, 2, & 6)), Fusion's clients and payments (*id.*, (Areas of Inquiry 3 & 7)), and Fusion's engagement of Christopher Steele and/or other contractors (*id.*, (Areas of Inquiry 4 & 10)). None of these categories of information even reference the December Memorandum, let alone go to BuzzFeed's state of mind or the applicability of any reporting privilege. Even when the subpoena's inquiries mention the December Memorandum, they still focus on Fusion's conduct, not on subjects that could lead to evidence about BuzzFeed's conduct or state of mind. *See id.* ((Areas of Inquiry 8, 9, & 11) (focusing on steps taken by Fusion, or others working for it, to obtain information that led to the creation of the December Memorandum, the preparation of the December Memorandum, and efforts to verify the statements in the December Memorandum) and Doc. Req. 10 (all communications with Christopher Steele concerning the Dossier)).

Likewise, Fusion's clients' identity and the identity of the Dossier's sources are also irrelevant to the underlying case. The identity of Fusion's clients, *id.* (Area of Inquiry 3), does not bear remotely on the issues in the case. BuzzFeed did not know the identity of Fusion's clients when it published the Dossier, *see* Ex. 9 (Fusion Decl. ¶ 9), so the clients' identity can have no relevance to BuzzFeed's state of mind in publishing the Dossier and also does not help Plaintiffs establish their claim or contest any of BuzzFeed's defenses.

Similarly, the subpoena's requests for the sources of information in the December Memorandum are also not relevant to Plaintiffs' claim. Ex. 2 (Area of Inquiry No. 5 & Doc. Reqs. 1, 7-9). Plaintiffs brought their defamation case explicitly on the ground that the statement

in the December Memorandum about them is false. Ex. 6 (Compl. ¶ 27) (“Not a single portion of this statement [i.e., the sentences in the December Memorandum that reference Plaintiffs] has any basis in fact whatsoever.”). Thus, Plaintiffs claim to know the statement to be false and apparently can establish its falsity without knowing the identity of any source. Additionally, to the extent that BuzzFeed—which has not sought discovery from Fusion—sought to establish the truth of the defamatory statements, it could do so independently and without relying on the identity of the confidential sources. The identity of a source is sometimes relevant in defamation litigation to the state of mind of the publisher, but, here, BuzzFeed explicitly acknowledged that it did not know the truth or falsity of the contents of the Dossier when it published the Dossier. *See, e.g.,* Ken Bensinger et al., *These Reports Allege Trump Has Deep Ties to Russia* (Jan. 10, 2017, 5:20 PM), https://www.buzzfeed.com/kenbensinger/these-reports-allege-trump-has-deep-ties-to-russia?utm_term=.vijQWebMx#.sg3LevaVo. Thus, the identities of the sources cannot be relevant to BuzzFeed’s state of mind when it published the Dossier.

In fact, the only remotely relevant discovery sought through this unduly burdensome third party subpoena—discovery of the pre-publication communications with BuzzFeed and Ben Smith concerning the publication of the Dossier—could be sought from BuzzFeed, a party to the litigation, rather than by burdening Fusion, a nonparty, with the request.⁵ None of the other discovery requests are targeted to discover evidence that is relevant to a defamation claim against BuzzFeed and Ben Smith. The subpoena requests may be the subject of Plaintiffs’ curiosity, but they are not relevant to Plaintiffs’ case and, accordingly, should not be permitted.

⁵ Fusion has set forth both General and Specific Objections to Document Requests 5 and 6, which seek “all communications between Fusion GPS and BuzzFeed concerning the Dossier” and “all communications between Fusion GPS and Ben Smith concerning the Dossier.” *See* Ex. 10 (Objections of Fusion GPS to R. 45 Subpoena for Docs.). As indicated in its Objections, Fusion will, subject to its objections, produce pre-publication communications, if any, with BuzzFeed or Ben Smith concerning BuzzFeed’s publication of the Dossier. *Id.*

- b. Plaintiffs' subpoena seeks discovery of information that is already known to Plaintiffs and it is therefore unduly burdensome.

Plaintiffs already know from Christopher Steele's responses in the case in England certain significant information they now seek from Fusion. For example, in his Defence (attached hereto as Ex. 11), Steele has described what led to the creation and preparation of the December Memorandum, about which Plaintiffs now seek to depose Fusion. *See* Ex. 2 (Area of Inquiry 9). Steele also describes the provision of the Dossier and/or the December Memorandum to a senior U.K. government official and to Senator John McCain because of its importance to matters of national security. Ex. 11 (Steele Defence ¶¶ 36-39). The subpoena nonetheless commands Fusion to produce documents about (Ex. 2 (Doc. Req. 11)) and to testify about (*id.* (Area of Inquiry 15)) these events. Compelling Fusion, a third party, to search for documents and prepare for a Rule 30(b)(6) deposition on matters already known to Plaintiffs is clearly "unduly burdensome."

- c. The subpoena is a fishing expedition into any information that Fusion has about Plaintiffs.

The subpoena also seeks discovery that is not limited to the Dossier or the December Memorandum, but rather seeks to uncover anything that Fusion has ever known about Plaintiffs. Document Requests 2, 3, and 4 seek all documents "concerning" Plaintiffs and Document Requests 7, 8, and 9 seek all documents "reflecting or relating to the sources of information concerning" Plaintiffs. *Id.* Plaintiffs also seek to depose Fusion about "any and all information concerning" Plaintiffs. *See id.* (Areas of Inquiry 17, 18, & 19). These requests contain no limitation whatsoever in context, time, or nature, and contain no connection to the allegedly defamatory statements at issue in the underlying case. In other words, Plaintiffs want to rummage through Fusion's files for any piece of paper that may mention them, in hopes of

finding something useful or interesting. Such requests are the quintessential definition of a “fishing expedition” and would unduly burden the limited staff and resources of Fusion, a nonparty to this litigation. Such discovery is overbroad, unduly burdensome, unlikely to discover any evidence relevant to the underlying case, and should be denied.

IV. Materials Sought by the Subpoena Are Protected by the First Amendment

In addition to being unduly burdensome and seeking discovery that is not relevant to their claim, Plaintiffs’ subpoena intrudes significantly on Fusion’s and its clients’ First Amendment rights and activities. The First Amendment protects against the discovery sought by Plaintiffs.

a. The First Amendment protects Fusion’s and its clients’ activities.

Fusion, on behalf of and in association with its clients, often engages in research on political issues of public concern and candidates running for public office. As such, Fusion’s activities “serve as a vehicle for political expression and association,” which are protected by the First Amendment. *United States v. Garde*, 673 F. Supp. 604, 607 (D.D.C. 1987); *see also Perry v. Schwarzenegger*, 591 F.3d 1147, 1159 (9th Cir. 2010) (“‘The First Amendment protects political association as well as political expression,’ and the ‘freedom to associate with others for the common advancement of political beliefs and ideas is ... protected by the First and Fourteenth Amendments.’” (quoting *Buckley v. Valeo*, 424 U.S. 1, 15 (1976); *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973))). Depending on the engagement, Fusion may use its research to educate reporters, government officials, and/or political leaders about issues of public interest.

In this case, Fusion performed research into a matter of intense public concern—Russian interference in the United States 2016 presidential election—and a presidential candidate, Donald J. Trump. Such activities go to the heart of the First Amendment. *Cf. Buckley*, 424 U.S.

at 14 (noting that “debate on the qualifications of candidates” is one of the “most fundamental First Amendment activities”). Furthermore, the contents of the Dossier were raised with government officials in an effort to protect the national security interests of the United States—conduct which is also protected by the First Amendment as a “petition” to the government. *See* Ex. 11 (Steele Defence ¶¶ 20-21); *see also* *BE & K Constr. Co. v. N.L.R.B.*, 536 U.S. 516, 524-25 (2002) (“[T]he right to petition [the government is] one of the most precious of the liberties safeguarded by the Bill of Rights” because “the right is implied by the very idea of a government, republican in form.” (internal quotation marks and alteration omitted))).

b. Being forced to respond to the subpoena would chill and frustrate Fusion’s and its clients’ pursuit of political activity.

The First Amendment prohibits the extensive and intrusive discovery sought by the subpoena into Fusion’s work related to the Dossier. Document Requests 2-4 and 7-11 and Areas of Inquiry 2-12 and 15-19 directly implicate Fusion’s First Amendment rights.

In seeking the identity of Fusion’s clients, the subpoena seeks to expose political affiliations and political activities which Fusion and its clients sought to engage in anonymously and confidentially. *See, e.g., Garde*, 673 F. Supp. at 607 (refusing to compel disclosure of the identity of clients based on the First Amendment because compelled disclosure would cause organization to “lose the confidence of some of its whistleblower informants and its efforts to gather and present safety allegations will suffer”); *see also* *NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (“It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association. . . .”); *AFL-CIO v. Fed. Election Comm’n*, 333 F.3d 168, 175 (D.C. Cir. 2003) (“compelled disclosure of political affiliations and activities can impose just as substantial a burden on First Amendment rights as can direct regulation”). In seeking Fusion’s information and documents related to its

work on the Dossier, the subpoena seeks to expose highly sensitive internal documents and communications. *See, e.g., AFL-CIO*, 333 F.3d at 176-78 (“compel[led] public disclosure of an association’s confidential internal materials . . . intrudes on the privacy of association and belief guaranteed by the First Amendment as well as seriously interferes with internal group operations and effectiveness” (internal citations and quotation marks omitted)); *Perry*, 591 F.3d at 1162 (holding that discovery seeking internal campaign communications infringed on the First Amendment by chilling participation and muting the internal exchange of ideas).

As described in the attached declaration, the compelled disclosure of this information would undermine, deter, and chill Fusion’s and its clients’ rights to engage in political activity and political speech, to speak anonymously, to associate freely with others, and to petition the government. *See* Ex. 9 (Fusion Decl.). Fusion’s ability to associate with its clients, its colleagues, its contractors or subcontractors, and its employees and staff would all be chilled substantially by compelled compliance with the subpoena. *Id.* ¶¶ 11-14. Additionally, compelled disclosure of Fusion’s clients would expose those clients to significant harassment. *Id.* ¶ 16. Another declaration, attached as Exhibit 12, demonstrates that individuals and entities who work with Fusion would be unlikely to affiliate with or hire Fusion in the future if their identities were likely to be revealed in civil discovery.

c. Balancing Fusion’s and its clients’ First Amendment interests against Plaintiffs’ need for the information sought makes clear that the subpoena should be quashed.

When discovery demands implicate the First Amendment, the D.C. Circuit has mandated a balancing inquiry to determine whether the discovery should be permitted: the “First Amendment claim should be measured against the . . . need for the information sought.” *Black Panther Party v. Smith*, 661 F.2d 1243, 1266 (D.C. Cir. 1981). The court must assess (1) whether the information sought “go[es] to the heart of the lawsuit”; and (2) whether the party has

made reasonable attempts to obtain the information from alternative sources. *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., & Its Locals 1093, 558 & 25 v. Nat'l Right to Work Legal Def. & Educ. Found., Inc.*, 590 F.2d 1139, 1152 (D.C. Cir. 1978); *see also Black Panther Party*, 661 F.2d at 1267-68 (When First Amendment interests exist, “[t]he interest in disclosure will be relatively weak unless the information goes to ‘the heart of the matter,’ that is, unless it is crucial to the party’s case.” (internal citations omitted)). “Infringement of First Amendment interests must be kept to a minimum.” *Black Panther Party*, 661 F.2d at 1268.

Under that test, the discovery sought by Plaintiffs should not be allowed. Weighed against the substantial infringement of Fusion’s First Amendment rights, the subpoena seeks largely irrelevant information, as discussed above, rather than seeking “crucial” information at “the heart of” Plaintiffs’ defamation claim. Instead of focusing on BuzzFeed’s decision to publish, the subpoena wanders aimlessly into how and with whom Fusion performed its investigation and on whose behalf it did so. Other than the discovery directed to Fusion’s pre-publication communications with BuzzFeed about publishing the Dossier, virtually every other request is a constitutionally impermissible fishing expedition. Further, Plaintiffs have not demonstrated that they have sought the information from alternative sources.

Courts in this district have repeatedly held that documents and testimony of the kind that Plaintiffs seek are off-limits. *See, e.g., Wyoming v. United States Dep’t of Agric.*, 208 F.R.D. 449, 455 (D.D.C. 2002) (denying motion to compel production of documents, including internal communications and communications among various groups, from nonparty witnesses on associational privilege grounds where documents sought were not highly relevant and government had not reasonably attempted to obtain information elsewhere); *Int’l Action Ctr. v. United States*, 207 F.R.D. 1, 3 (D.D.C. 2002) (rejecting discovery requests for information about

political action groups’ activities, the identities of persons who associated with them, information related to contributors and others, recognizing that such information went to “the essence of First Amendment freedoms”); *Garde*, 673 F. Supp. at 607 (refusing to enforce subpoena seeking information, including client identities, in possession of whistleblower organization where government had not “carefully and conscientiously explored” alternative means).

Such an outcome is particularly necessary here, given that Fusion is not a party to this lawsuit. Non-party status is yet another factor that weighs against compelling disclosure. *See, e.g., Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc.*, No. 05-2164-MLW-DWB, 2007 WL 852521, at *6 (D. Kan. Mar. 16, 2007) (“KHA is not a member to this lawsuit and this weighs against compelling disclosure.”) (citing cases).

V. Rule 45 Protects the Source(s) for the December Memorandum from Disclosure.

The subpoena explicitly seeks discovery of the sources for the information in the December Memorandum. *See* Ex. 2 (Area of Inquiry 5 & Doc. Reqs. Nos. 1, 7-9).⁶ Fusion’s First Amendment privilege prohibits such discovery. Additionally, discovery into the identity of the Dossier’s sources must be denied under the proportionality provision of Rule 26 and the balancing of the interests required by Rule 45.

As is evident from the text of the Dossier and the reaction to its publication, its sources are intensely confidential. Disclosure of the identity of the sources could put those individuals in grave and life-threatening danger. *See* Ex. 9 (Fusion Decl. ¶ 17) (“[I]f the identity of the confidential sources in the Trump Dossier were revealed, I believe that their lives would be put in immediate danger.”). The U.S. State Department has recognized that people perceived as whistleblowers or critics of the Russian government have been murdered in Russia. *See, e.g.,*

⁶ Document Requests 7-9 are overbroad, as they seek information about sources regarding Plaintiffs unconnected to the December Memorandum. But these requests would also require the production of documents as to the sources of the information about Plaintiffs in the December Memorandum.

U.S. Dep't of State, *Conviction of Five of Those Responsible for the Murder of Boris Nemtsov*, June 30, 2017, <https://www.state.gov/r/pa/prs/ps/2017/06/272311.htm> (noting the conviction of some of the individuals related to the assassination of a leader to the opposition to Vladimir Putin's government); U.S. Dep't of State, *10th Anniversary of the Murder of Anna Politkovskaya*, Oct. 6, 2016, <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262874.htm> (commemorating anniversary of unsolved murder of Russian journalist); U.S. State Dep't, *Russia 2016 Human Rights Report*, <https://www.state.gov/documents/organization/265678.pdf> (noting that Alexander Litvinenko, a former KGB officer turned whistleblower, was poisoned in London in what was likely an FSB operation). Under such circumstances, this Court should not permit discovery of the identities of any sources.⁷

Courts have maintained the confidentiality of sources in cases where far less is at stake. For example, in *Mgmt. Info. Techs., Inc. v. Alyeska Pipeline Serv., Co.*, 151 F.R.D. 478, 482–83 (D.D.C. 1993), discovery was sought of the identity of confidential sources within a company who had provided information to the plaintiff about the defendant company's alleged environmental abuses. The court refused to permit such discovery, holding that it was “unwilling to subject non-parties who work for [defendant] or its owner companies to the possible retaliation that frequently results when a whistleblower is identified.” *Id.* at 481-82 (reviewing studies and reports about employment consequences for whistleblowers).

⁷ A long line of cases has established an “informant’s privilege” that protects from disclosure the identity of persons who furnish information about violations of law to law enforcement officers. *See, e.g., Roviato v. United States*, 353 U.S. 53 (1957). Courts have noted that the privilege is particularly strong in civil cases where the privilege is not in tension with a defendant’s Fifth and Sixth Amendment guarantees. *See, e.g., Matter of Search of 1638 E. 2nd St., Tulsa, Okl.*, 993 F.2d 773, 775 (10th Cir. 1993). Although Plaintiffs’ subpoena to Fusion seeks the identities of sources who gave information to Christopher Steele and not to the government, Fusion notes that the U.S. government is investigating the assertions in the Dossier and it is therefore conceivable that these sources may be or may become sources of the U.S. government.

In re Domestic Drywall Antitrust Litig., 300 F.R.D. 234 (E.D. Pa. 2014), addressed a subpoena directed to a nonparty trade research group, TRG, which conducted industry research and sold confidential reports of its findings and opinions to institutional investors. The subpoena sought, among other things, information about the sources for a TRG report. *Id.* at 238. TRG argued that being forced to reveal its sources would cause it significant financial harm because its network of sources was a primary contributor of value to the company and the sources had been promised confidentiality. *Id.* at 249. The court agreed that discovery should not be permitted that would expose any source's identity. *Id.*

In *Gill v. Gulfstream Park Racing Ass'n., Inc.*, 399 F.3d 391, 402-03 (1st Cir. 2005), the First Circuit dealt with the confidentiality of informants who provided information to a private association of race tracks investigating the plaintiff's illegal horse racing practices. The First Circuit held that, under Federal Rule of Civil Procedure 26, the district court had erred by permitting the disclosure of the informants' identity without balancing "considerations of the public interest, the need for confidentiality, and privacy interests" against the appellants' asserted interest in the information, and ordered the district court to weigh those interests on remand. *Id.* at 403.

These three cases illustrate the duty of courts to protect the identities of confidential sources in a range of situations where the interests at stake do not present the kind of life-and-death situation that exists here. The danger of any disclosure of a source's identity in this case cannot be overstated; it could jeopardize the physical safety and lives of these sources. These high stakes must be weighed against the lack of relevance of the identity of the source(s) of the December Memo to Plaintiffs' claim. Because BuzzFeed explicitly acknowledged that it did not know the truth or falsity of the Dossier, the identity of the source(s) are not relevant to

Buzzfeed's state of mind when it published the December Memorandum. Under such circumstances, discovery of the identity of any source should not be permitted.

VI. Request for Cost-Shifting under Rule 45

The Court should quash the subpoena.⁸ If the Court does not quash the subpoena, Fusion requests that Plaintiffs bear the burden of the costs and expenses associated with complying with the subpoena. *See Linder v. Calero-Portocarrero*, 251 F.3d 178, 182 (D.C. Cir. 2001) (Rule 45 “ma[kes] cost shifting mandatory in all instances in which a nonparty incurs significant expense from compliance with a subpoena.”). Fusion's compliance costs include significant attorneys' fees as well as the time and resources that will have to be expended to prepare for and sit through a Rule 30(b)(6) deposition.

Conclusion

For the foregoing reasons, Fusion requests that the Court quash the subpoena at issue or, in the alternative, issue a protective order that would protect Fusion from having to produce documents and/or testify, except for the noted exception.

Dated: August 31, 2017

Respectfully submitted,

/s/ Steven M. Salky
William W. Taylor, III, (D.C. Bar No. 84194)
Steven M. Salky (D.C. Bar No. 360175)
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rcotton@zuckerman.com
Attorneys for Non-Party Fusion GPS

⁸ As previously indicated, Fusion will produce its pre-publication communications, if any, with BuzzFeed or Ben Smith concerning the publication of the Dossier, and, thereafter, at an agreed upon date other than September 6, 2017, will testify about that limited subject matter.

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ALEKSEJ GUBAREV, et al

Plaintiff

v.

Buzzfeed, Inc. and Ben Smith

Defendant

Civil Action No. 0:17-cv-60426-UU

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Fusion, GPS

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: KGlobal
2001 L Street NW, 6th Floor
Washington, DC 20036

Date and Time:

09/06/2017 9:30 am

The deposition will be recorded by this method: Stenographer and videographer

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See attached for list of deposition topics and for list of documents to be produced.

The following provisions of Fed. R. Civ. P. 45 are attached -- Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/08/2017

CLERK OF COURT

OR

/s/ Evan Fray-Witzer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Aleksej Guberav, XBT Holdings, S.A., and Webzilla, Inc.

, who issues or requests this subpoena, are: Evan Fray-Witzer, Ciampa Fray-Witzer, 20 Park Plaza, Suite 505, Boston, MA 02116 (617) 426-0000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 0:17-cv-60426-UU

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A – 30(b)(6) AREAS OF INQUIRY

Definitions

“Dossier.” For purposes of this request, the term “Dossier” shall mean both the individual memos and the compilation of said memos as a unified whole. The “Dossier” refers to those memos and the compilation of such memos which were prepared by, for, at the direction or behest of, or for the benefit of Fusion GPS and which related to alleged connections between Donald Trump and Russia. For the avoidance of confusion, the term “Dossier” is intended to mean those materials widely-referred to as the “Trump Dossier,” which was published by Buzzfeed, a copy of which is attached hereto.

“Fusion GPS.” For the purposes of this request, the term “Fusion GPS” shall refer to Fusion GPS, its owners, operators, directors, officers, managers, employees, agents, contractors and freelancers.

Areas of Inquiry

1. General background concerning Fusion GPS, its ownership, the scope of its business, and the operation of the same.
2. Fusion GPS’s engagement to conduct the research that led to the production of the Dossier.
3. Fusion GPS’s client or clients in connection with the Dossier.
4. Fusion GPS’s use and/or engagement of contractors or subcontractors in connection with the Dossier.
5. The sources of information for the Dossier.
6. The hiring of Fusion GPS to compile or produce the Dossier.
7. Payments made to Fusion GPS in connection with the Dossier.
8. All steps taken by Fusion GPS, and/or those working on its behalf to obtain information for the Dossier.
9. The preparation of the Dossier.
10. The engagement of Christopher Steele in connection with the Dossier.
11. Fusion GPS’s efforts (or lack of efforts) to verify allegations in the Dossier.
12. The provision of the dossier to media outlets.
13. Communications between Fusion GPS and Buzzfeed concerning the Dossier.

14. Communications between Fusion GPS and Ben Smith concerning the Dossier.
15. The provision of the Dossier to other third parties.
16. Communications with others concerning the dossier and the allegations contained therein.
17. Any and all information concerning Aleksey Gubarev.
18. Any and all information concerning XBT Holdings, S.A.
19. Any and all information concerning Webzilla, Inc.

SCHEDULE B – DOCUMENTS TO BE PRODUCED

Definitions

“Dossier” means both the individual memos and the compilation of said memos as a unified whole. The “Dossier” refers to those memos and the compilation of such memos which were prepared by, for, at the direction or behest of, or for the benefit of Fusion GPS and which related to alleged connections between Donald Trump and Russia. For the avoidance of confusion, the term “Dossier” is intended to mean those materials widely-referred to as the “Trump Dossier,” which was published by BuzzFeed, a copy of which is attached hereto.

“Fusion GPS” means Fusion GPS, its owners, operators, directors, officers, managers, employees, agents, contractors and freelancers.

“Concerning” means consisting of, referring to, reflecting or in any way logically or factually connected with the matter discussed. A document “concerning” a given subject is any document identifying, showing, referring to, dealing with evidencing, commenting upon, having as a subject, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting, or pertaining to that subject, including without limitation, documents referring to the presentation of other documents.

“Documents” means all writings or graphic matter or other means of preserving thought or expression of any kind, including the originals and all identical copies, whether different from the original by reasons of any notation made on such copies or otherwise including, without limitation, e-mails, letters, text messages, social media messages, correspondence, memoranda, notes, diaries, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, photographs, contracts, computer data, hard drives, correspondence, transcripts, schedules, affidavits, graphs, videotapes, tape recordings, motion pictures or other films (and all drafts, alternations, modifications, changes and amendments of any of the foregoing). It shall also include any electronically stored data on any media.

Documents Requested

1. The Dossier, in its unredacted form.
2. All documents concerning Aleksey Gubarev.
3. All documents concerning XBT Holdings, S.A.
4. All documents concerning Webzilla, Inc.
5. All communications between Fusion GPS and BuzzFeed concerning the Dossier.
6. All communications between Fusion GPS and Ben Smith concerning the Dossier.

7. All documents reflecting or relating to the sources of information concerning Aleksej Gubarev.

8. All documents reflecting or relating to the sources of information concerning XBT Holdings, Inc.

9. All documents reflecting or relating to the sources of information concerning Webzilla, Inc.

10. All communications with Christopher Steele concerning the Dossier.

11. All documents concerning the provision of the Dossier to third parties.

EXHIBIT 2

SCHEDULE A – 30(b)(6) AREAS OF INQUIRY

Definitions

“Dossier.” For purposes of this request, the term “Dossier” shall mean both the individual memos and the compilation of said memos as a unified whole. The “Dossier” refers to those memos and the compilation of such memos which were prepared by, for, at the direction or behest of, or for the benefit of Fusion GPS and which related to alleged connections between Donald Trump and Russia. For the avoidance of confusion, the term “Dossier” is intended to mean those materials widely-referred to as the “Trump Dossier,” which was published by Buzzfeed, a copy of which is attached hereto.

“December Memo.” For purposes of this request, the term “December Memo” shall mean the memo included in the Dossier dated December 13, 2016 and titled “Company Intelligence Report 2016/166.”

“Fusion GPS.” For the purposes of this request, the term “Fusion GPS” shall refer to Fusion GPS, its owners, operators, directors, officers, managers, employees, agents, contractors and freelancers.

Areas of Inquiry

1. General background concerning Fusion GPS, its ownership, the scope of its business, and the operation of the same.
2. Fusion GPS’s engagement to conduct the research that led directly or indirectly to the creation of the December Memo.
3. Fusion GPS’s client or clients in connection with the creation of the Dossier.
4. Fusion GPS’s use and/or engagement of contractors or subcontractors in connection with the Dossier.
5. The sources of information for the December Memo.
6. The hiring of Fusion GPS to compile or produce the Dossier.
7. Payments made to Fusion GPS in connection with the Dossier.
8. All steps taken by Fusion GPS, and/or those working on its behalf to obtain information that led to the creation of the December Memo.
9. The preparation of the December Memo.
10. The engagement of Christopher Steele in connection with the Dossier.
11. Fusion GPS’s efforts (or lack of efforts) to verify allegations in the December

Memo.

12. The provision of the Dossier, including the December Memo, to media outlets.
13. Communications between Fusion GPS and BuzzFeed concerning the Dossier and, in particular, the December Memo and information contained therein.
14. Communications between Fusion GPS and Ben Smith concerning the Dossier and, in particular, the December Memo and information contained therein.
15. The provision of the Dossier and/or the December memo to other third parties.
16. Communications with others concerning the Dossier and, in particular, the December Memo and the allegations contained therein.
17. Any and all information concerning Aleksey Gubarev.
18. Any and all information concerning XBT Holdings, S.A.
19. Any and all information concerning Webzilla, Inc.

SCHEDULE B – DOCUMENTS TO BE PRODUCED

Definitions

“Dossier” means both the individual memos and the compilation of said memos as a unified whole. The “Dossier” refers to those memos and the compilation of such memos which were prepared by, for, at the direction or behest of, or for the benefit of Fusion GPS and which related to alleged connections between Donald Trump and Russia. For the avoidance of confusion, the term “Dossier” is intended to mean those materials widely-referred to as the “Trump Dossier,” which was published by BuzzFeed, a copy of which is attached hereto.

“December Memo.” For purposes of this request, the term “December Memo” shall mean the memo included in the Dossier dated December 13, 2016 and titled “Company Intelligence Report 2016/166.”

“Fusion GPS” means Fusion GPS, its owners, operators, directors, officers, managers, employees, agents, contractors and freelancers.

“Concerning” means consisting of, referring to, reflecting or in any way logically or factually connected with the matter discussed. A document “concerning” a given subject is any document identifying, showing, referring to, dealing with evidencing, commenting upon, having as a subject, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting, or pertaining to that subject, including without limitation, documents referring to the presentation of other documents.

“Documents” means all writings or graphic matter or other means of preserving thought or expression of any kind, including the originals and all identical copies, whether different from the original by reasons of any notation made on such copies or otherwise including, without limitation, e-mails, letters, text messages, social media messages, correspondence, memoranda, notes, diaries, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, photographs, contracts, computer data, hard drives, correspondence, transcripts, schedules, affidavits, graphs, videotapes, tape recordings, motion pictures or other films (and all drafts, alternations, modifications, changes and amendments of any of the foregoing). It shall also include any electronically stored data on any media.

Documents Requested

1. The December Memo, in its unredacted form.
2. All documents concerning Aleksey Gubarev.
3. All documents concerning XBT Holdings, S.A.
4. All documents concerning Webzilla, Inc.

5. All communications between Fusion GPS and BuzzFeed concerning the Dossier.
6. All communications between Fusion GPS and Ben Smith concerning the Dossier.
7. All documents reflecting or relating to the sources of information concerning Aleksej Gubarev.
8. All documents reflecting or relating to the sources of information concerning XBT Holdings, Inc.
9. All documents reflecting or relating to the sources of information concerning Webzilla, Inc.
10. All communications with Christopher Steele concerning the December Memo.
11. All documents concerning the provision of the Dossier and/or the December Memo to third parties.

EXHIBIT 3

From: Evan Fray-Witzer <Evan@CFWLegal.com>
Sent: Thursday, August 24, 2017 11:25 PM
To: Salky, Steven M.
Cc: Cotton, Rachel; 'Val Gurvits'
Subject: RE: Checking back
Attachments: REVISED SCHEDULES to FUSION GPS SUBPOENA.pdf

Importance: High

Hi Steven -

I'm attaching revised schedules for Fusion GPS's deposition. Where possible, I've limited the area of inquiry/request to the December Memo. In some instances, though, it was impractical to do so simply because it would define things so narrowly as to exclude any reasonable response. For example, a category of inquiry concerning the hiring of Fusion to produce the December Memo would be meaningless since Fusion was hired not to produce the December Memo, per se, but the Dossier as a whole.

Also, I would be remiss if I did not at least acknowledge the widespread reporting today that your client testified for 10 hours to the senate judiciary investigators and that your client has urged the transcripts of that testimony to be made public. Such a position is largely inconsistent, I would argue, with efforts to resist testifying in the BuzzFeed litigation. It is my hope that your client will provide responsive documents and agree to sit for his deposition without the need for judicial intervention.

Please do let me know.

Thank you.

Evan

Evan Fray-Witzer
Ciampa Fray-Witzer, LLP
20 Park Plaza, Suite 505
Boston, MA 02116
(617) 426-0000
(617) 507-8043 (facsimile)
Evan@CFWLegal.com

-----Original Message-----

From: Salky, Steven M. [<mailto:Ssalky@zuckerman.com>]
Sent: Thursday, August 24, 2017 10:03 AM
To: Evan@CFWLegal.com
Cc: Cotton, Rachel <RCotton@zuckerman.com>
Subject: Checking back

Evan: just checking back with you regarding your ability to amend the document requests and the areas of inquiry attached to your subpoena to Fusion GPS? I can talk today or tomorrow, as long as I have advance notice.
Thanks.

Steve

Sent from my iPhone=

EXHIBIT 4

From: Salky, Steven M.
Sent: Friday, August 25, 2017 12:56 PM
To: Evan@CFWLegal.com
Cc: Cotton, Rachel; vгурvits@bostonlawgroup.com
Subject: Response to your revised schedules

Evan:

Thank you for your late night email and your consideration of my request to narrow the subpoena.

However, your revised schedules largely remain over broad, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome. The underlying case is about Buzzfeed's publication of the December 13 Memorandum. Discovery about Fusion's engagement or hiring (Areas of Inquiry Nos. 2,3,6), Fusion's client or payments (Areas of Inquiry Nos. 3,7), the engagement of Chris Steele or any other any other contractor (Areas of Inquiry Nos. 4, 10; Document Request 10), or all information about your clients (Areas of Inquiry Nos. 17-19; Document Requests 2-4), just to give a few examples, remain well outside the ambit of appropriate discovery in this case.

Plus, you already know from Chris Steele's pleadings in the parallel Gubarev case in England the answers to many of your areas of inquiry, including, by way of example only, what led to the creation and preparation of the December memo (Areas of Inquiry Nos. 8, 9), and the provision of the Dossier, including the December memo, to third parties (Areas of Inquiry No. 15 and Document Request 11).

Compelling Fusion, a third party, to both search for documents and to prepare for a Rule 30b6 deposition on already known matters is clearly "unduly burdensome." In fact, as we have discussed, the broad discovery you seek appears designed to advance your clients' case against Chris Steele/Orbis in England much more than your case against Buzzfeed, thereby rendering your Rule 45 subpoena improper. In these circumstances, I would ask you to substantially revise your requests to the few areas that actually matter in the Buzzfeed case

Further, as we have discussed, many of your document requests and areas of inquiry seek privileged information. Particularly because much of what you seek is both protected by Fusion's and their client(s) First Amendment privilege and is not crucial to your case against Buzzfeed, much of the discovery you seek is impermissible. *See generally Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., & its Locals 1093, 558 & 25 v. Nat'l Right to Work Legal Def. & Ed. Found., Inc.*, 590 F.2d 1139, 1152 (D.C. Cir. 1978); *Black Panther Party v. Smith*, 661 F.2d 1243, 1266 (D. C. Cir. 1981)(setting out test for discovery when First Amendment interests are at stake); *see also NAACP v. Alabama*, 357 U.S. 449 (1958); *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010); *Wyoming v. U.S. Dep't of Agric.*, 208 F.R.D. 449, 455 (D.D.C. 2002); *Int'l Action Ctr. v. United States*, 207 F.R.D. 1, 3 (D.D.C. 2002).

In particular, you continue to seek Fusion's client or clients in connection with the creation of the Dossier (Area of Inquiry No. 3). That information is protected from disclosure by the First Amendment privilege. *See US v. Garde*, 673 F. Supp. 604, 607 (D.D.C. 1987).

Additionally, you continue to seek the name of the source or sources for the December memo (Document Requests 1,7,8,9 and Area of Inquiry No. 5), which confidential information is specifically protected from discovery both by the First Amendment privilege, *see id.*, but also under any balancing of the interests under Rule 45, *see, e.g., Mgmt. Info. Techs., Inc. v. Alyeska Pipeline Serv., Co.*, 151 F.R.D.

Given the substantial First Amendment and confidentiality interests at stake, substantial revisions to your subpoena would be necessary before we could agree to appear without judicial intervention.

Let us know if you want to discuss these matters further, which I can arrange to do today or Monday.

Respectfully,
Steve

EXHIBIT 5

From: Evan Fray-Witzer <Evan@CFWLegal.com>
Sent: Saturday, August 26, 2017 12:41 PM
To: Salky, Steven M.
Cc: Cotton, Rachel; vгурvits@bostonlawgroup.com
Subject: RE: Response to your revised schedules

Steve -

Thank you for your response. Having reviewed your arguments and the cases cited, I am convinced that the cases are easily distinguished and that the facts of this case support the discovery requested, even under a First Circuit balancing test. Accordingly, it is not our intent to narrow the requests further.

I assume, therefore, that it is your intent to seek a protective order. Please let me know if that is your clients' intent. Even assuming that it is, I would expect that Fusion could and should produce those documents to which no objection exists. Please let me know how you would like to accomplish that production.

Thank you.

Evan

Evan Fray-Witzer
Ciampa Fray-Witzer, LLP
20 Park Plaza, Suite 505
Boston, MA 02116
(617) 426-0000
(617) 507-8043 (facsimile)
Evan@CFWLegal.com

-----Original Message-----

From: Salky, Steven M. [<mailto:Ssalky@zuckerman.com>]
Sent: Friday, August 25, 2017 12:56 PM
To: Evan@CFWLegal.com
Cc: Cotton, Rachel <RCotton@zuckerman.com>; vгурvits@bostonlawgroup.com
Subject: Response to your revised schedules

Evan:

Thank you for your late night email and your consideration of my request to narrow the subpoena.

However, your revised schedules largely remain over broad, not reasonably calculated to lead to the discovery of admissible evidence, and unduly

burdensome. The underlying case is about Buzzfeed's publication of the December 13 Memorandum. Discovery about Fusion's engagement or hiring (Areas of Inquiry Nos. 2,3,6), Fusion's client or payments (Areas of Inquiry Nos. 3,7), the engagement of Chris Steele or any other any other contractor (Areas of Inquiry Nos. 4, 10; Document Request 10), or all information about your clients (Areas of Inquiry Nos. 17-19; Document Requests 2-4), just to give a few examples, remain well outside the ambit of appropriate discovery in this case.

Plus, you already know from Chris Steele's pleadings in the parallel Gubarev case in England the answers to many of your areas of inquiry, including, by way of example only, what led to the creation and preparation of the December memo (Areas of Inquiry Nos. 8, 9), and the provision of the Dossier, including the December memo, to third parties (Areas of Inquiry No. 15 and Document Request 11).

Compelling Fusion, a third party, to both search for documents and to prepare for a Rule 30b6 deposition on already known matters is clearly "unduly burdensome." In fact, as we have discussed, the broad discovery you seek appears designed to advance your clients' case against Chris Steele/Orbis in England much more than your case against Buzzfeed, thereby rendering your Rule 45 subpoena improper. In these circumstances, I would ask you to substantially revise your requests to the few areas that actually matter in the Buzzfeed case

Further, as we have discussed, many of your document requests and areas of inquiry seek privileged information. Particularly because much of what you seek is both protected by Fusion's and their client(s) First Amendment privilege and is not crucial to your case against Buzzfeed, much of the discovery you seek is impermissible. See generally *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., & its Locals 1093, 558 & 25 v. Nat'l Right to Work Legal Def. & Ed. Found., Inc.*, 590 F.2d 1139, 1152 (D.C. Cir. 1978); *Black Panther Party v. Smith*, 661 F.2d 1243, 1266 (D. C. Cir. 1981)(setting out test for discovery when First Amendment interests are at stake); see also *NAACP v. Alabama*, 357 U.S. 449 (1958); *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010); *Wyoming v. U.S. Dep't of Agric.*, 208 F.R.D. 449, 455 (D.D.C. 2002); *Int'l Action Ctr. v. United States*, 207 F.R.D. 1, 3 (D.D.C. 2002).

In particular, you continue to seek Fusion's client or clients in connection with the creation of the Dossier (Area of Inquiry No. 3). That information is protected from disclosure by the First Amendment privilege. See *US v. Garde*, 673 F. Supp. 604, 607 (D.D.C. 1987).

Additionally, you continue to seek the name of the source or sources for the December memo (Document Requests 1,7,8,9 and Area of Inquiry No. 5), which confidential information is specifically protected from discovery both by the First Amendment privilege, see *id.*, but also under any balancing of the interests under Rule 45, see, e.g., *Mgmt. Info. Techs., Inc. v. Alyeska Pipeline Serv., Co.*, 151 F.R.D. 478, 482-83 (D.D.C. 1993); *Gill v. Gulfstream Park Racing Ass'n., Inc.*, 399 F.3d 391, 402-03 (1st Cir. 2005).

Given the substantial First Amendment and confidentiality interests at stake, substantial revisions to your subpoena would be necessary before we could agree to appear without judicial intervention.

Let us know if you want to discuss these matters further, which I can arrange to do today or Monday.

Respectfully,

Steve

EXHIBIT 6

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CASE NO:

ALEKSEJ GUBAREV, XBT HOLDING S.A.,
AND WEBZILLA, INC.,
Plaintiffs,

vs.

BUZZFEED, INC. AND BEN SMITH,
Defendants.

COMPLAINT FOR DAMAGES

Plaintiffs, Aleksej Gubarev ("Mr. Gubarev"), XBT Holding S.A. ("XBT"), and Webzilla, Inc. ("Webzilla")(collectively, "Plaintiffs") sue Defendants Buzzfeed, Inc. ("Buzzfeed") and Ben Smith ("Mr. Smith") for damages. In support, Plaintiffs allege the following:

INTRODUCTORY STATEMENT

1. On January 10, 2017, in perhaps one of the most reckless and irresponsible moments in modern "journalism," Defendant Buzzfeed and its Editor in Chief Ben Smith chose to publish a "dossier" of unverified information compiled by a private security company in which various allegations were made concerning, among other things, computer hacking allegedly carried out by persons or organizations with ties to Russia, the Russian Government, and/or the Federal Security Service of the Russian Federation ("FSB").

2. And, although Buzzfeed and Smith specifically knew that at least portions of the dossier were untrue, they printed the entire document – without meaningful redactions – including those portions that falsely accused the Plaintiffs of participating in an alleged conspiracy to commit crimes against the Democratic Leadership, not to mention a conspiracy to

undermine American Democracy and the 2016 election. With respect to the Plaintiffs, these allegations were wholly and completely false.

3. BuzzFeed and Smith published these allegations without having even taken the most basic step of contacting the Plaintiffs to ask if the allegations had any merit. Indeed, in its original publication of the dossier, BuzzFeed itself *admitted* it had no idea what – if anything – in the dossier was truthful, writing:

The dossier, which is a collection of memos written over a period of months, includes specific, unverified, and potentially unverifiable allegations... BuzzFeed News reporters in the US and Europe have been investigating various alleged facts in the dossier but have not verified or falsified them. ...[The dossier] is not just unconfirmed: It includes some clear errors.

4. As of the date of this filing, the original BuzzFeed article has been viewed almost six million times and BuzzFeed has published eight additional follow-up articles, each of which links back to the original defamatory publication.

5. Plaintiff Aleksey Gubarev, who is married with three young children is not, in any way, shape, or form, a public figure. As a result of BuzzFeed and Mr. Smith's reckless publication of defamatory materials, he has found his personal and professional reputation in tatters. His wife has found herself a target of online harassment and the family's personal security has been compromised. Similarly, the economic damage to XBT and Webzilla (a Florida Corporation), including the harm to the companies' previously-unblemished reputations with their clients, lenders, vendors, and others has been immediate and ongoing.

PARTIES

6. Plaintiff Aleksey Gubarev is an individual who resides in the Republic of Cyprus. Mr. Gubarev has lived in Cyprus since 2002. Mr. Gubarev is the Chairman and CEO and director of Plaintiff XBT Holding S.A.

7. Plaintiff XBT Holding S.A. is a company organized under the laws of Luxembourg. XBT has offices in Florida and Texas as well as other locations across the globe. XBT has various subsidiary companies, including Webzilla, Inc.

8. Plaintiff Webzilla, Inc. is a Florida corporation with offices in Fort Lauderdale.

9. Defendant Buzzfeed, Inc. is a Delaware Corporation. According to Buzzfeed, it has offices in "18 cities around the world including New York, Los Angeles, San Francisco, London, Sydney, Sao Paulo, and Tokyo." Buzzfeed owns and operates the Buzzfeed.com website as well as the Buzzfeed mobile app. According to Buzzfeed's media kit, it has in excess of 200 million unique monthly views. Buzzfeed.com is one of the most trafficked websites in the United States, currently ranked in the top 100 websites visited in the U.S.

10. Defendant Ben Smith is an individual who, on information and belief, resides in Brooklyn, New York. Mr. Smith is the Editor in Chief of Buzzfeed.

JURISDICTION, VENUE, AND CONDITIONS PRECEDENT

11. This Court has subject matter jurisdiction over Plaintiffs' claim for damages as each claim is in excess of \$15,000.

12. This Court has personal jurisdiction over the Defendants pursuant to Florida Statute 48.193(1)(b). The Defendants posted defamatory materials concerning the Plaintiffs on their website (and through their mobile app), which materials were accessed in Florida, constituting the commission of the tortious act of defamation within Florida under section 48.193(1)(b).

13. This Court also has personal jurisdiction over the Defendants pursuant to Florida Statute 48.193 because:

(a) Defendants have caused injury to persons or property within Florida, arising out of acts or omissions undertaken outside of the state and Defendants regularly solicit advertising and viewers within Florida;

(b) Defendants have committed intentional torts expressly aimed at one or more of the Plaintiffs, the effects of which were suffered in this circuit. Defendants' intentional conduct was calculated to cause injury to one or more of the Plaintiffs in Florida and has caused injury to one or more of the Plaintiffs in Florida. Based on their intentional torts, Defendants should have reasonably anticipated being haled into this Court and due process is satisfied.

14. Venue is proper in Broward County because the tort occurred in Broward County and the harm to the Plaintiffs was felt in Broward County in that Plaintiff regularly conducts business in Broward County, Florida.

15. All conditions precedent to this action have been performed. Specifically, although not actually required to do so, Plaintiffs provided Defendants with pre-suit notice and a demand for a retraction pursuant to Florida Statutes Chapter 770.01, *et seq.* See **Exhibit 1**.

FACTUAL ALLEGATIONS

16. Mr. Gubarev is an individual who lives, with his wife and three children, in Cyprus. He is a 36 year-old venture capitalist and tech expert. In 2002, at the age of 22, he moved from Russia to Cyprus and, in 2005, he founded Webzilla Limited (an XBT predecessor) – a company that specializes in internet hosting, data, and web-development.

17. Over the next 12 years, Mr. Gubarev grew XBT to an international business with various subsidiary companies, employing approximately 300 employees in three different continents. XBT has offices in Texas, Florida, and Luxembourg, among others.

18. Mr. Gubarev has never been involved in politics and is not a public figure. Outside of technology circles, he is not known at all.

19. Webzilla, Inc., one of XBT's subsidiaries, is a Florida corporation with offices in Fort Lauderdale, Florida and Dallas, Texas.

20. XBT and its subsidiaries operate approximately 37,000 servers across the globe, with approximately 40 percent of its business being handled over the servers run out of Dallas, Texas. Approximately 27 percent of XBT's global business comes from within the United States.

21. Given that XBT's and Webzilla's businesses focus on internet hosting solutions, network services, and web development services, their reputation for providing secure services has been carefully cultivated and paramount to the success of the businesses.

22. Similarly, prior to the Defendants' publication of defamatory materials, Mr. Gubarev's own professional reputation has been untarnished and key to his ability to build XBT and Webzilla into successful international hosting companies.

23. On January 10, 2017, Buzzfeed and Mr. Smith published an online article entitled, "These Reports Allege Trump Has Deep Ties To Russia" (the "Defamatory Article") The Defamatory Article, which at the time of this writing has been viewed more than 5.9 million times, can be found at https://www.buzzfeed.com/kenbensinger/these-reports-allege-trump-has-deep-ties-to-russia?utm_term=.fvQvex17e#.yez3nBr3. A true and accurate copy of the Defamatory Article is attached hereto as **Exhibit 2**. On information and belief, the Defamatory Article has (conservatively) been viewed in Florida tens of thousands of times.

24. This Defamatory Article attached a 35-page unverified "dossier" of information compiled by a private security company. On information and belief, the dossier was created as part of opposition research conducted as part of the 2016 election campaign; it is not an official

document and was not created by any government entity. A true and accurate copy of the dossier attached to the Defamatory Article is attached hereto as **Exhibit 3**.

25. The dossier included various allegations concerning, among other things, allegations of computer hacking of the Democratic Party allegedly carried out by persons or organizations with ties to Russia, the Russian Government, and/or the Federal Security Service of the Russian Federation (“FSB”).¹

26. With respect to the Plaintiffs, the dossier included the following assertions of fact:

[redacted] reported that over the period March-September 2016 a company called XBT/Webzilla and its affiliates had been using botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct “altering operations” against the Democratic Party leadership. Entities linked to one Alexei GUBAROV [sic] were involved and he and another hacking expert, both recruited under duress by the FSB, Seva KAPSUGOVICH, were significant players in this operation. In Prague, COHEN agreed contingency plans for various scenarios to protect the operations, but in particular what was to be done in the event that Hillary CLINTON won the presidency. It was important in this event that all cash payments owed were made quickly and discreetly and that cyber and that cyber and other operators were stood down / able to go effectively to ground to cover their traces.

27. Not a single portion of this statement (as it applies to Mr. Gubarev, XBT, or Webzilla) has any basis in fact whatsoever. Specifically:

- a. Neither XBT nor Webzilla nor any of their affiliates had been “*using botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct ‘altering operations’*” against the Democratic Party leadership or anyone else;
- b. No “*entities linked*” to Mr. Gubarev were involved in any alleged cyber-attacks;
- c. Mr. Gubarev was not “*recruited under duress by the FSB*” (to be clear, he was not recruited at all – whether under duress or otherwise), nor was he recruited for such activities by anyone else at any other time or in any other circumstances whatsoever. Additionally, he has no knowledge of, has never met and has never spoken to a person known as Seva Kapsugovich;

¹ The FSB is the main successor agency to the USSR's Committee of State Security (“KGB”).

- d. Mr. Gubarev and his companies have never acted with “*another hacking expert*” to mount a cyber-attack on the Democratic Party Leadership or on any other person; and
- e. Not having been involved in the activities attributed to them in the “dossier,” neither Mr. Gubarev nor any of his companies would have had any need to “*go effectively to ground to cover their traces*” in the event that Ms. Clinton won the presidency.

28. Although Buzzfeed and Mr. Smith claim that they had the dossier in their possession for weeks prior to its publication, and despite their claims that they had four reporters working near full-time on attempting to verify the claims made in the dossier, prior to publishing the Defamatory Article and the dossier, neither Buzzfeed nor Mr. Smith contacted the Plaintiffs to determine if the allegations made against them had any basis in fact. After the dossier’s publication numerous journalists (more than 30) contacted Mr. Gubarev with some even arranging to travel to Cyprus to discuss the publication with Mr. Gubarev. During this time, and up to the present day, neither Buzzfeed nor Mr. Smith contacted the Plaintiffs to determine if the allegations made against them had any basis in fact.

29. At the time the Defendants published the Defamatory Article and accompanying dossier, they knew, without a doubt, that at least certain portions of the dossier were untrue.

Indeed, the Defamatory Article stated specifically that:

The dossier, which is a collection of memos written over a period of months, includes specific, unverified, and potentially unverifiable allegations... BuzzFeed News reporters in the US and Europe have been investigating various alleged facts in the dossier but have not verified or falsified them. ...[The dossier] is not just unconfirmed: It includes some clear errors.

30. In other words, Buzzfeed and Mr. Smith knew for sure *only* that certain parts of the dossier were *untrue*. Other than the portions confirmed by them to be false, Buzzfeed and Mr. Smith had been unable to verify the veracity of any of the claims made in the dossier.

31. Indeed, Mr. Smith has admitted that Buzzfeed knew at the time that it published the Defamatory Article and dossier that there were “real solid reasons to distrust” the veracity of the allegations contained therein.

32. Despite these concerns, Buzzfeed and Mr. Smith took no steps to redact out the names of the Plaintiffs from the dossier, a step they could have taken easily and which would not have changed the character of their reporting.

33. Buzzfeed and Mr. Smith immediately faced an onslaught of criticism for their irresponsible decision to publish the unverified dossier and the Defamatory Article – drawing condemnation from media outlets and journalism experts across the political spectrum including The Washington Post, CNN, MSNBC, Fox News, and the Poynter Institute to name a few.

34. Despite this condemnation, Buzzfeed published eight additional follow-up articles, each of which contained a link back to the original Defamatory Article.

30. In addition, Mr. Smith published an Op-Ed in the New York Times and appeared in numerous television and radio interviews defending his decision to publish the Defamatory Article and the dossier. Some of these articles and interviews actually compounded the defamatory effect by implying that Buzzfeed had verified the claims made.

35. For example in his New York Times Op-Ed, Mr. Smith stated that Buzzfeed decided to publish the dossier “only after we had spent weeks with reporters in the United States and Europe trying to confirm or disprove specific claims.” What the New York Times Op-Ed omitted, however, is that Buzzfeed had failed entirely in these efforts. The Op-Ed also failed to state that Buzzfeed had made no attempts to contact Mr. Gubarev, XBT, or Webzilla and – on information and belief – had made no attempts to verify the claims made as to the Plaintiffs.

36. Similarly, Mr. Smith stated on CNN's Reliable Sources that BuzzFeed was "running it down every way we could" and told MSNBC's Meet the Press Daily that "we, like many other organizations had had [the dossier] for weeks. We had reporters in Europe and the United States trying to stand up or knock down specific details."

37. BuzzFeed and Mr. Smith's decision to publish the unverified dossier not only flew in the face of all journalistic standards and ethics, but also violated Mr. Smith's own claims of how BuzzFeed operates. Less than two months before it published the Defamatory Article and dossier, Mr. Smith wrote an article for the Columbia Journalism Review in which he claimed that BuzzFeed not only routinely took steps to verify the facts that they published but that doing so was "not complicated." Specifically, in an article entitled "How tech and media can fight fake news," published on November 17, 2016, Mr. Smith wrote:

Mark Zuckerberg recently wrote that "identifying the 'truth' is complicated." Maybe for algorithms and epistemologists. But it's something that professional journalists are asked to do every day, and it's not actually that complicated. The everyday reporting truths—who said what, when did they say it, what does the document say, where did the money go—are the sorts of thing we're good at pinning down.

COUNT I – DEFAMATION AND DEFAMATION PER SE

38. Plaintiff re-alleges and re-asserts the allegations set forth in paragraphs 1-37 as if fully set forth herein.

39. Defendants BuzzFeed and Mr. Smith, by and through their representatives, published false and defamatory statements concerning Plaintiffs without privilege to do so.

40. The false and defamatory statements included, but are not limited to, allegations that:

- a. XBT and Webzilla used "*botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct 'altering operations'*" against the Democratic Party leadership;
- b. "*entities linked*" to Mr. Gubarev were involved in cyber-attacks;

- c. Mr. Gubarev was “*recruited under duress by the FSB*”
- d. Mr. Gubarev and his companies acted with “*another hacking expert*” to mount a cyber-attack on the Democratic Party Leadership; and
- e. Mr. Gubarev and his companies would need to “*go effectively to ground to cover their traces*” in the event that Ms. Clinton won the presidency.

41. The defamatory statements were published without privilege to third parties, including thousands or tens of thousands (or more) residents of Florida.

42. None of the Plaintiffs are public figures, nor are they limited public figures for purposes of a defamation analysis.

43. The defamatory statements were made negligently; without reasonable care as to their truth or falsity; with knowledge of their falsity; and/or with reckless disregard for the truth.

44. The statements allege that the Plaintiffs committed crimes including (but not limited to) computer hacking and that the Plaintiffs engaged in behavior designed to undermine American democracy and the 2016 Presidential election.

45. The statement are of the kind that they would tend to prejudice the Plaintiffs in the eyes of a substantial and respectable minority of their communities.

46. The statements have caused, and will continue to cause, the Plaintiffs injury in their personal, social, and business relations.

47. XBT and Webzilla have suffered, and will continue to suffer, actual injury as a result of injury to their corporate reputations. At least one lender has declined to do business with XBT and/or Webzilla based on the defamatory statements published by the Defendants and, on information and belief, the defamatory statements have also cost Webzilla and XBT clients.

48. Mr. Gubarev has suffered, and will continue to suffer, actual injury as a result of the injury to his personal reputation.

49. The defamatory statements tend to injure the Plaintiffs in their business trade as the allegations call into question the security and proper operation of the Plaintiffs' businesses. Additionally, the above statements subject Plaintiffs to distrust, scorn, ridicule, hatred, and contempt. As such, the defamatory statements constitute defamation *per se*.

50. In addition, as a direct and proximate result of the defamatory statements made by Defendants, Plaintiff has suffered, and continue to suffer, substantial damages.

51. It is clear from the statements made by Buzzfeed and Mr. Smith, discussed above, that they had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage to the Plaintiffs would result and that, despite that knowledge, the Defendants intentionally pursued that course of conduct, resulting in injury or damage. Accordingly, and in conformity with Florida Statute §768.72, the Plaintiffs will seek leave of court to seek an award of punitive damages against Defendants. In the alternative, Plaintiffs will also seek leave of court to seek punitive damages under Florida Statute §768.72 because the Defendants' actions, as described above, were so reckless or wanting in care that they constituted a conscious disregard or indifference to the rights of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Aleksej Gubarev, XBT Holding S.A., and Webzilla, Inc. pray for judgment against defendants Buzzfeed, Inc. and Ben Smith as follows:

1. For an award of general and special in an amount in excess fifteen thousand dollars (\$15,000.00) in accordance with proof at trial together with interest thereon at the maximum legal rate; and Plaintiffs reserve the right to seek leave of court to seek punitive damages against Defendants in accordance with the facts and claims stated herein and established through discovery;

2. For costs of suit incurred herein; and

3. For such other and further relief as to this court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted this 3rd day of February, 2017 by:

The Plaintiffs,
Aleksej Gubarev,
XBT Holding S.A.
Webzilla, Inc.
By their Attorneys,

COBB EDDY, PLLC
Local Counsel for Plaintiffs
642 Northeast Third Avenue
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By: /s/ Valentin D. Gurvits
VALENTIN D. GURVITS, ESQUIRE
Pro Hac Vice Pending
Massachusetts BBO# 643572
vgurvits@bostonlawgroup.com

EXHIBIT 7

McDermott Will & Emery

Boston Brussels Chicago Dallas Düsseldorf Frankfurt Houston London Los Angeles Miami
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Catrin L. Hughes
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+44 20 7570 1468

Our Ref: ZR/CH - 102171 0011

Orbis Business Intelligence Limited
9-11 Grosvenor Gardens
London SW1W 0BD

3 February 2017

Dear Sirs

(1) Aleksei Gubarev (2) Webzilla B.V. (3) Webzilla Limited & (4) XBT Holding S.A v.
(1) Orbis Business Intelligence Limited & (2) Christopher Steele
In the High Court of Justice

We act for Aleksei Gubarev, Webzilla B.V., Webzilla Limited, and XBT Holding S.A. Our clients have today filed a claim against you in the High Court of Justice.

Please find enclosed by way of service the following documents:

1. Claim form;
2. Particulars of claim; and
3. The defendant's response pack.

Yours faithfully

McDermott Will & Emery UK LLP

McDermott Will & Emery UK LLP

Enc.

McDermott Will & Emery UK LLP is a limited liability partnership regulated by the Solicitors Regulation Authority and registered in England and Wales, registered number OC311909. The members are solicitors or registered foreign lawyers. A list of members' names and their professional qualifications is available for inspection at the principal place of business and registered office shown below.

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DEFEND**COPY****Claim Form**In the HIGH COURT OF JUSTICE
QUEENS BENCH DIVISIONFee Account
no.Help with Fees
- Ref. no. (if
applicable)

H W F - [] [] - [] []

You may be able to issue your claim online
which may save time and money. Go to
www.moneyclaim.gov.uk to find out more.

Claim no.

Issue date

H20171505413

03 FEB 2017

Claimants' names and addresses including postcodes

(1) ALEKSEJ GUBAREV
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London EC2N 4AY

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c/o McDermott Will & Emery UK LLP
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London EC2N 4AY

(3) WEBZILLA LIMITED
c/o McDermott Will & Emery UK LLP
110 Bishopsgate
London EC2N 4AY

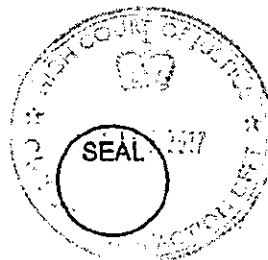
(4) XBT HOLDING S.A.
c/o McDermott Will & Emery UK LLP
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London EC2N 4AY

Assigned to master thornett

Defendants' names and addresses including postcodes

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Chandlers Ford
Eastleigh
Hampshire SO53 4AR

(2) Christopher Steele
186 Reading Road
Wokingham
Berkshire RG41 1LH

For further details of the courts www.gov.uk/find-court-tribunal

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (08.16)

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Brief details of claim

Damages and an injunction for libel in respect of publications published and/or caused to be published by the Defendants on and/or around 10 January 2017 as more particularly set out in the attached Particulars of Claim.

Value

Expect to recover damages in excess of £200,000

You must indicate your preferred County Court Hearing Centre for hearings here (*see notes for guidance*)

Royal Courts of Justice

Defendant's
name and
address for
service
including
postcode

(1) Orbis Business Intelligence
Limited
HBW Highland House
Mayflower Close
Chandlers Ford
Eastleigh
Hampshire SO53 4AR

(2) Christopher Steele
186 Reading Road
Wokingham
Berkshire RG41 1LH

£	
Amount claimed	Exceeds £200,000
Court fee	£10,000
Legal representative's costs	To be assessed
Total amount	

Claim No.	
-----------	--

Does, or will, your claim include any issues under the Human Rights Act 1998? ☐ Yes ☒ No

Particulars of Claim (attached) (to follow)


Attached

Statement of Truth

*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.
* I am duly authorised by the claimant to sign this statement

Full name Ziva Robertson

Name of claimant's legal representative's firm McDermott Will & Emery UK LLP

signed  position or office held Partner
(If signing on behalf of firm or company)

~~Claimant's legal representative~~

**delete as appropriate*

McDermott Will & Emery UK LLP
110 Bishopsgate
London EC2N 4AY

Claimant's or claimant's legal
representative's address to which
documents or payments should be
sent if different from overleaf including
(if appropriate) details of DX, fax or e-
mail.

Claim No: 4017000413

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN:

(1) ALEKSEJ GUBAREV
(2) WEBZILLA B.V.
(3) WEBZILLA LIMITED
(4) XBT HOLDING S.A.

Claimants

-and-

(1) ORBIS BUSINESS INTELLIGENCE LIMITED
(2) CHRISTOPHER STEELE

Defendants



PARTICULARS OF CLAIM

1. The First Claimant is a successful businessman. He is based in Cyprus and has a substantial personal and business reputation throughout the European Union, including in England and Wales. He is the CEO and beneficial owner of the Second, Third and Fourth Claimants.
2. The Second and Third Claimants are hosting infrastructure companies based in the Netherlands and Cyprus respectively. Both companies are wholly owned subsidiaries of the Fourth Claimant, which is based in Luxembourg. Each of the companies has a substantial business and trading reputation throughout the European Union, including in England and Wales.
3. The First Defendant is a company registered in England and Wales ("Orbis"). Orbis provides corporate intelligence services.
4. The Second Defendant is a founder and director of Orbis.
5. Insofar as material the Second Defendant was acting at all times for and on behalf of Orbis, whether as agent, employee, consultant, director or otherwise. The First Defendant is vicariously liable for all of the Second Defendant's actions upon which the Claimants rely in these Particulars of Claim.

6. The Defendants published and/or caused to be published to the world at large, and thereby to vast (and unquantifiable) numbers of people across the European Union, the following words defamatory of the Claimants on or around 10 January 2017 and thereafter:

“[REDACTED] reported that over the period March-September 2016 a company called XBT/Webzilla and its affiliates had been using botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct “altering operations” against the Democratic Party leadership. Entities linked to one Alexei GUBAROV were involved and he and another hacking expert, both recruited under duress by the FSB, Seva KAPSUGOVICH, were significant players in this operation. In Prague, COHEN agreed contingency plans for various scenarios to protect the operations, but in particular what was to be done in the event that Hillary CLINTON won the presidency. It was important in this event that all cash payments owed were made quickly and discreetly and that cyber and that cyber and other operators were stood down / able to go effectively to ground to cover their traces.”

7. In their natural and ordinary meaning, the words complained of meant and were understood to mean that the Claimants had deliberately and without consent hacked into the IT systems of the leadership of the United States Democratic Party and had used such unlawful access to transmit viruses, plant bugs, steal data and alter files and programs.

8. Without prejudice to the generality of the averment in paragraphs 6 and 7:

- 8.1 The words complained of are part of a document (“the December Memorandum”) dated 13 December 2016. The December Memorandum was prepared (whether alone or with others) by the First Defendant on or around that date. The December Memorandum was one of a series of similar documents prepared (whether alone or with others) by the First Defendant between June and December 2016 (the “the Steele Memorandums”; together “the Steele Dossier”). Paragraph 5 above is repeated.

- 8.2 Pending disclosure, the Claimants freely admit that they do not know the precise identities of those to whom the Defendants originally provided the December Memorandum. However, the Defendants prepared and initially published the December Memorandum intending that its contents should be republished to the world at large; further or alternatively in circumstances such as it was reasonably foreseeable that its contents would be republished to the world at large. As to which:

- 8.2.1 The general subject of the Steele Memorandums (including the December Memorandum) was the possibility that the Russian state had interfered in the U.S. general election and had gathered compromising information about Donald Trump. This was a subject of enormous topicality.
- 8.2.2 The Steele Memorandums were prepared by the Defendants to be provided to third parties, as they were.
- 8.2.3 More specifically, the Steele Memorandums were provided to third parties in order that those parties could use the information contained within them for strategic purposes. As the Defendants were well aware, this would be highly likely to include making public the information contained within them.
- 8.2.4 By 13 December (the date of the December Memorandum) the Defendants had prepared and published a substantial number of memorandums (between ten and twenty).
- 8.2.5 Pending disclosure it is not known whether the Defendants themselves directly provided any of the memorandums to media organisations or journalists. However by 13 December the Defendants were well aware that a number of (if not all) previously prepared memorandums had been published (or republished) to and within such organisations and that their contents were being openly and widely discussed.
- 8.2.6 By the same date the Second Defendant had himself given informal interviews to journalists in relation to the content of the Steele Dossier. Indeed he discussed his desire that its contents should be published more widely.
- 8.3 On 10 January 2017 the Steele Dossier, including the December Memorandum containing the words complained of was published online on the Buzzfeed website where they were accessible to the world at large and read by very substantial (and unquantifiable numbers) of people across the European Union.
- 8.4 Thereafter the words complained of (further or alternatively the allegation they conveyed) were further published on the internet countless times and were read by further very substantial numbers of people across the European Union.
- 8.5 In all the circumstances, the Defendants intended the words complained of (further or alternatively the allegation they conveyed) to be so republished. Further or alternatively, such republication was manifestly a reasonably foreseeable consequence of the Defendants' actions.

9. Publication of the words complained of has caused and is likely to cause serious harm to the reputation of the Claimants. It has caused the Claimants serious financial loss and is likely to do so in the future.
10. For the avoidance of doubt, and pending detailed analysis of the losses suffered by the Claimants, their claim extends to and is confined to publication of the words complained of throughout the European Union. If and insofar as necessary, the Claimants will rely upon the presumption that the law of each of the jurisdictions in which the words complained of were published was and is, so far as material, the same as the law of England and Wales.
11. Without prejudice to the generality of paragraph 9:
 - 11.1 The allegation conveyed by the words complained of is incredibly serious.
 - 11.2 The words complained of were published extremely widely.
 - 11.3 The Claimants are already being caused serious financial loss. The Claimants are monitoring these losses with the intention of preparing a complete schedule of loss in due course, but for the avoidance of any doubt as a direct result of the publication complained of:
 - (a) The Claimants' relationships with financial lenders have been adversely affected and some credit facilities have been frozen or withdrawn. This has seriously interrupted the Claimants' day to day business, which has caused and continues to cause ongoing loss and damage. The Claimants are in the process of quantifying these losses.
 - (b) The Claimants have lost clients, both in England and Wales and across the European Union; and
 - (c) The Claimants have had to divert a significant amount of resources to dealing with the fallout of the publications complained of and have incurred (and continued to incur) significant expense on P.R. and marketing costs as a result.
12. As a result of the publication complained of, the Claimants have suffered loss and damage and the First Claimant has additionally suffered hurt and distress. In support of the Claimants' claim for damages and, in respect of the First Claimant, aggravated damages, the Claimants will rely upon the facts and matters pleaded in paragraph 11 above and additionally upon the following:

- 12.1 Notwithstanding the seriousness of the allegation and the evident likelihood that its publication would have serious repercussions for the Claimants, no attempt was made by the Defendants to contact them prior to publication.
 - 12.2 In the circumstances, it is clear that the Defendants were prepared to tarnish the Claimants without providing them an opportunity to respond or conducting even the most basic attempt at verification.
 - 12.3 Notwithstanding the seriousness of the allegations, the Defendants have declined to deal with the matter with any speed whatsoever. The Defendants have failed in a reasonable time to provide any meaningful response to the Claimants' letter before action with the result that it was necessary to issue proceedings in order to protect and restore the Claimants' reputations.
13. Unless restrained, the Defendants will continue to publish or further publish the words complained of or words with the same or a similar defamatory meaning.

AND THE CLAIMANTS CLAIM:

- (1) General damages (including in the case of the First Claimant, aggravated damages) for defamation.
- (2) Special damages as per paragraph 11 above.
- (3) Interest on such damages pursuant to s.35A of the Senior Courts Act 1981 at such rates and for such period as the Court thinks just.
- (4) An injunction to restrain the Defendants whether by themselves, through agents, others or otherwise howsoever from publishing or further publishing the words complained of or words with the same or similar defamatory meaning.
- (5) Further or other relief.
- (6) Costs.

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimants to sign this statement on their behalf

Signed:



Ziva Robertson
Partner
McDermott Will & Emery UK LLP

Dated 3 February 2017

The Claimants' solicitors are McDermott Will & Emery UK LLP, 110 Bishopsgate, London EC2N 4AY where they will accept service of proceedings on behalf of the Claimants.

To the Defendants

To the Court Manager

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 17-cv-60426-UU

ALEKSEJ GUBAREV, XBT HOLDING S.A.,
AND WEBZILLA, INC.

Plaintiffs,

vs.

BUZZFEED, INC. AND BEN SMITH,

Defendants.

**AMENDED ANSWER OF DEFENDANTS BUZZFEED, INC. AND
BEN SMITH TO PLAINTIFFS' COMPLAINT FOR DAMAGES**

Defendants BuzzFeed, Inc. and Ben Smith ("Smith" and collectively, "Defendants"), answer the Complaint for Damages (the "Complaint") of Plaintiffs Aleksei Gubarev ("Gubarev"), XBT Holding S.A. ("XBT"), and Webzilla, Inc. ("Webzilla," and collectively, "Plaintiffs") as follows, using the same headings and paragraph numbering employed by Plaintiffs:

INTRODUCTORY STATEMENT

1. Defendants admit that on January 10, 2017, BuzzFeed published an article entitled *These Reports Allege Trump Has Deep Ties to Russia* (the "Article"), accompanied by a 35-page intelligence dossier (the "Dossier"). Defendants respectfully refer the Court to the Article and Dossier (attached to the Complaint as Exhibits 2 and 3) for their true content and meaning. Except as so referred and admitted, Defendants deny each and every allegation in paragraph 1 of the Complaint.

2. Defendants respectfully refer the Court to the Article and Dossier for their true content and meaning, and except as so referred, Defendants deny each and every allegation in paragraph 2 of the Complaint.

3. Defendants respectfully refer the Court to the Article and the Dossier for their true content and meaning, admit that they did not contact Plaintiffs prior to publishing the Dossier, and except as so admitted deny each and every allegation in paragraph 3 of the Complaint.

4. Defendants admit that the Article had nearly six million total non-unique page views as of February 3, 2017, and that BuzzFeed published additional articles about the Dossier containing links back to the Article and Dossier. Except as so admitted, Defendants deny each and every allegation in paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint contains legal conclusions that require no response, and factual allegations for which Defendants lack sufficient information to form a belief as to the truth or falsity thereof, and on that basis deny.

PARTIES

6. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 6 of the Complaint, and on that basis deny each and every one of them.

7. Defendants admit that XBT is incorporated in Luxembourg, deny that it has offices in Florida, and lack sufficient information to form a belief as to the truth or falsity of the remaining allegations in paragraph 7 of the Complaint, and on that basis deny each and every one of them.

8. Defendants admit that Webzilla is incorporated in Florida, but, except as so admitted, deny each and every allegation in paragraph 8 of the Complaint.

9. Defendants admit the allegations in paragraph 9 of the Complaint.

10. Defendants admit that Smith resides in Brooklyn, New York, and is Editor-in-Chief of BuzzFeed News.

JURISDICTION, VENUE, AND CONDITIONS PRECEDENT

11. Paragraph 11 of the Complaint contains legal conclusions that require no response. To the extent that any response is required, Defendants do not contest this Court's subject-matter jurisdiction.

12. Paragraph 12 of the Complaint contains legal conclusions that require no response. To the extent that any response is required, Defendants deny each and every allegation in paragraph 12, and specifically deny that this Court has personal jurisdiction over either of them.

13. Paragraph 13 of the Complaint contains legal conclusions that require no response. To the extent that any response is required, Defendants deny each and every allegation in paragraph 13, and specifically deny that this Court has personal jurisdiction over either of them, in whole or in part.

14. Paragraph 14 of the Complaint contains legal conclusions that require no response. To the extent that any response is required, Defendants deny each and every allegation in paragraph 14.

15. Paragraph 15 of the Complaint contains legal conclusions that require no response. To the extent that any response is required, Defendants admit that Plaintiffs sent the letter referred to in paragraph 15 and, except as so admitted, deny each and every allegation in paragraph 15.

FACTUAL ALLEGATIONS

16. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 16 of the Complaint, and on that basis deny each and every one of them.

17. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 17 of the Complaint, and on that basis deny each and every one of them.

18. Paragraph 18 of the Complaint contains legal conclusions that require no response, and factual allegations for which Defendants lack sufficient information to form a belief as to the truth or falsity thereof, and on that basis deny.

19. Defendants admit that Webzilla is incorporated in Florida, deny that Webzilla has an office in Fort Lauderdale, Florida, and lack sufficient information to form a belief as to the truth or falsity of the remaining allegations in paragraph 19 of the Complaint, and on that basis deny each and every one of them.

20. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 20 of the Complaint, and on that basis deny each and every one of them.

21. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 21 of the Complaint, and on that basis deny each and every one of them.

22. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 22 of the Complaint, and on that basis deny each and every one of them.

23. Defendants admit that they published the Article on January 10, 2017, and respectfully refer the Court to the Article and the Dossier for their true content and meaning. Defendants also admit that the Article had more than 5.9 million total non-unique page views as of February 3, 2017. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 23 of the Complaint.

24. Defendants admit that they published the Dossier along with the Article. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 24 of the Complaint.

25. Defendants respectfully refer the Court to the Article and Dossier for their true content and meaning. Except as so referred, Defendants deny each and every remaining allegation in paragraph 25 of the Complaint.

26. Defendants admit that the Dossier included the words quoted in paragraph 26 of the Complaint. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 26.

27. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 27 of the Complaint, and on that basis deny each and every one of them.

28. Defendants admit that they have not contacted Gubarev regarding the allegations in the Dossier. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations in paragraph 28 of the Complaint, and on that basis deny each and every one of them.

29. Defendants admit that the Article contained the words quoted in paragraph 29 of the Complaint, respectfully refer the Court to the Article and the Dossier for their true content

and meaning. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 29.

30. Defendants deny each and every allegation in paragraph 30 of the Complaint.

31. Defendants admit that, in an interview with MSNBC's MTP Daily aired on or about January 11, 2017 (the "MSNBC Interview"), Mr. Smith stated "Once...it emerges, as it did last night, in the public conversation that there is this secret document floating around, full of dark allegations that we will not repeat to you. That I feel like, in this era, you really have to show your readers what that is, in an appropriate context. And our original report, I mean, if you read what we wrote, it stressed that there were real solid reasons to distrust this. It noted two specific errors," and respectfully refer the Court to that interview for its true content and meaning. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 31 of the Complaint.

32. Defendants admit that they did not redact the words "XBT/Webzilla" OR "Alexei GUBAROV" from the Dossier when they initially published it. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 32 of the Complaint.

33. Defendants admit that BuzzFeed's publication of the Article and Dossier touched off debate about the appropriateness of publishing the Dossier, with journalists and journalism experts taking both sides of the debate. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 33 of the Complaint.

34. Defendants admit that BuzzFeed has published a number of additional articles related to the Dossier and that some of those articles contain links to the Article and Dossier. Except as so admitted, Defendants deny each and every remaining allegation in paragraph 34 of the Complaint.

30. The paragraph immediately following paragraph 34 of the Complaint is misnumbered paragraph 30. Defendants admit that Mr. Smith published an article in the *New York Times* on January 23, 2017, entitled *Why BuzzFeed News Published the Dossier* (the “New York Times Article”) and that he discussed BuzzFeed’s decision to publish the Dossier in television interviews. Defendants respectfully refer the Court to the New York Times Article and the other unspecified interviews referred to in the misnumbered paragraph 30 for their true content and meaning. Except as so referred and admitted, Defendants deny each and every remaining allegation in this paragraph.

35. Defendants admit that in the New York Times Article, Mr. Smith wrote that “BuzzFeed News decided to publish the dossier, with appropriate context and caveats...only after we had spent weeks with reporters in the United States and Europe trying to confirm or disprove specific claims,” and respectfully refer the Court to that article for its true content and meaning. Except as so referred and admitted, Defendants deny each and every remaining allegation in paragraph 35 of the Complaint.

36. Defendants admit that, in January 15, 2017 interview with CNN’s Reliable Sources, Mr. Smith stated that “we, like you, I think like you, like certainly other outlets who we ran across in the reporting, we’re staking out places where we thought we could get information in Europe. We’re running it down every way we could.” Defendants also admit that Mr. Smith stated in the MSNBC Interview that “we, like many other organizations, had had it for weeks. We had reporters in Europe and the United States trying to stand up or knock down specific details.” Defendants respectfully refer the Court to both of those interviews for their true content and meaning, and, except as so referred and admitted, Defendants deny each and every remaining allegation in paragraph 36 of the Complaint.

37. Defendants admit that Mr. Smith wrote an article published in the Columbia Journalism Review November 17, 2016 entitled *How tech and media can fight fake news*, and that the article included the words in the block quotation in paragraph 37 of the Complaint. Defendants respectfully refer the Court to that article for its true and content and meaning, and, except as so referred and admitted, Defendants deny each and every remaining allegation in paragraph 37 of the Complaint.

COUNT I – DEFAMATION AND DEFAMATION PER SE

38. Defendants repeat and reallege each and every admission, denial, and referral made in response to paragraphs 1 through 37 of the Complaint (including the misnumbered paragraph 30) as if made in response to paragraph 38 of the Complaint.

39. Defendants deny each and every allegation in paragraph 39 of the Complaint.

40. Defendants deny each and every allegation in paragraph 40 of the Complaint.

41. Defendants deny each and every allegation in paragraph 41 of the Complaint.

42. Paragraph 42 of the Complaint contains legal conclusions that require no response. To the extent that any response is required, Defendants deny each and every allegation in paragraph 42.

43. Defendants deny each and every allegation in paragraph 43 of the Complaint.

44. Defendants deny each and every allegation in paragraph 44 of the Complaint.

45. Defendants deny each and every allegation in paragraph 45 of the Complaint.

46. Defendants deny each and every allegation in paragraph 46 of the Complaint.

47. Defendants deny each and every allegation in paragraph 47 of the Complaint.

48. Defendants deny each and every allegation in paragraph 48 of the Complaint.

49. Defendants deny each and every allegation in paragraph 49 of the Complaint.

50. Defendants deny each and every allegation in paragraph 50 of the Complaint.

51. Defendants deny each and every allegation in paragraph 51 of the Complaint, deny that Plaintiffs are entitled to an award of punitive damages, and further deny that Florida law applies to this case.

Defendants deny each and every allegation in the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

First Defense

This Court does not have personal jurisdiction over Defendants, in whole or in part. By pleading and preserving this defense, Defendants are not in any way agreeing or conceding that they have the burden of proof or the burden of persuasion on it.

Second Defense

Defendants' publication of the allegedly defamatory statements in the Dossier, within the context of the Article, is protected by the fair report privilege pursuant to New York Civil Rights Law § 74 and/or the New York state constitution. In the alternative, Defendants' publication of the allegedly defamatory statements is protected by the fair report privilege pursuant to Florida common law and/or the Florida constitution, or Texas law pursuant to Tex. Civ. Prac. & Rem. Code § 73.002(b)(1) and the Texas constitution.

Third Defense

Defendants' publication of the allegedly defamatory statements in the Dossier, within the context of the Article, is protected by a neutral report privilege pursuant to the common law, the First and Fourteenth Amendments to the Constitution of the United States, and the New York (or, in the alternative), Florida, or Texas constitutions.

Fourth Defense

Defendants' publication of the allegedly defamatory statements in the Dossier, within the context of the Article, is protected by the First and Fourteenth Amendments to the Constitution of the United States, the New York Constitution, and (in the alternative), the Florida and/or Texas constitutions.

Fifth Defense

Plaintiffs are public figures and cannot meet their burden to prove actual malice by clear and convincing evidence.

Sixth Defense

Plaintiffs have failed to mitigate their alleged damages.

Seventh Defense

Exemplary or punitive damages are not recoverable because Defendants did not act with either common-law malice or constitutional malice.

Eighth Defense

Any claim for exemplary or punitive damages is barred by the First and Fourteenth Amendments to the Constitution of the United States, the New York, Florida and/or Texas constitutions, and New York, Florida and/or Texas law.

WHEREFORE, Defendants respectfully request that:

1. Judgment be entered in their favor, and the Complaint against them be dismissed with prejudice;
2. Defendants be awarded their costs, disbursements, and attorneys' fees; and
3. The Court grant Defendants such further and other relief as is just and proper.

Date: June 29, 2017

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Miami, FL 33131
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By: /s/ Lawrence A. Kellogg, P.A.
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Florida Bar No. 328601
Jezabel P. Lima
Florida Bar No. 519431

Katherine M. Bolger
(admitted *pro hac vice*)
Nathan Siegel
(admitted *pro hac vice*)
Adam Lazier
(admitted *pro hac vice*)
LEVINE SULLIVAN KOCH & SCHULZ, LLP
321 West 44th Street, Suite 1000
New York, NY 10036
Tel: (212) 850-6100

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 29, 2017, the foregoing was filed with the Court's CM/ECF Service, which will provide electronic notice to counsel of record to:

Brady J. Cobb, Esquire
Dylan M. Fulop, Esquire
COBB EDDY, PLLC
Local Counsel for Plaintiffs
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Telephone: (954) 527-4111
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vgurvits@bostonlawgroup.com

By: /s/ Lawrence A. Kellogg, P.A.
LAWRENCE A. KELLOGG, P.A.

EXHIBIT 9

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

In Re Third Party Subpoena to Fusion GPS

c/o Zuckerman Spaeder LLP
1800 M Street, NW
Washington, D.C. 20036

Misc. Case No. _____

Aleksej Gubarev, XBT Holding S.A., and
Webzilla, Inc.,

Plaintiffs,

V.

Case No. 17-cv-60426-UU

Buzzfeed, Inc and Ben Smith.,

Defendants.

**DECLARATION OF FUSION GPS IN SUPPORT OF NON-PARTY FUSION GPS'S
MOTION TO QUASH THIRD-PARTY SUBPOENA OR, IN THE ALTERNATIVE,
FOR A PROTECTIVE ORDER**

I, Peter Fritsch, declare as follows:

1. My name is Peter Fritsch, and I am of legal age and competent to give this declaration.
2. I am a partner at Fusion GPS.
3. Previously, I worked for the Wall Street Journal for fifteen years.
4. Fusion GPS was founded by experienced investigative journalists who apply investigative reporting skills to Fusion's clients' projects and needs.
5. Fusion GPS engages in research and investigation on behalf of its clients. Our clients include private sector businesses and individuals, as well as political organizations and politicians

on both the left and the right. Our engagements frequently relate to political matters of public importance, including but not limited to research about political candidates and issues.

6. Our techniques and investigative tools for our research and investigation go beyond standard open-source methods. Fusion GPS has an extensive network of domestic and international contacts, built up over many years of reporting.

7. Fusion GPS maintains the confidentiality of the identity of our clients and our sources, unless a client or source instructs otherwise.

8. During the U.S. presidential race, Fusion GPS was hired to research and investigate then-candidate Donald J. Trump. As part of the engagement, Fusion GPS hired Christopher Steele to investigate Trump's ties to Russia. In the course of that work, Mr. Steele produced a series of memoranda that have become known as the "Trump Dossier." One of these memorandum contains a paragraph about the Plaintiffs ("December Memo").

9. The identity of Fusion's clients in the engagement is confidential and has remained confidential.

10. Fusion GPS did not publish the Trump Dossier to the world; Buzzfeed did. Nevertheless, Fusion GPS has received a subpoena from Aleksej Gubarev, XBT Holding S.A., and Webzilla, Inc. ("Plaintiffs").

11. The subpoena seeks extensive and intrusive discovery from Fusion GPS about our clients, confidential sources of information, documents and information about the Plaintiffs, our work related to the December Memo and the Dossier, and our internal communications and work product, among other topics. Requiring us to reveal this information would chill our and our clients' First Amendment rights to engage in political activity, political speech, to speak anonymously, to associate freely with others, and to petition the government.

12. Being compelled to comply with the subpoena will make it harder for Fusion GPS to

attract clients, collaborate with other like-minded organizations and individuals, and hire contractors and others to assist Fusion GPS in its work.

13. Forced disclosure of our internal communications and documents would make our organization less willing to communicate freely with our clients, our contractors and collaborators, and amongst ourselves.

14. Forced disclosure of our internal communications and documents would also make it more difficult for us to research and investigate matters of public concern. Sources will be less likely to confide in us. Collaborators will be less likely to associate with us. Clients will be less likely to hire us. And we will be less likely to undertake sensitive political research assignments for fear of having to disclose our sources, clients, work product and/or internal communications or documents.

15. As a result of the publicity around the Trump Dossier, Fusion GPS has been maligned in the media as “a disinformation firm,” as improperly receiving money from Russians, as a professional smear organization, as partisan operatives, and far worse. The organization and its principals have received threatening communications.

16. If Fusion GPS was forced to expose our clients’ identity, those clients would be exposed to the kind of harassment to which Fusion GPS has been subjected.

17. Lastly, if the identity of the confidential sources in the Trump Dossier were revealed, I believe that their lives would be put in immediate danger.

18. On August 22, 2017, Glenn Simpson was interviewed by staff on the Senate Judiciary Committee. He invoked the First Amendment and attorney-client/attorney work product privileges, as well as obligations to his clients, to questions that sought privileged information. He did not reveal the identity of Fusion GPS’s clients or any of the sources for the Dossier or the December Memo.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 30, 2017



Peter Fritsch

EXHIBIT 10

-----)	
Aleksej Gubarev, XBT Holding S.A., and)	
Webzilla, Inc.)	
Plaintiffs,)	
)	Case No. 17-cv-60426-UU
v.)	
)	
Buzzfeed, Inc. and Ben Smith,)	
)	
Defendants.)	
-----)	

OBJECTIONS OF FUSION GPS TO RULE 45 SUBPOENA FOR DOCUMENTS ISSUED BY ALEKSEJ GUBAREV, XBT HOLDING SA, AND WEBZILLA, INC.

Pursuant to Rule 45(d)(2)(B) of the Federal Rules of Civil Procedure, Fusion GPS (“Fusion”) states its objections to the command contained within the Subpoena to Testify At A Deposition In A Civil Action (“Subpoena”), issued by Plaintiffs in the above-captioned matter, that Fusion produce documents in response to the requests listed in the Revised Schedule B (“Schedule B”) at the deposition noted for September 6, 2017 at 9:30 a.m. The General and Specific Objections are as follows:

Objections to the Definitions and General Objections to the Documents Requested

1. Fusion objects to the Definitions contained in Schedule B, and any implied or express definition or direction in the Document Requests, that impose or seeks to impose discovery obligations that are broader than or inconsistent with the Federal Rules of Civil Procedure.

2. Fusion objects to the Definition contained in Schedule B of “Fusion GPS” as including “agents, contractors and freelancers.” Fusion will not respond to the Document Requests contained in Schedule B on behalf of any “agents, contractors [or] freelancers.” In particular, Fusion is not responding to Schedule B on behalf of Christopher Steele or Orbis

Business Intelligence LTD who Plaintiffs have sued in England, nor is Fusion responding on behalf of its attorneys or any other agent.

3. Fusion objects to the Document Requests contained in Schedule B to the extent they seek documents or information already in Plaintiffs' possession, including but not limited to documents or information that has already been provided by the Defendants in this case or by Orbis Business Intelligence LTD and Christopher Steele in the High Court of Justice, on the basis that seeking discovery of documents or information already in Plaintiffs' possession constitutes an undue burden or expense on Fusion in violation of Rule 45(d)(1).

4. Fusion objects to the Document Requests contained in Schedule B to the extent they seek documents or information that is cumulative or duplicative of information already in Plaintiffs' possession.

5. Fusion objects to the Document Requests contained in Schedule B to the extent they seek documents or information that could be obtained from the parties in the litigation, rather than from Fusion, a nonparty.

6. Fusion objects to the Document Requests contained in Schedule B to the extent they seek documents or information that are not proportional to the needs of the underlying case within the meaning of Federal Rules of Civil Procedure 26(b)(1).

7. Fusion objects to the Document Requests contained in Schedule B to the extent they are overbroad, unduly burdensome, and/or seek documents not relevant to any party's claim or defense.

8. Fusion objects to the Document Requests contained in Schedule B to the extent they request documents or information not within Fusion's custody, control or possession.

9. Fusion objects to the Document Requests contained in Schedule B as seeking documents and information for use in foreign proceedings, including but not limited to the claim filed in the High Court of Justice in February 2017 by Plaintiffs against Orbis Business Intelligence LTD and Christopher Steele, rendering the subpoena improper under Federal Rule of Civil Procedure 45 as an improper attempt to circumvent the evidence-gathering process in the foreign proceedings.

Specific Objections

Request 1: The December Memo, in its unredacted form.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as seeking a document that is not relevant to any party's claim or defense. The allegedly defamatory publication was the December Memo in its redacted form. Accordingly, any unredacted version, if such a version exists, is not relevant to Plaintiffs' claim. Furthermore, the redaction may protect information that could identify a confidential source. The identity of the source is not relevant to Plaintiffs' claim.

Second, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Third, Fusion further objects to the Document Request as calling for the production of a document protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Fourth, Fusion further objects to the Document Request as calling for the production of a document protected by an informant's privilege and/or by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 2: All documents concerning Aleksej Gubarev.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and not relevant to any party's claim or defense. The Request is unlimited in time, does not reference the Trump Dossier or the December Memo, is not otherwise connected to any matter at issue in the lawsuit, and violates Rule 45(d)(1).

Second, Fusion further objects to the Document Request as calling for the production of a document protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Fourth, Fusion further objects to the Document Request as calling for the production of a document protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 3: All documents concerning XBT Holdings, S.A.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and not relevant to any party's claim or defense. The Request is unlimited in time, does not reference the Trump Dossier or the December Memo, is not otherwise connected to any matter at issue in the lawsuit, and violates Rule 45(d)(1).

Second, Fusion further objects to the Document Request as calling for the production of a document protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Fourth, Fusion further objects to the Document Request as calling for the production of a document protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 4: All documents concerning Webzilla, Inc.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and not relevant to any party's claim or defense. The Request is unlimited in time, does not

reference the Trump Dossier or the December Memo, is not otherwise connected to any matter at issue in the lawsuit, and violates Rule 45(d)(1).

Second, Fusion further objects to the Document Request as calling for the production of a document protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Fourth, Fusion further objects to the Document Request as calling for the production of a document protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 5: All communications between Fusion and BuzzFeed concerning the Dossier.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to this Request as overly broad, unduly burdensome, and seeking discovery not relevant to any party's claim or defense, particularly because the Request is not limited to communications concerning the publication of the December Memo or the Dossier. Further, the Request is unlimited in time.

Second, Fusion further objects to the Document Request as calling for the production of a document protected by the First Amendment to the United States Constitution, including but not

limited to, the rights of Fusion and/or its clients to engage in political activity, political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to this Request as seeking documents or information that could be obtained from BuzzFeed, a party to the litigation, rather than from Fusion, a nonparty.

Subject to, and without waiver of, the foregoing objections, Fusion will produce all communications, if any, between Fusion and BuzzFeed prior to the publication of the Dossier concerning the publication of the Dossier.

Request 6: All communications between Fusion and Ben Smith concerning the Dossier.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to this Request as overly broad, unduly burdensome, and seeking discovery not relevant to any party's claim or defense, particularly because the Request is not limited to communications concerning the publication of the December Memo or the Dossier. Further, the Request is unlimited in time.

Second, Fusion further objects to the Document Request as calling for the production of a document protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity, political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to this Request as seeking documents or information that could be obtained from Ben Smith, a party to the litigation, rather than from Fusion, a nonparty.

Subject to, and without waiver of, the foregoing objections, Fusion will produce all communications, if any, between Fusion and Ben Smith prior to the publication of the Dossier concerning the publication of the Dossier.

Request 7: All documents reflecting or relating to the sources of information concerning Aleksej Gubarev.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and seeking discovery not relevant to any party's claim or defense. The Request is unlimited in time, does not reference the Trump Dossier or the December Memo, is not otherwise connected to any matter at issue in the lawsuit, and violates Rule 45(d)(1).

Second, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Third, Fusion further objects to the Document Request as calling for the production of documents protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Fourth, Fusion further objects to the Document Request as calling for the production of documents protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 8: All documents reflecting or relating to the sources of information concerning XBT Holdings, Inc.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and seeking discovery not relevant to any party's claim or defense. The Request is unlimited in time, does not reference the Trump Dossier or the December Memo, is not otherwise connected to any matter at issue in the lawsuit, and violates Rule 45(d)(1).

Second, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Third, Fusion further objects to the Document Request as calling for the production of documents protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Fourth, Fusion further objects to the Document Request as calling for the production of documents protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 9: All documents reflecting or relating to the sources of information concerning Webzilla, Inc.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and seeking discovery not relevant to any party's claim or defense. The Request is unlimited in time, does not reference the Trump Dossier or the December Memo, is not otherwise connected to any matter at issue in the lawsuit, and violates Rule 45(d)(1).

Second, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Third, Fusion further objects to the Document Request as calling for the production of documents protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Fourth, Fusion further objects to the Document Request as calling for the production of documents protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Request 10: All communications with Christopher Steele concerning the December Memo.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as seeking discovery not relevant to any party's claim or defense. Such communications are not relevant to Plaintiffs' claim.

Second, Fusion further objects to the Document Request as calling for the production of documents protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity or political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to the Document Request as calling for the production of documents protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Fourth, Fusion further objects to the Document Request as calling for the production of information which could lead to the disclosure of the identity of a confidential source, which could endanger that source's physical safety. Such discovery should not be permitted under Rule 26 and/or Rule 45.

Request 11: All documents concerning the provision of the Dossier and/or the December Memo to third parties.

Objections: Fusion incorporates herein by reference the foregoing General Objections. Fusion specifically objects to the Request on the following grounds.

First, Fusion objects to the Document Request as overly broad, unduly burdensome, and seeking discovery not relevant to any party's claim or defense. First, the Dossier, as defined, concerns matters unrelated to Plaintiffs. Additionally, no third party other than BuzzFeed and its Editor-in-Chief are Defendants in this action and, accordingly, documents concerning the provision of the Dossier and/or the December Memo to any third party other than BuzzFeed or its Editor-in-Chief are not relevant to Plaintiffs' claim. Third, the Request is not limited in time.

Second, Fusion further objects to the Document Request as calling for the production of documents protected by the First Amendment to the United States Constitution, including but not limited to, the rights of Fusion and/or its clients to engage in political activity, political speech, to speak anonymously, to associate freely with others, and to petition the government.

Third, Fusion further objects to the Document Request as calling for the production of documents protected by an informant's privilege and by other legal or contractual duties of confidentiality and non-disclosure owed by Fusion to a third party.

Fourth, Fusion further objects to this Request to the extent that it seeks documents or information that could be obtained from parties to the litigation, rather than from Fusion, a nonparty.

Subject to, and without waiver of, the foregoing objections, Fusion will produce all documents, if any, concerning the provision of the Dossier and/or the December Memo to BuzzFeed prior to the publication of the Dossier.

Respectfully submitted,

/s/ Steven Salky
William W. Taylor, III
Steven M. Salky
Rachel F. Cotton
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rcotton@zuckerman.com

Counsel for Non-Party Fusion GPS

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2017, the foregoing was served on Evan Fray-Witzer via electronic mail.

/s/ Steven M. Salky
Steven M. Salky

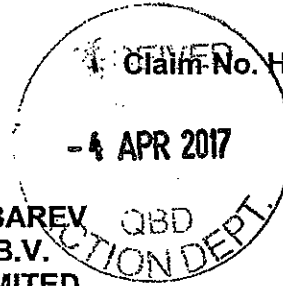
EXHIBIT 11

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN:-

- (1) ALEKSEJ GUBAREV
(2) WEBZILLA B.V.
(3) WEBZILLA LIMITED
(4) XBT HOLDINGS S.A.



Claimants

-and-

- (1) ORBIS BUSINESS INTELLIGENCE LIMITED
(2) CHRISTOPHER STEELE

Defendants

DEFENCE

References in this Defence are to paragraphs in the Particulars of Claim unless otherwise stated.

Introduction

1. Save that it is admitted that the Second and Third Claimants are hosting infrastructure companies based in the Netherlands and Cyprus respectively, no admissions are made as to paragraphs 1 and 2.
2. Paragraphs 3-5 are admitted.
3. Orbis was founded in 2009 by the Second Defendant and Christopher Burrows.
4. The Second Defendant and Christopher Burrows were formerly senior and experienced Crown servants in the Foreign and Commonwealth Office.
5. Sir Andrew Wood GCMG was the British Ambassador to Moscow between 1995 and 2000. He is an Associate Fellow of the Russia and Eurasia Programme at the Royal Institute for International Affairs at Chatham House. He is also an Associate of Orbis.

6. Fusion GPS ("Fusion") is a consultancy based in Washington DC providing research, strategic intelligence and due diligence services to clients.
7. Prior to the events in issue in this case the Defendants had developed a working relationship with Fusion over a number of years.
8. At all material times Fusion was subject to an obligation not to disclose to third parties confidential intelligence material provided to it by the Defendants in the course of that working relationship without the agreement of the Defendants.

The pre-election memoranda

9. Between June and early November 2016 Orbis was engaged by Fusion to prepare a series of confidential memoranda based on intelligence concerning Russian efforts to influence the US Presidential election process and links between Russia and Donald Trump.
10. The Defendants produced sixteen such memoranda. These will be referred to for convenience as "the pre-election memoranda", having been prepared before the 2016 US Presidential election. The last one was produced in the latter part of October 2016. None were produced in November 2016. None of the pre-election memoranda contained any reference to, or intelligence about, the Claimants.
11. As an Associate of Orbis, Sir Andrew Wood was aware of the Second Defendant's intelligence gathering for the pre-election memoranda.

Senator John McCain

12. Senator John McCain is the Chair of the US Senate Armed Services Committee and a member of the US Senate Committee on Homeland Security and Governmental Affairs.
13. David Kramer is a former US State Department civil servant and was US Assistant Secretary of State for Democracy, Human Rights, and Labor from 2008 to 2009. He is the Senior Director for Human Rights and Human Freedoms at Senator McCain's Institute for International Leadership.
14. After the election of Donald Trump as the 45th President of the United States on 8 November 2016, Sir Andrew Wood met Mr Kramer and Senator McCain. As a result of their discussions Sir Andrew arranged for the Second Defendant to meet Mr Kramer, as the representative of Senator McCain, in order to show him the pre-election memoranda on a confidential basis.

15. The meeting between the Second Defendant and Mr Kramer took place on 28 November 2016 in Surrey. Mr Kramer told the Second Defendant that the intelligence he had gathered raised issues of potential national security importance.
16. An arrangement was then made upon Mr Kramer's return to Washington for Fusion to provide Sen. McCain with hard copies of the pre-election memoranda on a confidential basis via Mr Kramer.
17. On behalf of Sen McCain, Mr Kramer requested to be provided with any further intelligence gathered by the Defendants about alleged Russian interference in the US Presidential election.

The confidential December memorandum

18. The Defendants continued to receive unsolicited intelligence on the matters covered by the pre-election memoranda after the US Presidential election and the conclusion of the assignment for Fusion.
19. After receiving some such intelligence the Second Defendant prepared the confidential December memorandum, referred to at paragraph 8.1, on his own initiative on or around 13 December 2016.
20. The Defendants considered, correctly, that the raw intelligence in the December memorandum:
 - a. was of considerable importance in relation to alleged Russian interference in the US Presidential election;
 - b. had implications for the national security of the US and the UK; and
 - c. needed to be analysed and further investigated/verified.
21. Accordingly the Second Defendant provided a copy of the December memorandum to:
 - a. A senior UK government national security official acting in his official capacity, on a confidential basis in hard copy form; and
 - b. Fusion, by enciphered email with an instruction to Fusion to provide a hard copy to Sen. McCain via Mr Kramer.

Liability for the publication complained of

22. Save that it is admitted that the words complained of and set out therein were contained in the confidential December memorandum, paragraph 6 is denied.

23. It is denied that in their natural and ordinary meaning, in their proper context, the words complained of bore or were capable of bearing the meaning pleaded at paragraph 7.
24. Read in context the natural and ordinary meaning of the words complained of was that there were grounds to investigate whether the Claimants had been coerced by Russia into hacking the computers used by the US Democratic Party leadership, transmitting viruses, planting bugs, stealing data and conducting altering operations.
25. Save insofar as it is admitted above paragraph 8.1 is denied.
26. The first sentence of paragraph 8.2 is noted. This is understandable. The contents of the December memorandum were highly sensitive and the Defendants only disseminated copies of it in strict confidence as aforesaid.
27. The remainder of paragraph 8.2 is, in the premises, denied in its entirety.
28. Sub-paragraphs 8.2.1, 8.2.2 and 8.2.4 are admitted.
29. As to sub-paragraph 8.2.3:
 - a. In so far as this sub-paragraph refers to the pre-election memoranda:
 - i. The first sentence is too vague for the Defendants to plead to in any meaningful way;
 - ii. The second sentence is denied;
 - b. In so far as it refers to the confidential December memorandum:
 - i. The first sentence is again too vague for the Defendants to plead to in any meaningful way. The December memorandum was provided to the recipients identified above so that that the information in it was known to the United States and United Kingdom governments at a high level by persons with responsibility for national security;
 - ii. The second sentence is denied.
30. The first sentence of sub-paragraph 8.2.5 is noted. The Defendants did not, however, provide any of the pre-election memoranda to media organizations or journalists. Nor did they authorize anyone to do so. Nor did they provide the confidential December memorandum to media organizations or journalists. Nor did they authorize anyone to do so.
31. The second sentence of sub-paragraph 8.2.5 is denied.

- 32. Save that it is admitted that the Second Defendant gave off the record briefings to a small number of journalists about the pre-election memoranda in late summer/autumn 2016, sub-paragraph 8.2.6 is denied.
- 33. Paragraph 8.3 is admitted but liability for such publication resides with BuzzFeed.
- 34. No admissions are made as to paragraph 8.4.
- 35. Paragraph 8.5 is denied. The Defendants are not liable for publication by BuzzFeed.

Qualified privilege

- 36. Further or in the alternative, the confidential December memorandum was published by the Defendants, as pleaded at paragraph 21 above, in good faith, on an occasion of qualified privilege.
- 37. In the circumstances set out above the Defendants were under a duty to pass the information in the December memorandum to the senior UK government national security official and Sen. McCain so that it was known to the United Kingdom and United States governments at a high level by persons with responsibility for national security. These recipients had a corresponding duty or interest to receive it in their capacities as senior representatives of those governments with such responsibilities.
- 38. The incidental publications to Fusion and Mr Kramer were reasonable as a means of bringing this sensitive document securely to the attention of Sen. McCain.
- 39. The Defendants did not publish the December memorandum to any of the said recipients with the intention it should be republished to the world at large nor did they ask any of them to republish the December memorandum to others. If any of the recipients did so with the result that it was published to the world at large the Defendants, in the circumstances, retain the protection of qualified privilege.

Harm

- 40. In relation to paragraph 9, it is admitted that publication of the words complained of by BuzzFeed (or any subsequent internet republication of those words by third parties) was likely to cause serious harm to the reputation of the First Claimant. Save as aforesaid, paragraph 9 is not admitted. In particular, it is not admitted that the publication of the words complained of by BuzzFeed (or any such subsequent republication) has caused serious financial loss to any of the Claimants or that it is likely to do so in future. The Claimants are required to prove the existence and extent of any past financial loss and/or any likely future financial loss caused by the publication of the words complained of.

41. Paragraph 10 is noted. It is not admitted that the law of each of the jurisdictions in the European Union in which the words complained of were published was and is, so far as material, the same as the law of England and Wales.
42. In relation to paragraph 11:
 - a. Paragraphs 23 and 24 above are repeated and sub-paragraph 11.1 is denied;
 - b. Sub-paragraph 11.2 is admitted but it is denied that the Defendants published or caused the publication of the words complained of extremely widely;
 - c. Sub-paragraph 11.3 is not admitted;
43. The first sentence of paragraph 12 is not admitted.
44. In relation to the second sentence of paragraph 12, it is denied that the Claimants are entitled to claim damages, whether aggravated or otherwise, against the Defendants as opposed to BuzzFeed.
45. In relation to paragraphs 12.1 and 12.2, it is admitted that the Defendants did not contact the Claimants prior to the publication of the words complained of by BuzzFeed. In light of the matters pleaded above the Defendants had no reason to contact the Claimants in relation to the publication of the December memorandum by BuzzFeed.
46. Paragraph 12.3 is denied. The First, Second and Third Claimants sent a letter before action to the Defendants on 23 January 2017. The Defendants acknowledged receipt of the letter before action through a letter from their former solicitors, Schillings, on 30 January 2017. The Defendants then provided a detailed response to the letter before action four days later on 3 February 2017. The Defendants pointed out that the Claimants' letter before action did not meet the requirements contained in the Pre-Action Protocol for Defamation. In particular the letter before action:
 - a. stated that McDermott Will & Emery were instructed by "*affiliates*" of the Second and Third Defendants, but did not provide the names or any details of those "*affiliates*". Nor did it state whether McDermott Will & Emery were instructed by the Fourth Claimant;
 - b. did not identify the particular publication(s) that were the subject of the prospective claim, contrary to paragraph 3.2 of the Pre-Action Protocol for Defamation;
 - c. did not identify the meaning that the First to Third Claimants attributed to the words complained of, contrary to paragraph 3.3 of the Pre-Action Protocol for Defamation.

The Defendants therefore requested the Claimants to provide the necessary information in order to enable the Defendants to provide a full response to the

proposed claim. Notwithstanding the fact that the Defendants provided a detailed response to the Claimants' letter before action within 11 days of that letter being sent, and notwithstanding the numerous deficiencies in the letter before action, on 3 February 2017 the Claimants issued and served proceedings on the Defendants. In the circumstances, the Claimants' decision to issue proceedings less than two weeks after the letter before action was precipitous, incompatible with the overriding objective in the Civil Procedure Rules, and breached the requirements of the Pre-action Protocol for Defamation.

47. It is denied that the Claimants are entitled to an injunction against the Defendants as pleaded in paragraph 13 of the Particulars of Claim or at all.

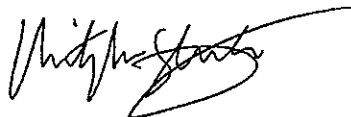
GAVIN MILLAR Q.C.

EDWARD CRAVEN

STATEMENT OF TRUTH

The Defendants believe that the facts set out in these Particulars of Claim are true.

Signed:



Christopher Steele

Position: Director, Orbis Business Intelligence Ltd

Date: 03 April 2017

EXHIBIT 12

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re Third Party Subpoena to Fusion GPS

c/o Zuckerman Spaeder LLP
1800 M Street, NW
Washington, D.C. 20036

Misc. Case No. _____

Aleksej Gubarev, XBT Holding S.A., and
Webzilla, Inc.,

Plaintiffs,

v.

Buzzfeed, Inc and Ben Smith.,

Defendants.

Case No. 17-cv-60426-UU

**DECLARATION OF JOHN DOE IN SUPPORT OF MOTION OF NON-PARTY FUSION
GPS TO QUASH THIRD-PARTY SUBPOENA OR, IN THE ALTERNATIVE,
FOR A PROTECTIVE ORDER**

I, John Doe, declare as follows:

1. I am of legal age and competent to give this declaration.
2. I am a partner in a national law firm that has worked with Fusion GPS in the past (not on the engagement that produced the Trump Dossier).
3. I worked with Fusion GPS for the purpose of conducting research into political issues of public concern. Fusion GPS's research included investigating the qualifications of particular international political candidates and U.S. officials, their public and private dealings, and the truthfulness of claims that they made.
4. When I worked with Fusion GPS, it was important to me that Fusion GPS keep my identity confidential, as well as the identity of the person and/or organization with whom I was

affiliated.

5. Had I known that my affiliation with Fusion GPS would not be kept confidential, I would not have worked with them.

6. Further, I would be less inclined to hire Fusion GPS in the future if I knew that my engagement of them would not be kept confidential.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 28, 2017

/s/

A handwritten signature in black ink, appearing to be "J. B. [unclear]", is written over a horizontal line. A vertical line extends downwards from the signature area.