

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

HOULIHAN SMITH & COMPANY, )  
INC.® and HOULIHAN SMITH )  
ADVISORS, LLC, )

Plaintiffs, )

v. )

Case No.

JULIA FORTE, individually; )  
JULIA FORTE d/b/a 800Notes.com )  
Advent LLC; )  
JULIA FORTE d/b/a whocallsme.com; )  
JAMON SILVA, individually; )  
JAMON SILVA d/b/a whocalled.us.com; )  
JOHN DOES 1-30; and )  
JANE DOES 1-30, )

Defendants. )

10CH16477

**VERIFIED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Houlihan Smith & Company, Inc.® ("Houlihan Smith") and Houlihan Smith Advisors, LLC ("Houlihan Smith Advisors") (Houlihan Smith and Houlihan Smith Advisors are collectively referred to as "Plaintiffs" or "Houlihan"), for their complaint against the Defendants, Julia Forte, individually ("Forte"); Julia Forte d/b/a/ 800Notes.com Advent LLC ("800Notes"); Julia Forte d/b/a whocallsme.com ("Whocallsme"); Jamon Silva, individually ("Silva"); Jamon Silva d/b/a whocalled.us.com ("Whocalled.us") (800Notes, Whocallsme, Whocalled.us, Forte, and Silva collectively are referred to as the "Website Defendants"); John Does 1-30; and Jane Does 1-30 (collectively are referred to as the "Jane and John Doe Defendants") (the Website Defendants and the Jane and John Doe Defendants collectively are referred to as the "Defendants"), for defamation *per se* and *per quod*, violation of the Illinois Trademark Registration and Protection Act, violation of the Illinois Right of Publicity Act, misappropriation of trademark and mark, violation of the Illinois Fair Trade Practices Act, violation of the Illinois

Consumer Fraud and Deceptive Business Practices Act, and for the issuance of a temporary restraining order, preliminary and permanent injunction, state as follows:

### **NATURE OF ACTION**

1. This action concerns numerous false, defamatory and disparaging statements about Houlihan on the websites 800Notes.com, Whocallsme.com, and Whocalled.us.com. (800Notes.com, Whocallsme.com and Whocalled.us.com are collectively referred to as the “Websites.”). Julia Forte owns and operates the websites 800 Notes.com and Whocallsme.com. Jamon Silva owns and operates the website Whocalled.us.com.

2. Over the course of the past year, unidentified individuals and/or entities, *i.e.* the Jane and John Doe Defendants, have engaged in a malicious campaign to ruin the reputation of Plaintiffs and their principals, employees, agents and representatives by repeatedly publishing and re-publishing false and defamatory statements on the Websites.

3. As recently as April 6, 2010, the wrongful campaign to harm Plaintiffs resulted in the publication of a harassing defamatory and disparaging comment posted on 800Notes and Whocallsme. These statements attribute criminal conduct to Plaintiffs and two of their principals, impute an inability by Plaintiffs and their principals to properly discharge the duties of their employment and, *inter alia*, impute an inability of Plaintiffs and their principals to properly perform the duties of their profession and business. These statements are completely false.

4. On April 12, 2010, Plaintiffs provided written notice to the Website operators, informing them that the statements in the April 6, 2010 posting, as well as additional postings on the Websites, were false and defamatory. Plaintiffs requested that the Website Defendants voluntarily remove, and/or block access to, the defamatory postings. The Website Defendants have refused without reason or justification to comply with Plaintiffs’ request.

5. To remedy the continued dissemination and impermissible use of Plaintiffs' intellectual property rights and to stop the significant decline and loss of revenue the Plaintiffs currently are suffering, Plaintiffs ask this Court to enter a temporary restraining order, preliminary injunction, and permanent injunction against the Website Defendants and the owners and/or operators of these Websites (Forte and Silva), to remove and/or block access to all of the defamatory postings on the Websites until further order of this Court.

6. Plaintiffs bring claims for defamation against the individuals and/or entities that have posted the defamatory comments (the Jane and John Doe Defendants) and against the Website Defendants because of their substantial assistance and continued dissemination and republication of the defamatory materials and malicious use of Houlihan Smith's trademarks and other intellectual property rights, for defamation *per se*, violation of the Illinois Trademark Registration and Protection Act, violation of the Illinois Right of Publicity Act, misappropriation of trademark, and violation of the Illinois Consumer Fraud and Deceptive Practices Act, Illinois Uniform Deceptive Trade Practices Act.

7. Plaintiffs are entitled to injunctive relief. They have a protectable interest in the continued operation of their business free from unlawful interference, the use and enjoyment of Houlihan Smith's trademarks, right of publicity, and other intellectual property rights. Plaintiffs do not have an adequate remedy at law as no monetary award can possibly compensate Plaintiffs for the significant revenue and goodwill they have already lost and continue to lose as a result of the defamatory postings and malicious violation of their intellectual property rights throughout the world. The balance of harms strongly favors Plaintiffs.

8. The Defendants will suffer no prejudice or harm. They have the absolute right to remove access to all of the harassing and defamatory postings. They do not have the right to use

and misappropriate Plaintiffs' intellectual property rights. The Jane and John Doe Defendants' defamatory statements are not entitled to any protections, neither at common law nor under the Constitution. Moreover, the Communications Decency Act, 47 U.S.C. § 2301, *et seq.* ("CDA"), does not insulate the Website Defendants from liability in this action or Plaintiffs' request for injunction relief.

9. This is an emergency because the April 6, 2010 posting falsely represents that principals of Plaintiffs are scam artists and ex-cons, among other false statements, which is causing significant harm to Plaintiffs and their owners and managers. By entering a temporary restraining order and preliminary injunction blocking access to, or removing the defamatory postings, the Court can maintain the *status quo* among all of the parties.

#### **PARTIES**

10. Houlihan Smith is an investment banking firm that is incorporated in Nevada and has its principal place of business in Chicago, Illinois.

11. Houlihan Smith Advisors is a financial services company that is incorporated in Nevada and has its principal place of business in Chicago, Illinois.

12. Forte, an individual, is the registered owner of the websites 800Notes.com and Wocallsme.com, and a resident and citizen of North Carolina. Forte does business as and/or operates 800Notes.com and as Whocallsme.com.

13. Silva, an individual, is the registered owner of the website Whocalled.us.com, and a resident and citizen of Massachusetts. Silva does business as and/or operates Whocalled.us.com.

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14. Jane and John Doe Defendants have been anonymously posting and continue to post false and disparaging statements about Plaintiffs and their principals, employees, agents and representatives on the Websites.

15. On information and belief, the Jane and John Doe Defendants consist of a group of individuals and/or competitors of Plaintiffs that create email accounts using fictitious names in order to anonymously post false statements about Plaintiffs.

16. Based on the information contained in the April 6, 2010 posting on 800Notes and Whocallsme, the individual making the defamatory comments in this posting is a former employee of Plaintiffs in their Chicago, Illinois office.

#### **JURISDICTION AND VENUE**

17. This Court has personal jurisdiction over the Defendants pursuant to 735 ILCS 5/2-209(a) and (b) because they have transacted business in Illinois and intentionally directed harmful and egregious tortious and intentional acts to Plaintiffs, whose principal place of business is located in Chicago, Illinois, in reckless or intentional disregard for the truth of the postings and harm they are causing Plaintiffs. 735 ILCS 5/2-209(a) and (b). Further, the Website Defendants also engage in substantial internet advertising and solicitations over the internet, in Illinois, and throughout the world.

18. Venue is proper in this Circuit Court under 735 ILCS 5/2-101 because some or all of the events and transactions that form the basis of this action occurred in Cook County, Illinois.

#### **FACTUAL BACKGROUND**

19. Houlihan Smith is an investment banking firm based in Chicago, Illinois that provides financial advisory and financing services to public and private businesses in Illinois and throughout the United States.

20. Houlihan Smith Advisors is a financial services firm based in Chicago, Illinois.

21. Houlihan Smith is the owner of U.S. Trademark Registration Nos. 3,390,591 for Houlihan Smith & Company, Inc. (words only) and 3,387,276 for Houlihan Smith & Company Inc. (words and design) (hereinafter referred to as “the Houlihan Marks”). *See Exhibit A.* The Houlihan Marks have been used in connection with Houlihan Smith’s financial advisory and financing services throughout the state of Illinois and on the internet. This use has been continuous and exclusive since at least 1996. *See* the Affidavits of Charles Botchway and Andrew Smith attached hereto as **Exhibits E and F**, respectively.

22. Houlihan Smith is a registered broker dealer with the Financial Industry Regulatory Authority (“FINRA”). FINRA is the largest independent regulator for all securities firms doing business in the United States. “FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services.” *See* <http://www.finra.org>.

23. As a member of FINRA, any customer complaints regarding Houlihan Smith’s financial and security-based services in the financial industry are required to be filed and processed before FINRA. Tellingly, throughout their existence, there have never been any customer complaints filed against Plaintiffs before FINRA or its predecessor, National Association of Security Dealers.

24. However, in a malicious scheme, or individual spite, to harm and disparage the reputations of Plaintiffs and their principals, employees, agents and representatives, various unidentified individuals and/or entities (*i.e.*, the Jane and John Doe Defendants) have been anonymously posting and continuing to post false and disparaging statements about Plaintiffs and their principals, employees, agents and representatives on the Websites.

25. To carry out their wrongful conduct, these individuals and/or entities create false email accounts using fictitious names in order to anonymously post false statements about Plaintiffs. They have no legitimate reason for their conduct.

26. Among the *per se* defamatory statements currently located on the Websites and being disseminated throughout the world by the Website Defendants are the following:

- You are full of sh\*\*! You have been on other complaint sites regarding this **scam** company Houlihan/Smith. See <http://whocalled.us/lookup/3124995900>.
- "Once the **scam** was complete and Houlihan had all of our cash reserves and we couldn't afford to give them anymore to produce these pretty looking folders...they disappeared..." **Houlihan Scam** - 5 Jan 2009. See <http://whocallsme.com/Phone-Number.aspx/3124995900>.
- "**Absolute scam** and only sucker would fall for it." 6 Aug 2008, Crystal display, Delama City, Delaware, U.S.A. See <http://800notes.com/Phone.aspx/1-312-499-5900/5>.
- "looked it up and found out it was Holiahan (sic) and smith... They are like IPA out in Buffalo Grove... **Ripe (sic) off artists...**" Cocoa MC 20 - 27 Feb 2009. See <http://800notes.com/Phone.aspx/1-312-499-5900>.
- "I was stupid enough to take a job with this strong armed **scam company** that calls itself an investment banking advisory firm. ... **This company lies to its so called clients. It lies to it's (sic) employees...** An investment bank is typically filled with ivy league graduates and MBA's. This company is filled with people who can hardly get a job. ... **They scammed their clients at that firm and they are doing the same here. BEWARE!!!** I guarantee they will get sued numerous times for **scamming clients** for \$30K to \$100K for so called advisory work as a bait to get them to think they will get funded with debt or equity. Yeah right..." Former employee. See <http://800notes.com/Phone.aspx/1-312-499-5900/2>.
- "Houlihan clearly is a **scam...**" Not quite right - 5 May 2009. See <http://800notes.com/Phone.aspx/1-312-499-5900/4>.
- "... they were not in the business of doing anything other than **ripping us off...** \* \* \* Thank you very much to the commentors on this site - you just saved my company a lot of money." Caitlin - 15 Jun 2009. See <http://800notes.com/Phone.aspx/1-312-499-5900/8>.
- "Sure it's an 'investment banking firm', **but one of high repute? I think not. . .** **This company is a joke -- ...**" I used to work there too -- 4 July 2008. See <http://800notes.com/Phone.aspx/1-312-499-5900/4>.

- “You provide a disservice to humanity, regardless of what company you work for. **You existence is sustained via corporate bribery and the blackmail of politicians...High reput?** hahahaha....” Gigi, 14 Nov. 2008. *See* <http://800notes.com/Phone.aspx/1-312-499-5900/4>.
- “Houlihan Smith is just not right. They don’t care about business relationships in a business that is all about people....” Just interviewed, 15 Jan 2009; *See* <http://800notes.com/Phone.aspx/1-312-499-5900/7>.
- “... a former senior associate who collected checks in the field for HS Advisors LLC was an **ex-con who ran a commodity pool scam and bilked 25 investors out of \$5 million and spent 51 months in a federal "condo"**. Rest Of The Story - 2 Feb 2010. *See* <http://800notes.com/Phone.aspx/1-312-499-5900/9>.
- “**This company is the biggest scam on the face of the earth and it is definitely a lawsuit waiting to happen.** In fact, I know they are being looked at. It’s sad that [employee of Houlihan] seems like such a family guy **is a scam artist.** [He] **has no idea what he is talking about as far as valuations....**[Houlihan will] deliver the report late and in **horrible quality...** [An employee] **is an ex-con for a scam involving commodities....**” Warning, 6 April 2010; *See* <http://800notes.com/Phone.aspx/1-312-499-5900/9>.

Attached hereto as Exhibits B through D are copies of the defamatory postings on each Website; **Exhibit B** contains postings on 800Notes.com; **Exhibit C**, Whocallsme.com; and **Exhibit D**, Whocalled.us.com (emphasis added).

27. The statements in the postings attached as Exhibits B through D are patently false, harassing, and outrageous. *See* the Affidavits of Charles Botchway and Andrew Smith attached hereto as **Exhibits E and F**, respectively. None of the Plaintiffs, principals employees agents or representatives has consented in writing or otherwise to the use of their name, likeness, the Houlihan Marks, trademarks, marks, service marks or other intellectual property rights.

28. This activity is ongoing. Many of these publications occurred as late as April 6, 2010, on which date one or more of the Jane and John Doe Defendants posted the *per se* defamatory and completely untrue statements attached hereto as Exhibits B through D accusing Plaintiffs and their principals, employees, agents and representatives on 800Notes.com and Whocallsme.com of criminal conduct:

29. Plaintiffs are not now and never have been a “scam”, “ripoff”, “fraud”, or “boiler room.” Neither Plaintiffs nor any of their principals, employees, agents or representatives lie to customers, scam any individual or company, or otherwise engage in the conduct attributed to them in the postings attached hereto. None of Plaintiffs’ principals, current or former employees, agents or representatives are “ex-cons” or have ever been accused or convicted of any criminal conduct. *See* Exhibits E and F.

30. Equally troubling, these defamatory postings and false statements about Plaintiffs occupy some of the top search engine results for the search terms “Houlihan Smith” on the most popular search engines, such as Google and Yahoo.

31. The owners and operators of the Websites are not mere passive forums or innocent bystanders in this regard. They profit from Plaintiffs’ agony through, among other things, the increased traffic to their Websites resulting from the scandalous and outrageous nature of the comments appearing on their Websites. In order to increase the flow of “traffic” or visitors to the Websites, the Website Defendants or their owners and/or operators combine their own original content with each posting to ensure the false statements occupy or are associated with Plaintiffs on search results whenever an individual performs a search for “Houlihan Smith.” This has the result of perpetuating the wrongful scheme to harm Plaintiffs and to ensure the false statements are disseminated throughout the internet and, consequently, the world.

32. For example, none of the publications on Exhibits B through D use the word “fraud.” Nevertheless, a search result for “Houlihan Smith fraud” on a search engine retrieves the postings on the Websites that are attached as Exhibits B through D. On information and belief, this is because once a posting is submitted to a Website, the Website Defendants provide their own content into the HTML, metatags, source code, buried code, search terms, keywords,

key terms, hit generating pages, or otherwise, such as the term “fraud”, for the particular webpage containing the report or comment. On information and belief, the Website Defendants use and associate the term “fraud” with “Houlihan Smith” in the HTML script or otherwise in order to direct search results for “Houlihan Smith fraud” to the Websites. It is only through the Website Defendants’ own original content that internet searches associate “Houlihan Smith” with the word “fraud.”

33. Further, each webpage contains an HTML script that is read by internet search engines, such as Google or Yahoo. The owners of the Websites (such as Forte and Silva) have exclusive control over the content of the HTML script for their webpage. Among other content, the HTML script contains “metatags” that are designed for internet search engines to read.

34. One such metatag is the “title metatag,” which provides a title for the particular webpage. This title appears on the title bar of an internet browser program. On information and belief, the Website Defendants and/or their operators create the title metatag for each webpage on the Websites using derogatory terms such as “scam,” “fraud”, “ex-con”, *etc.*

35. In addition to the title metatag, the Website Defendants and/or their operators use information submitted by the anonymous individuals as part of the “description metatag” for each webpage. Similar to the “title metatag,” the description metatag appears in the HTML script for the webpage, which is displayed in the two lines of text beneath the title for each search result on search engines such as Google. For example, when Houlihan Smith is searched on Google, the results page on Google displays the defamatory content of the postings as a result of the Websites’ use of the description and title metatags containing the defamatory content and intellectual property rights of Plaintiffs in the HTML.

36. Further, on information and belief, the Website Defendants enter into agreements with entities, such as Google, that operate internet search engines to ensure the defamatory postings are associated with Plaintiffs' name and identities when searches are performed when an individual searches the internet for Plaintiffs or their principals, employees, agents or representatives who are identified by name on the Websites.

37. The combination of the defamatory comments in the anonymous postings, agreements with internet-search companies, and the original content provided by the Website Defendants and/or their operators results in the intentional, constant and repeated publication of the defamatory materials about Plaintiffs throughout the internet and, consequently, throughout the world, 24 hours a day, seven days a week.

38. The highly-charged, sensational words, such as "scam", "scam artists", "fraud" and "ex-con" appearing on the search results page have the intended effect of shocking any person who conducts an internet search for any business, such as Plaintiffs, unfortunate enough to be the victim of such comments posted on the Websites. The Website Defendants' intended consequence of using such sensational words, such as "scam", "scam artist", "ex-con", and "fraud" is to increase traffic to the Websites, which in turn has the effect of increasing their revenue through advertisements and otherwise. The Website Defendants solicit individuals to visit their Websites through this wrongful conduct for commercial gain.

39. Further, in order to facilitate the wrongful dissemination of postings on the Websites, including the defamatory postings about Houlihan and its principals, employees, agents or representatives that are at issue here, 800Notes and Whocallsme obtain an irrevocable license from whomever publishes a post, including individuals residing in Illinois. The Terms of Service Agreements for 800Notes and Whocallsme provide, in part:

By posting Content to any public area of the Service, you automatically grant, and you represent and warrant that you have the right to grant, to [800Notes or whocallsme] an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sublicenses of the foregoing.

Copies of the Terms of Service Agreements for 800Notes.com and Whocallsme.com are attached as **Exhibits G and H**, respectively. It is only through this license that the Website Defendants have the right to continually disseminate the statements on their Websites.

40. The Website Defendants know the statements that are the subject of this action are false, yet they continue to disseminate the false statements throughout the world. They know Houlihan Smith owns a trademark, and its principals, employees, agents and representatives have the right to control their own publicity. Yet, they continue to publish the defamatory statements.

41. Indeed, the mere fact that Houlihan Smith registered the Houlihan Marks with the U. S. Patent and Trademark Office provides the Website Defendants with at least constructive notice of Houlihan Smith's intellectual property rights. Plaintiffs exclusively and consistently identify the Houlihan Marks as registered trademarks in the provision of their services, as evidenced by use of the same on Houlihan Smith's website (houlihansmith.com), employee stationery, emails, and employee handbook, all reference the Houlihan Marks. Plaintiffs consistently use and protect their Marks and have done so since at least 1996.

42. 800Notes, Whocallsme, and Forte also know that the statements violate the "Terms of Service Agreements" between them and the individuals and/or entities that originally posted them. The "Terms of Service Agreements" for 800Notes and Whocallsme provides, in part:

**Contribution of Content:** Much of the content of this website is provided by and is the responsibility of the person or people who made those postings. 800notes.com does not monitor the content and takes no responsibility for such content. However,



we reserve the right to delete any Content at any time without notifying the person from which such Content originated.

You agree that you will not post Content that:

- is known by you to be false, inaccurate or misleading
- is for purposes of spamming
- claims the identity, characteristics or qualifications of another person
- is unlawful, threatening, obscene, vulgar, pornographic, profane or indecent including any communication that constitutes (or encourages conduct that would constitute) a criminal offense, gives rise to civil liability or otherwise violates any local, state or federal law
- violates the copyright, trademark or other intellectual property rights
- contains links to viruses, worms or any items of a destructive nature
- for which you were compensated or granted any consideration by any third party

\* \* \*

See <http://800notes.com/nb/tos.aspx> (emphasis added); <http://whocallsme.com/nb/tos.aspx> (emphasis added).

43. The Terms of Service Agreements for 800Notes.com and Whocallsme.com authorize the deletion or removal of the defamatory information, providing: “[W]e reserve the right to delete any Content at any time without notifying the person from which such Content originated.” <http://800notes.com/nb/tos.aspx> and <http://whocallsme.com/nb/tos.aspx>.

44. The Terms of Service Agreements further authorizes 800Notes and Whocallsme to block the users from publishing any additional false and defamatory statements:

**Termination:** [The Website] reserves the right to immediately terminate your use of, or access to the Service if [the Website] decides at its sole discretion that you have breached this Agreement or any relevant law, rule or regulation or you have engaged in conduct that we consider to be inappropriate or unacceptable

<http://800notes.com/nb/tos.aspx> and <http://whocallsme.com/nb/tos.aspx>.

45. On April 12, 2010, Plaintiffs informed the Website Defendants in writing that the postings were false, defamatory and a violation of Plaintiffs' intellectual property rights, demanding that they remove the information from the Websites and cease all additional uses associated with the same. Copies of the April 12 demand letters are attached hereto as **Exhibits I and J**. The Website Defendants refused, without any legitimate justification and in bad faith. Their responses are attached hereto as **Exhibits K and L**.

46. Despite having knowledge of the defamatory nature of the postings, knowledge of the Plaintiffs' intellectual property rights and the right to remove to remove and/or block the continued dissemination of these materials, Forte, Silva, 800Notes and Whocallsme have refused to do so.

47. Plaintiff Houlihan Smith is the registered owner of the Houlihan Marks. The Houlihan Marks are well known and recognized both by individuals in the investment industry and, as their use demonstrates, by the Jane and John Doe Defendants who post on the Websites. Moreover, the Website Defendants' actions—creating metatags using the Houlihan Marks—demonstrate that the Houlihan Marks are recognized by the Website Defendants themselves.

48. By associating the Houlihan Marks with the term "fraud" in search engine results on Yahoo.com and Google.com, the Website Defendants use the Houlihan Marks in commerce, via their own original content, in order to attract hits to their own Websites while simultaneously defaming, disparaging, and harming Plaintiffs. Plaintiffs have never authorized any of the Defendants to use the trademark, or associate the trademark with nefarious conduct such as fraud, scams, criminal activity or otherwise.

49. The Website Defendants' conduct has the tendency to mislead individuals and customers into falsely believing the statements are true or that the association of the wrongful

conduct is accurate. It is not. The Defendants' unauthorized use dilutes and tarnishes the distinctive qualities of the Houlihan Marks.

50. These false statements and misuse of the Houlihan Marks and the individuals' right of publicity are so widely publicized by Defendants that Plaintiffs and their employees find themselves constantly having to explain and defend the false statements in their business and in their private and personal lives.

51. They have caused lost professional and business opportunities for Plaintiffs, lost profits and revenue for Plaintiffs, lost good will, they are seriously harming their reputations in the community, as well as the reputations of the principals, employees, agents or representatives of Plaintiffs.

52. The Website Defendants' practice of perpetuating the dissemination of these false statements (both through the creation of HTML script, association of the term "fraud" with Houlihan Smith, and refusing to remove the posts) has the effect of increasing the relevance of those reports to the Websites and increasing their revenue, and further has the effect of republishing the false statements.

53. Any future (or continued) publication of the defamatory statements, misuse of the Houlihan Marks, and other intellectual property rights at issue here will cause harm and damage to Plaintiffs and their principals, employees, agents and representatives without reason or just cause.

**COUNT I**  
**DEFAMATION PER SE AGAINST ALL DEFENDANTS**

54. Plaintiffs incorporate and re-allege paragraphs 1 through 53 as though fully set forth herein.

55. Jane and John Doe Defendants have published to third parties without authority or privilege the false statements detailed above, and other false statements, regarding Plaintiffs and their principals, employees, agents representatives with the malicious and wrongful attempt to harm Plaintiffs' business.

56. Jane and John Doe Defendants have repeatedly published and re-published those statements *via* the internet and the Websites, all posted under false usernames.

57. Jane and John Doe Defendants' false statements constitute defamation *per se* under all applicable laws because they falsely accuse Plaintiffs of committing crimes; suggest that Plaintiffs are a "scam," "scam artists," "ex-cons," operate a "boiler room," and other wrongful conduct; prejudice Plaintiffs in their business and profession; prejudice the individuals employed by Plaintiffs in their profession; and otherwise impute wrongful and criminal conduct to Plaintiffs and their principals, employees, agents and representatives in the operation of their business and professions.

58. Jane and John Doe Defendants' false statements have damaged each Plaintiff by interfering with their business relationships, by damaging their reputations in their communities, by interfering with their business or prospective business relationships with persons concerned that some of the false statements might be true, and by harming Plaintiffs in their ability to hire new employees.

59. The Website Defendants have engaged in defamatory conduct of their own because they have included their own original content to their Websites that affirmatively associates Plaintiffs with the term "fraud," even though no posting on the Websites uses that term. The Website Defendants also included the offensive, defamatory and untrue statements in the HTML in order to direct visitors to the Websites for commercial use.

60. The Defendants' conduct has significantly harmed and damaged Plaintiffs and their principals, employees, agents and representatives. The harm and damage they are causing will continue into the future if not enjoined, leaving Plaintiffs with no remedy at all.

61. The defamatory statements are not subject to an innocent construction nor protected by the First Amendment to the Constitution.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them:

(1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing any further statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives; (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives; (3) A temporary, preliminary and permanent injunction blocking the publication on any of website operated by Defendants by the individuals and/or entities responsible for the defamatory publications at issue in this case; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate, publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or

the intellectual property rights; (5) An order compelling the Website Defendants to immediately provide Plaintiffs with all information concerning the individuals and/or entities that have published the defamatory materials, including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (6) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000 against all Defendants, jointly and severally, plus punitive damages, interest, costs and attorneys' fees; and (7) All other relief to which Plaintiffs are entitled.

**COUNT II**  
**DEFAMATION *PER QUOD* AGAINST ALL DEFENDANTS**  
**(IN THE ALTERNATIVE TO COUNT I)**

62. Plaintiffs incorporate and re-allege paragraphs I through 53 as though fully set forth herein.

63. To the extent the defamatory statements in Count I, or any of them, are not considered *per se* defamation, Plaintiffs bring this Count II for defamation *per quod* in the alternative to Count I and incorporate all allegations in Count I herein.

64. In addition, the conduct of the Defendants with respect to the publication and continued publication of the defamatory comments is malicious and willful, all in an attempt to harm Plaintiffs and their principals, employees, agents and representatives.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them:

- (1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing any further statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives;
- (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all

statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives; (3) A temporary, preliminary and permanent injunction blocking the publication on any of website operated by Defendants by the individuals and/or entities responsible for the defamatory publications at issue in this case; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate, publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or the intellectual property rights; (5) An order compelling the Website Defendants to immediately provide Plaintiffs with all information concerning the individuals and/or entities that have published the defamatory materials, including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (6) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000 against all Defendants, jointly and severally, plus punitive damages, interest, costs and attorneys' fees; and (7) All other relief to which Plaintiffs are entitled.

**COUNT III**  
**VIOLATION OF THE ILLINOIS TRADEMARK REGISTRATION**  
**AND PROTECTION ACT; INJURY TO BUSINESS REPUTATION;**  
**DILUTION, 765 ILCS 1036/1 ET SEQ. AGAINST ALL DEFENDANTS**

65. Plaintiffs incorporate and re-allege paragraphs 1 through 53 as though fully set forth herein.

66. By reason of Plaintiffs' extensive labor, efforts, advertising and exclusive and consistent use of the Houlihan Marks, trade name, and service mark in connection with Plaintiffs' services since at least 1996, they have become famous and distinctive throughout the state of Illinois.

67. Plaintiffs have advertised their services in connection with the Houlihan Marks throughout the State of Illinois through the internet, electronic mailings, printed materials, and otherwise.

68. Plaintiffs have advertised and used the Houlihan Marks in all aspects of their business, including investment banking, valuations, fairness and solvency opinions, solvency and capital adequacy opinions, securities, corporate governance, private placement, asset management, and other related financial channels and trades consistently and exclusively since at least 1996. They are not aware of the use of the same or similar mark by any third parties, unless otherwise stated in this Complaint.

69. The Houlihan Marks are registered with the United States Patent and Trademark Office and on the principal register.

70. The Defendants' willful and unauthorized use of the Houlihan Marks in commerce, as set forth above, which occurred after they acquired fame and distinctiveness, have diluted and tarnished and will, unless restrained, continue to dilute and tarnish the distinctive



quality of the Houlihan Marks by destroying the association between them and Plaintiffs' reputable investment banking, financial and other services.

71. The Defendants are and continue to trade on Plaintiffs' reputation and to cause dilution and tarnishment of the Houlihan Marks with malice and without authorization.

72. The Defendants' actions are willful and in bad faith, in violation of the Illinois Trademark Registration and Protection Act. *See* 765 ILCS 1036/65; *Injury to Business Reputation, Dilution*.

73. The Defendants' conduct has directly and proximately caused Plaintiffs to suffer irreparable damage and will, unless enjoined by this Court, continue to cause Plaintiffs to suffer damages that cannot be adequately remedied at law.

74. The Website Defendants are not using, reproducing, copying, or otherwise misappropriating the Houlihan Marks or mark in comparative commercial advertising for non-commercial use, or in any form of news reporting or news commentary.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them:

- (1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from using, reproducing, copying, or otherwise associating any of the statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives at issue in this action with the Houlihan Marks or Mark;
- (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives, from all Websites that use, reproduce, copy, or otherwise associate the Houlihan Marks or mark in connection with the defamatory

postings; (3) A temporary, preliminary and permanent injunction blocking the continued publication, use, reproduction, copying, or association of the defamatory materials with the Houlihan Marks or mark on any of website operated by the Website Defendants; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate, publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or the intellectual property rights; (5) Judgment in favor of Plaintiffs and against the Website Defendants, jointly and severally, in an amount not to exceed three times the damage to Plaintiffs, and their reasonable attorneys' fees, but in no event less than \$50,000, plus punitive damages, interest, costs and attorneys' fees; and (6) All other relief to which Plaintiffs are entitled.

**COUNT IV**  
**VIOLATION OF THE ILLINOIS RIGHT OF PUBLICITY ACT,**  
**765 ILCS 1075/1, ET SEQ., AGAINST THE WEBSITE DEFENDANTS**

75. Plaintiffs incorporate and re-allege paragraphs 1 through 53 as though fully set forth herein.

76. The principals, employees, agents, and representatives of Plaintiffs have the exclusive and inherent right to control the use and commercial use of their name, identity, and likeness. The Right to Publicity Act is a law pertaining to intellectual property.

77. In Illinois, an individual's right of publicity is governed by the Illinois Right of Publicity Act, 765 ILCS 1075/1 *et seq.* (the "RPA"). The RPA defines "Identity" as "any attribute of an individual that serves to identify that individual to an ordinary, reasonable viewer or listener, including but not limited to (i) name, (ii) signature, (iii) photograph, (iv) image, (v) likeness, or (vi) voice." 765 ILCS 1075/5. The term "Name" as used in the RPA means "the actual name or other name by which an individual is known that is intended to identify that individual." 765 ILCS 1075/5.

78. The RPA limits the right of anyone to use an individual's identity, providing, in part: (a) A person may not use an individual's identity for commercial purposes during the individual's lifetime without having obtained previous written consent from the appropriate person or persons...." 765 ILCS 1075/30.

79. The right of publicity of the individuals identified in the postings on the Websites and used without permission by the Website Defendants constitutes a property right under the Illinois Right to Publicity Act, 765 ILCS 1075/1, *et seq.*

80. The Website Defendants' use of the identities of Plaintiffs' principals, employees, agents, and representatives in association with the defamatory and disparaging statements on the websites for commercial purposes and without their consent or authorization.

81. The Website Defendants' impermissible use has placed, and continue to place, Plaintiffs' principals, employees, agents or representatives in a false light before the public, harming their reputations and good will, personally and professionally.

82. The Defendants' false statements are highly offensive to reasonable persons.

83. The Website Defendants have and continue to violate the right of publicity of Plaintiffs' principals, employees, agents and representatives who are specifically named in the Websites. They do so 24 hours a day, seven days a week, throughout the world.

84. The Website Defendants have, without consent of Plaintiffs' principals, agents, employees and representatives, appropriated to their own use commercial or benefit the name or likeness of Plaintiffs' principals, agents, employees and representatives identified in the Websites.

85. In addition to the personal and substantial harm caused to these individuals because of the Website Defendants' malicious use of the individuals' right of publicity, they have also suffered and continue to suffer harm in the practice of their professions and businesses.

86. The RPA entitles Plaintiffs to injunctive relief against the Website Defendants' continued unlawful use of the identities and names of the principals, employees, agents, and representatives identified on the Websites. 765 ILCS 1075/50.

87. The RPA entitles Plaintiffs as the representatives of their principals, employees, agents, and representatives to an award of damages, punitive damages, reasonable attorneys' fees and costs. 765 ILCS 1075/40 and 55.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them:

(1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing, republishing, using, reproducing, copying or otherwise taking advantage of the right of publicity of Plaintiffs' principals, employees, agents and representatives identified by name or implication on the Websites; (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all statements that name or otherwise identify any

principals, employees, agents or representatives of Plaintiffs from all Websites; (3) A temporary, preliminary and permanent injunction barring the Website Defendants from continuing to publish any statements on their Websites that name or otherwise identify Plaintiffs' principals, employees, agents or representatives; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate, publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or the intellectual property rights; (5) An order compelling the Website Defendants to immediately provide Plaintiffs with all information concerning the individuals and/or entities that have published the defamatory materials, including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (6) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000, against the Website Defendants, jointly and severally, plus punitive damages, interest, costs and attorneys' fees; and (7) All other relief to which Plaintiffs are entitled.

**COUNT V**  
**INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS**  
**OPPORTUNITIES AGAINST THE DEFENDANTS**

88. Plaintiffs incorporate and re-allege paragraphs 1 through 53 as though fully set forth herein.

89. The Jane and John Doe Defendants' conduct detailed above, and on information and belief their yet-undiscovered conduct, is extreme and outrageous.

90. Through the intentional conduct described in this Verified Complaint, the Jane and John Doe Defendants intend to inflict severe harm upon Plaintiffs in order to inhibit third-parties and potential customers of Plaintiffs from using their services, and are further aware that there is at least a high probability that their conduct will cause third parties and potential customers to cease or avoid doing business with Plaintiffs.

91. Plaintiffs' business relationships constitute a property interest and, as such, are entitled to protection from unjustified tampering by another.

92. Plaintiffs have a reasonable expectancy of entering into a valid business relationship with entities and individuals who have read or will read the defamatory postings on the Websites.

93. The Jane and John Doe Defendants are aware of Plaintiffs' expectancy of entering into a valid business relationship with such entities and individuals.

94. The Jane and John Doe Defendants' intentional, reckless and unjustified interference has prevented and will prevent Houlihan from realizing upon its business expectancy.

95. Plaintiffs have been damaged as a direct result of the conduct of the Jane and John Doe Defendants.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them:

(1) A temporary, preliminary and permanent injunction as set forth in Count I; (2) An order compelling the Website Defendants to immediately provide Plaintiffs with all information concerning the individuals and/or entities that have published the defamatory materials,

including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (3) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000 against all Defendants, jointly and severally, plus punitive damages, interest, and costs; and (4) All other relief to which Plaintiffs are entitled.

**COUNT VI**  
**VIOLATION OF THE ILLINOIS UNIFORM DECEPTIVE**  
**TRADE PRACTICES ACT, 815 ILCS 510/1 ET SEQ., AGAINST ALL DEFENDANTS**

96. Plaintiffs incorporate and re-allege paragraphs 1 through 53 as though fully set forth herein.

97. Defendants have violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2, because: (a) the postings disparage the services and business of Houlihan by false and misleading representations of fact; (b) the postings falsely represent that Houlihan's services are of a particular standard or quality; and (c) the Defendants have otherwise engaged in conduct which has created a likelihood of confusion or misunderstanding related to Houlihan's services. 815 ILCS 510/2(a).

98. The Jane and John Doe Defendants have and continue to make, publish and disseminate false, misleading and/or disparaging postings regarding Houlihan's services and business throughout the world.

99. On information and belief, the false, misleading and/or disparaging postings were made by the Jane and John Doe Defendants in the course of his/her/its business, vocation or occupation.

100. The Website Defendants have and continue to make, publish and disseminate false, misleading and/or disparaging postings regarding Houlihan's services and business

through the world by including their own original content to “metatags” contained in the HTML script which was authored by them and/or their operators.

101. Further, the Website Defendants have and continue to maliciously publish and disseminate the false, misleading and/or disparaging postings of the Jane and John Doe Defendants regarding Houlihan’s services and business throughout the world.

102. The Website Defendants have been informed and are aware of the deceptive character of the postings.

103. The Website Defendants have and continue to make, publish and disseminate these postings in the course of their business, vocation or occupation.

104. The continued dissemination of the false, misleading and/or disparaging materials by the Defendants will harm Plaintiffs and their principals, employees, agents and representatives in the operation of their business and provision of services. Plaintiffs have already incurred significant damages as a result of the statements and there exists a more than reasonable probability that the damages will continue or increase as a result of the Defendants’ continued making, publication and dissemination of the false statements.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them:

- (1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing any further statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives;
- (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives, from all websites where they have



posted such statements; (3) A temporary, preliminary and permanent injunction blocking the publication on any of website operated by Defendants by the individuals and/or entities responsible for the defamatory publications at issue in this case; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate, publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or the intellectual property rights; (5) An order compelling the Website Defendants to immediately provide Plaintiffs with all information concerning the individuals and/or entities that have published the defamatory materials, including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (6) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000 against all Defendants, jointly and severally, plus punitive damages, interest, costs and attorneys' fees; and (7) All other relief to which Plaintiffs are entitled.

**COUNT VII**  
**VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE TRADE**  
**PRACTICES ACT, 815 ILCS 505/1 ET SEQ., AGAINST ALL DEFENDANTS.**

105. Plaintiffs incorporate and re-allege paragraphs 1 through 53, and in Count VI paragraphs 97 through 104, as though fully set forth herein.

106. The Defendants' conduct that violates the Illinois Uniform Deceptive Trade Practices Act also gives rise to a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act, which provides that it is unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act."..." 815 ILCS 505/2.

107. Houlihan is entitled to actual and punitive damages, injunctive relief and, if it prevails, reasonable attorneys' fees. 815 ILCS 505/10a(a) and (c) (emphasis added).

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them: (1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing any further statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives; (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives, from all websites where they have posted such statements; (3) A temporary, preliminary and permanent injunction blocking the publication on any of website operated by Defendants by the individuals and/or entities responsible for the defamatory publications at issue in this case; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate,

publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or the intellectual property rights; (5) An order compelling the Website Defendants to immediately provide Plaintiffs with all information concerning the individuals and/or entities that have published the defamatory materials, including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (6) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000 against all Defendants, jointly and severally, plus punitive damages, interest, costs and attorneys' fees; and (7) All other relief to which Plaintiffs are entitled.

**COUNT VIII**  
**COMMON LAW MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS**  
**AGAINST ALL DEFENDANTS**

108. Plaintiffs incorporate and re-allege paragraphs 1 through 53 as though fully set forth herein.

109. Defendants have misappropriated the Plaintiffs' right to control their name and reputation by making, publishing and disseminating statements that (a) disparage the services and business of Houlihan by false and misleading representations of fact; and (b) misappropriate the Houlihan Mark.

110. The Plaintiffs have a property right in the exclusive use of the Houlihan Mark, in their own reputation, and in their current and future clients and business.

111. The Jane and John Doe Defendants have and continue to make, publish and disseminate false, misleading and/or disparaging postings regarding Houlihan's services and business throughout the world.

112. In doing so, the Jane and John Defendants have misappropriated the Houlihan Mark and the Plaintiffs' reputation, and severely and negatively impacted the ability of the Plaintiffs to utilize both in retaining and attracting clients and business.

113. The Website Defendants have and continue to make, publish and disseminate false, misleading and/or disparaging postings regarding Houlihan's services and business through the world by including their own original content to "metatags" contained in the HTML script which was authored by them and/or their operators.

114. Further, the Website Defendants have and continue to publish and disseminate the false, misleading and/or disparaging postings of the Jane and John Doe Defendants regarding Houlihan's services and business through the world.

115. The Website Defendants' actions have been undertaken in an effort to increase traffic to their own Websites, and hence to increase advertising and other revenue.

116. In doing so, the Website Defendants have misappropriated the Houlihan Mark and the Plaintiffs' reputation, and severely and negatively impacted the ability of the Plaintiffs to utilize both in retaining and attracting clients and business.

117. The continued dissemination of the false, misleading and/or disparaging materials by the Defendants will harm Plaintiffs and their principals, employees, agents and representatives in the operation of their business and provision of services. Plaintiffs have

already incurred significant damages as a result of the statements and there exists a more than reasonable probability that the damages will continue or increase as a result of the Defendants' continued making, publication and dissemination of the false statements.

**WHEREFORE**, Plaintiffs respectfully pray that the Court grant them: (1) A temporary, preliminary and permanent injunction prohibiting all Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing any further statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives; (2) A temporary, preliminary and permanent injunction ordering all Defendants to remove all statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and all of their principals, employees, agents or representatives, from all websites where they have posted such statements; (3) A temporary, preliminary and permanent injunction blocking the publication on any of website operated by Defendants by the individuals and/or entities responsible for the defamatory publications at issue in this case; (4) A temporary, preliminary and permanent injunction against the Website Defendants from continuing to disseminate, publish, use or republish the defamatory statements and to remove any and all reference to the defamatory statements from the Websites, including but not limited to any use of names, words, designations or symbols consisting or otherwise similar to the Houlihan Marks, marks, service marks, names and identities of Plaintiff's principals, employees, agents, and representatives from any HTML text, buried code, metatags, search terms, keywords, key terms, hit generating pages, or any other device used, intended, or likely to cause any website of Defendants to associate the Plaintiffs with the defamatory materials at issue here or the intellectual property rights; (5) An order compelling the Website Defendants to immediately provide Plaintiffs with all information

concerning the individuals and/or entities that have published the defamatory materials, including their IP address, name, address, telephone number, email address and any other information necessary to identify the individual and/or entity responsible for the defamatory statements about Plaintiffs and their agents; (6) An award of compensatory damages in an amount to be proven at trial, but in no event less than \$50,000 against all Defendants, jointly and severally, plus punitive damages, interest, and costs; and (7) All other relief to which Plaintiffs are entitled.

**COUNT IX**  
**INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS**

118. Plaintiffs incorporate and re-allege paragraphs 1 through 117 as though fully set forth herein.

119. Plaintiffs are entitled to an injunction ordering the Defendants to remove, or block access to, all defamatory postings from the Websites.

120. Plaintiffs have a clearly ascertainable right in need of protection because it has the right to operate its company free from unlawful interference, defamatory and other unlawfully derogatory postings.

121. Neither Plaintiffs nor their principals, employees, agents or representatives have an adequate remedy at law because no monetary award can remedy the significant harm the defamatory postings have already caused Plaintiffs and continue to cause Plaintiffs every day the defamatory postings remain on the Websites. Plaintiffs do not have a complete, clear, practical and efficient remedy.

122. Plaintiffs have a likelihood of success on the merits of their claim for the statements constitute defamation per se as alleged above and the Website Defendants' conduct

aiding and abetting the publication and continued dissemination of the defamatory comments does not insulate it from liability or entry of injunctive relief.

123. The balance of harms favors Plaintiff and its principals, employees, agents and representatives because they are suffering immeasurable harm as a result of the postings and they do not have the right to confront the malcontents because of the anonymous nature of the postings on the Websites.

124. There is no harm to the Jane and John Doe Defendants as they are not privilege or otherwise authorized to publish defamatory statements about Houlihan, its principals, employees, agents or representatives. They do not enjoy any First Amendment rights to disseminate defamatory materials throughout the world.

125. The Website Defendants also suffer no harm or prejudice. They have the right to remove or block access to the defamatory materials per the Terms of Service Agreements. Further, they cannot be held liable for the deletion or removal of harassing information, such as set forth in the postings at issue here.

**WHEREFORE**, Plaintiff respectfully prays that the Court grant the following relief: (1) In addition to the relief sought in Counts I through VIII, a temporary, preliminary and permanent injunction prohibiting Defendants, their agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from publishing any further statements regarding Houlihan Smith & Company, Inc, Houlihan Smith Advisors, LLC, and any of their principals, employees, agents or representatives; (2) An order requiring Defendants to remove all statements regarding Houlihan Smith & Company, Inc., Houlihan Smith Advisors, LLC, and any of their principals, employees, agents or representatives from all websites where Defendants have posted such statements; (3) An order to third party websites where Defendants have posted

their defamatory statements that all such material be taken down immediately, that all accounts controlled by Defendants be deactivated, and that those third parties take reasonable, available steps to prevent Defendants from posting further statements; and (4) All other relief to which Plaintiff is entitled.

**HOULIHAN SMITH & COMPANY, INC.®  
AND HOULIHAN SMITH ADVISORS, LLC**

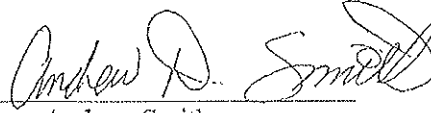
By: \_\_\_\_\_

One of Their Attorneys

Richard P. Darke  
Rosanne Ciambrone  
Duane Morris LLP  
190 S. LaSalle St., Suite 3700  
Chicago, IL 60603  
(312) 499-6700  
(312) 499-6701 (fax)  
Firm Id. No.: 38820



Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to those matters stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
\_\_\_\_\_  
Andrew Smith  
PRESIDENT

SECTION 1-109 VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to those matters stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Charles Botchway

# EXHIBITS