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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

RESOLUTE FOREST PRODUCTS, INC., *et al*.

Plaintiffs,

v.

GREENPEACE INTERNATIONAL, *et al*.

Defendants.

CASE NO. 3:17-CV-02824-JST

Hon. Jon S. Tigar
Courtroom 9

PLAINTIFFS' CONSOLIDATED MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' RULE 12(B)(6) MOTION TO DISMISS AND MOTION TO STRIKE

Action Filed: May 31, 2016
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Resolute Forest Products, Inc., Resolute FP US, Inc., Resolute FP Augusta, LLC, Fibrek General Partnership, Fibrek US, Inc., Fibrek International, Inc., and Resolute FP Canada, Inc. (collectively, "Resolute" or "Plaintiffs") respectfully submit this memorandum of points and authorities in opposition to the motions to dismiss and strike the amended complaint (ECF No. 185 (hereinafter the "Amended Complaint" or "Am. Cmpl.") filed by Greenpeace International ("GPI"), Greenpeace, Inc. ("GP-Inc."), Daniel Brindis, Amy Moas, Matthew Daggett, and Rolf Skar, Greenpeace Fund Inc. ("GP-Fund") (collectively, the "Greenpeace Defendants"), ForestEthics (n/k/a Stand) and Todd Paglia (together with Stand, the "Stand Defendants").[1]

PRELIMINARY STATEMENT

The Amended Complaint alleges dozens of intentionally false, misleading, and defamatory claims by the defendants about Resolute's operations in, and effects on, the Canadian Boreal forest. These claims misstate material facts and assert purported conclusions and "opinions" that are not honestly held, lack a reasonable factual basis, imply facts that are not true, and misrepresent and fail to disclose material information, interests, or conflicts. The case law from the Supreme Court to every trial court in the country ubiquitously holds that such claims enjoy no First Amendment protection. Indeed, each year courts sustain thousands of actions for common law fraud, securities and other statutory frauds, and tortious interference based on far less substantial allegations. Contrary to this long-settle rule of law, defendants move to dismiss the Amended Complaint on the baseless fiat that all the false and defamatory statements alleged constitute "opinions" only, and the equally baseless legal argument that all "opinions" are protected speech. Neither is correct. The Amended Complaint alleges dozens of actionable statements and omission, some in the form of outright (false) statements of facts and others in the form of conclusions and opinions purportedly (but actually not) based on true facts.

First, the Amended Complaint alleges that the defendants repeatedly misrepresented that their claims about Resolute were based on "objective facts," "science," "studies", and "expertise"

[1] Also submitted herewith is the Declaration of Lyn R. Agre ("Agre Decl.") and accompanying exhibits. All references to "¶ __" are to paragraphs of the Amended Complaint.

when in fact their claims were not derived from, did not reflect, and were not meant to reflect any of those things, but instead reflected what they have now admitted was the complete opposite: "rhetoric" and "hyperbole" derived not from objective facts and science but from their undisclosed objective of inflicting as much harm to Resolute as possible.

Second, the defendants manufactured and misrepresented photographs and maps, used those misrepresented photos and maps to falsely accuse Resolute of harvesting in areas in which it was not harvesting, violating the Canadian Boreal Forest Agreement, and endangering caribou and so-called "intact forests." The defendants then used those lies to manufacture a false pretext for leaving the CBFA based on Resolute's (non-existent) violations, and to accuse Resolute of putting caribou herds and endangered forests at risk when, if such risks exist at all, they do not come from Resolute.

Third, the defendants misrepresented that Resolute was actually responsible for material amounts of deforestation and reinforced that misrepresentation by relating the effects of Resolute's operations to the massive deforestation of millions of hectacres in other parts of the world. In fact, as the defendants have now admitted in this case, Resolute was responsible for no deforestation in the Boreal forest and nothing remotely similar to the operators deforesting other parts of the world with whom defendants compared Resolute.

Fourth, in conjunction with misrepresenting that Resolute was deforesting the Boreal, defendants also attributed to its operations material risks to climate change. To do so, defendants, once again, related operations elsewhere in the world that materially diminish the global forest's ability to absorb greenhouse gases with Resolute operations which not only do not contribute to that impairment but, in fact, enhance the boreal ability to mitigate climate change.

Fifth, the defendants misrepresented that Resolute had lost three FSC certificates due to "serious shortcoming" in the sustainability of its operations when, in fact, two of those certificates had simply expired and one was suspended due to a dispute between the Quebec government and a First Nation that had nothing to do with Resolute, and which it could not do anything about. The remaining certificate suspension did not reflect "serious shortcoming" relating to sustainability, and the defendants made the material omission of not disclosing their

aggressive campaigning and interference that cause Resolute to lose that certificate when others similarly, or less favorable situated, suffered no similar sanction.

Sixth, defendants misrepresented that Resolute was an environmentally irresponsible outlier among the companies operating in the boreal forest, and that customers consequently should source from its competitors. In fact, Resolute operations and practices were, at a minimum, indistinguishable from those competitors, and, for the most part, superior based on the very sustainability criteria the defendants claimed they cared about.

Seventh, the defendants repeatedly misrepresented the data and studies that they cite to misrepresent that their publications and claims are based on science and objective facts. For example, defendants' publications accusing Resolute's operations of impairing the forests ability to mitigate climate change cites to a decade-old study and omit any mention to the subsequent follow-up report that determined that the earlier studies conclusion were wrong. Likewise, as set forth in more detail below, the defendants misrepresent and distort studies on caribou herds to falsely accuse Resolute of operating in ranges in which caribou are at risk when, in fact, the studies defendants are citing actually show that the herds with habitats in or near areas where Resolute operates are stable or thriving, and Resolute has little to no material operations in the habitats of at-risk herds.

Eighth, the defendants also omitted material facts from their publications that a reasonable reader would have found necessary for those publications and claims not be misleading. Most important, the defendants nowhere disclose that they are operating collectively with other groups with the express shared objective of inflicting as much harm on Resolute, and that this objective, and not science and objective facts, control their message.

Moreover, the Amended Complaint contains substantial detailed allegations establishing malice. Among other things detailed below, the defendants had a written plan memorializing their agreed upon objective of publicly portraying Resolute in as negative a light as possible, and made explicit extortive threats to do so to Resolute directly. In furtherance of this objective, among other things detailed below, defendants intentionally manufactured fake photos and maps falsely depicting Resolute as operating in areas in which it was not, and based on that

manufactured "evidence," misrepresented publicly that defendants were leaving the CBFA because of Resolute's (phony) breaches. In fact, the defendants knew the photographs and maps were false, never inquired of Resolute before publishing the fake maps and photographs, refused to admit their claims were false for months after Resolute had demonstrated they were false, and, even after admitting they were wrong, did not rejoin the CBFA that they had scuttled based on those false allegations because those false allegations were always an elaborate pretext to justify their agreed upon plan to attack Resolute in violation of the CBFA's terms.

As set forth in more detail below, the defendants continue to this day to manufacture fake maps and photos, misrepresent and selectively disclose data and information, and refuse to correct their errors even when challenged with the truth by Resolute as well as non-parties to this litigation. Moreover, malice can be inferred from the sheer volume of repeatedly false and inaccurate claims disseminated about Resolute, the fact the defendants are purported experts in this field and claim their publications are based on thorough research and the best science, and the fact that the falsity would be apparent to anyone with such credentials, data, and information.

Finally, the Amended Complaint alleges with specificity each element of a RICO claim. The defendants were, according to their own written documents, associated in fact as an enterprise in the very scheme alleged. That scheme consisted of the predicates acts of, among others, mail and wire fraud and extortion against Resolute, its customers, and the defendants' donors. And the Amended Complaint alleges directs and proximate harm to Resolute as a direct result of those predicates acts directed at those three targets.

FACTUAL BACKGROUND

Since 2012, a network of putative environmental nongovernmental organizations ("ENGOs"), including the Greenpeace Defendants, the Stand Defendants, Greenpeace Canada ("GP-Canada") and Canopy, and those working in concert with them (the "Enterprise"), have targeted Resolute with a campaign, the explicitly stated objective of which was to destroy Resolute's business and that of any customer who did business with it. (¶ 67.) That campaign was prosecuted through intentional, defamatory, fraudulent lies and threats. (*See infra*.)

In furtherance of the campaign, the Enterprise members agreed to widely disseminate an intentionally and materially false, misleading, and defamatory narrative depicting Resolute as, according to the Enterprise members, "*the most regressive forest products company*" in the world and an "outlier" in the Canadian Boreal forest. (¶ 68.) Conversely, the campaign would promote identically situated competitors as responsible companies with whom Resolute customers should do business instead, even though those companies were, at a minimum, indistinguishable from Resolute with respect to their business practices and often far less compliant with the standards the Enterprise falsely claimed Resolute was ignoring. (¶ 68, 220.) The intentionally misrepresented narrative would form the basis for extorting, defrauding, and interfering with Resolute's customers, certification partners, and the public, whose donations premised on misrepresented claims funded the scheme. (*See infra*.)

The campaign was carefully planned among the Enterprise members and launched on a false pretext. (¶ 76.) That pretext was the false claim that Resolute was violating the Canadian Boreal Forest Agreement ("CBFA" or "Agreement") that it and other companies had entered into with the Enterprise members and other ENGOs two years earlier. (¶ 69.) At that time, the Enterprise members had hailed the CBFA as an "historic agreement" that would ensure sustainable forestry practices in the Canadian Boreal forest and "protected *virtually all* of the critical habitat of the threatened woodland caribou." (*Id*.) In exchange for the sustainability commitments and restrictions the CBFA imposed on Resolute (and other signatory companies), especially the moratorium on harvesting in designated caribou habitats, the signatory ENGOs, including GP-Canada, Stand, and Canopy, agreed not to campaign against Resolute (and other signatory companies). (¶ 70.)

At all times after launching the CBFA, Resolute operated outside of the moratorium area GP-Canada described as protecting "virtually all of the habitat of the threatened woodland caribou," and otherwise complied with the CBFA in all material respects. (¶ 72.) Among other things, Resolute committed thousands of hours to analyzing and proposing additional protected lands to protect caribou, including proposals to increase such areas by 1.7 million hectares in Quebec and 2 million hectares in Ontario; matched funds raised by ENGOs to conduct research

on species management; proposed bringing indigenous communities and governments into the CBFA process so that its goals could be more quickly implemented; and prepared management plans in collaboration with ENGOs, indigenous communities, and governments. (*Id.*)

Nevertheless, by the second half of 2012, the Greenpeace Defendants, the Stand Defendants, and Canopy agreed to use a fabricated claim that Resolute was not abiding by the CBFA to launch a public campaign against Resolute and its customers, titled the "Resolute: Forest Destroyer" campaign, through which these Enterprise Members could generate publicity and donations for their own benefit based on intentionally false claims about Resolute. (¶ 74.)

A. The Campaign Plan

The Enterprise's campaign plan was memorialized in an operational memorandum ("Operational Memo" or "Memorandum"). The Memorandum, authored by defendant Todd Paglia of Stand (¶ 78), stated that "[a]ll ENGOs [would be] involved in th[e] campaign" with "GP US and GPI becom[ing] actively involved," and outlined the threats the Enterprise would make against Resolute, and the actions it would take to destroy Resolute if it did not capitulate to those threats. (¶ 78.) The Memorandum noted that "the very targeted market campaign directed at Resolute" had the "full support from at least some of the funders," which included GP-Fund and GPI as well as various Enterprise member foundations willing to fund the campaign. (¶ 85.)

Among other things, the Operational Memo stated that the Enterprise would aggressively disseminate the intentional misrepresentations that Resolute violated the CBFA and stood alone, as a rogue environmental bad actor, among all other competitors and other CBFA members. (¶ 77.) These claims were materially false and known to be so by each Enterprise member because each knew that Resolute had not only abided by its commitments under the CBFA, but exceeded those commitments, as well as those undertaken by its competitors, and was, at a minimum, indistinguishable from other competitors whom the campaign plan intended to juxtapose with Resolute as responsible environmental actors. (¶¶ 77-78.) The Operational Memo further dictated that as part of that effort, "[o]ngoing very negative press and communications [would be] directed at customers in Canada, the US and Europe" with all the ENGO's "working on the same team" and "saying don't buy from Resolute unless they meet our

demands . . . buy from these other companies (and reference the positive work of the other CBFA companies)." (¶¶ 78-79.) These communications would be made "with the intent of creating a threat to the brands of any customers who buy from Resolute." (¶ 78.) Other similarly, or less favorably situated, companies, however, would be misrepresented as more environmentally responsible suppliers for these customers to use instead. (¶¶ 79, 81, 86-87.)

The Operational Memo also indicated that the Enterprise would directly interfere with Resolute's operations by, among other things, commencing "[l]awsuits directed at all Resolute tenures" and otherwise "increas[e] [the] amount of senior executive time will need to be dedicated to managing the impacts of the campaign, responding to customer concerns, and diverted away from managing the core business." (¶ 82.) The campaign plan also provided that "Resolute FSC certs come under coordinated attack by all ENGOs." (¶ 83.) This was a critical element of the plan because Enterprise members had long championed Forest Steward Council ("FSC") certification as the "gold standard" of the environmental movement and, consistent with its pledge to the environmental community, Resolute had become the largest holder of FSC certificates in the world. (¶ 284.) That status would have made it difficult for the Enterprise to credibly depict Resolute as "the most regressive forest products company." (¶ 83.) By interfering with Resolute's ability to secure FSC certificates, the Enterprise would directly impair Resolute's ability to sell its products, and also fabricate a basis to publicly attack Resolute. (*Id.*)

The Memorandum noted that the plan was to force Resolute to surrender control of its operations to the Enterprise and promote the Enterprise members and their agendas and claims, in exchange for which they would promote Resolute as Canada's "most progressive forest company," instead of its most "regressive." (¶ 84.)

B. The Campaign Is Launched

1. The Misrepresented Pretext For Withdrawing From The CBFA

The Enterprise foreshadowed its campaign plan by letter dated September 17, 2012, jointly written by GP-Canada (Goodwin), Stand (Paglia), and Canopy (Carr) to member companies of the Forest Products Association Of Canada falsely accusing Resolute of engaging in "active logging and road building . . . in areas originally designated off limits within the

CBFA, including . . . in the Quebec region under priority [thereby] fast-tracking the erosion of the legitimacy of [the CBFA]." (¶ 224.)

On December 6, 2012, the Enterprise launched its campaign against Resolute with a highly sensational, publicized, and knowingly false report published by GP-Canada titled "Exposed: Resolute Forest Products Breaks Historic Environmental Agreement" (the "Exposed Report"). (¶ 89.) The Exposed Report intentionally misrepresented that Resolute was harvesting in various regions of the Canadian boreal forest in violation of the CBFA, and purported to corroborate those claims with five photographs purporting to show ongoing Resolute operations in off-limits areas under the CBFA. (*Id.*) Each photograph included an unidentified Greenpeace network member displaying GPS devices purporting to prove the accuracy of the locations alleged. (*Id.*) The captions for the five photographs read as follows:

- Pin #1: New road built 20 km beyond the limits agreed to under the CBFA in Resolute Forest Products' managed area (FMU 25-51);
- Pin #2: Recently built road 10 km beyond the limits agreed to under the CBFA in Resolute managed area (FMU 25-51);
- Pin #3: Active road building in Resolute managed area in the extreme north of FMU 24-51;
- Pin #4: Freshly bulldozed forest inside the CBFA's off-limit areas in FMU 24-51;
- Pin #5: Active road building in off-limits intact forest in FMU 24-51. (¶ 90.)

The allegations that Resolute was harvesting in violation of the CBFA were knowingly false and the GPS coordinates were intentionally and maliciously fabricated as a pretext to withdraw from the CBFA and launch a campaign against Resolute. In fact:

- The images and coordinates misrepresented in pins 1 and 2 **were roads permitted under the CBFA**. GP-Canada and the Stand Defendants knew the claims were false because as CBFA signatories they were involved in the negotiation and selection of the authorized harvesting areas and each possessed maps and information identifying that road construction in those areas were authorized under the CBFA. (¶¶ 91, 328.)
- The roads corresponding to pins 3 and 4 **were built by the Quebec Ministry of Natural Resources ("QMNR")** as part of efforts to reforest areas that had been damaged by fire. GP-Canada, GP-USA, GPI, and the Stand Defendants knew the claims were misrepresented because they possessed public documentation through

QMNR regional offices that reflected the roads were built by QMNR, not Resolute, for the sole purpose of providing access to large areas burned in the summer of 2007 after it was determined natural regeneration was insufficient. (¶¶ 92, 328.)

- The road corresponding to pin 5 built **by a forestry company that was not a signatory to the CBFA**. GP-Canada and the Stand Defendants knew the claims were misrepresented because as signatories to the CBFA they each had maps and information sufficient to determine that the area was managed by a forestry company other than Resolute. (¶¶ 93, 328.)

The Exposed Report was accompanied by a video "Scandal in the Boreal Forest," which also intentionally misrepresented that Resolute had "ravaged" certain forest areas in violation of the CBFA. (¶ 94.) Once again purporting to rely on GPS coordinates, the Enterprise, through GP-Canada, falsely claimed that Resolute was operating "20 kilometres beyond the limits set by the [CBFA]" "in off-limit caribou habitat," in violation of the CBFA. (*Id.*) The images were doctored and intentionally misrepresented the truth:

- One image depicted an area that had been harvested in the 2000s -- before the CBFA existed -- which the video attempted to pass off as site recently harvested by Resolute. But, the configuration of worksites and abundant regeneration evidence that this land had not been recently harvested. To conceal this deception and add putative credibility to the image, the Enterprise included GPS coordinates that refer to a *different* location burned by fires in 2007, not harvesting. "Experts" such as the Greenpeace Defendants, the Stand Defendants, and GP-Canada would unequivocally recognize that the image and the GPS coordinates could not correspond to each other or areas impacted during the existence of the CBFA. (¶¶ 95, 96, 329.)

- Another image was intentionally misrepresented as evidence of Resolute's harvesting in violation of the CBFA, when in fact the activity and equipment depicted involved the regeneration of an area that had been harvested before the CBFA, which was evident to the Greenpeace Defendants, the Stand Defendants, and GP-Canada as "experts" in the area of forestry and logging. Moreover, as members of the CBFA, GP-Canada and the Stand Defendants knew this image was misrepresented because each was aware from the information they possessed in negotiating the CBFA that this area had been harvested before the CBFA became effective. (¶¶ 97, 329.)

- Several images purporting to depict Resolute's harvesting causing destruction, were in fact areas impacted by fires, as evident to the Greenpeace Defendants, the Stand Defendants, and GP-Canada as "experts" in forestry, logging, and the Canadian Boreal forests. Nevertheless, the Enterprise, through GP-Canada misrepresented these areas because burnt areas look particularly devastated as fires, unlike harvesting, do not proceed according to plans or include wooded buffers adjacent to lakes and waterways. (¶¶ 98-99.)

- The final image was a satellite image of an area that was harvested in 2003, long before the existence of the CBFA, as apparent to a trained or informed observer from the image itself. Moreover, the GPS coordinates accompanying the video themselves reflect that the area in question is primarily outside of Resolute's forest management unit. As putative experts, the Greenpeace Defendants, the Stand Defendants, and GP-Canada were aware of this from the image itself, or a simple comparison of maps to the GPS coordinates in GP-Canada's and the Stand Defendants' possession. (¶ 100.)

Over the next several days, GP-Canada, defendant Rolf Skar, and GP-USA continued to disseminate the knowingly false misrepresentation that Resolute had violated the CBFA, including in the following publications and communications: (i) 12/7/2012 email from Skar of GP-USA to longtime Resolute customer Hearst accusing Resolute of violating the CBFA and attaching the photographs from the Exposed Report, which Skar described as "evidence ***we*** had collected" and referencing "***our***" letter to the CBFA steering committee, demonstrating that Skar and GP-USA were working in concert with GP-Canada as outlined in the Operational Memo; and (ii) 12/11/2012 GP-Canada article "It's Over Resolute Forest Products" authored by Bruce Cox, announcing that GP-Canada was leaving the CBFA because "[a] Greenpeace field investigation revealed newly built roads in off-limits areas in Quebec's endangered Montagnes Blanches forest, a forest managed by our CBFA partner Resolute Forest Products." (¶¶ 103-04.)

2. The Enterprise Refuses To Retract Its Intentional Misrepresentations

Resolute immediately responded to the false allegations that it had violated the CBFA. (¶ 106.) By letter dated December 12, 2012, addressed to all CBFA signatories, including GP-Canada, Stand, and Canopy, Resolute presented irrefutable evidence that GP-Canada's, GP-USA's, Skar's, the Stand Defendant's, and Canopy's allegations and putative proof were materially false, misleading, and intended to deceive, including that the roadbuilding depicted in the five photographs were either (a) authorized by the CBFA; (b) built by QMNR; or (c) built by another forestry company. (¶¶ 106, 352-53.) The letter also presented evidence that the images in the video were phony and misleading. (¶ 107, 352-53.)

Despite being immediately informed that its accusations and proof were false, the Enterprise not only declined to retract the claims or purported evidence, but instead immediately redoubled its efforts to disseminate them. (¶ 108.) For example, by letter dated December 14,

2012 from Stephanie Goodwin of GP-Canada to CBFA signatories, the Enterprise purported to "provide further clarity on Resolute Forest Product's logging activity in off-limits areas of the [CBFA]" and continued to falsely accuse Resolute of "allow[ing] road building in original CBFA Areas of Suspended Harvest . . ." (*Id.*) In response, on December 17, 2012, Resolute again informed GP-Canada that these claims were contradicted by available evidence, and demanded that Greenpeace immediately cease and desist from making these allegations and remove all references from Greenpeace's website. (¶ 109.) Nevertheless, very next day, the Enterprise, through GP-Canada, launched a petition on a third-party website falsely accusing Resolute of "violating the [CBFA] by approving logging roads in off-limit forest areas." (¶110.) The petition linked to the Exposed Report and the accompanying photographs and videos. Within weeks, 15,000 individuals signed the petition and a significant number donated money. (*Id.*)

GP-Canada, GP-USA, and defendant Brindis continued to disseminate the false claim that Resolute had violated the CBFA throughout January 2013, including in the following publications: (i) 1/16/2013 GP-Canada "Boreal Alarm Report" (the "Boreal Alarm Report"), which falsely asserted that "Resolute recently began building roads in off-limits forest areas" in violation of the CBFA . . ."; (ii) 1/17/2013 GP-Canada post titled "Resolute Forest Products fails to deliver on sustainability" which falsely claimed that Greenpeace's "investigation" revealed that Resolute "has authorized logging and the construction of roads in this off-limits forest." (¶¶ 111-12.) On January 21, 2013, Brindis of GP-USA sent Hearst the Boreal Alarm Report. Brindis referred to the report as "*our*" report, demonstrating that GP-USA worked in concert with GP-Canada in preparing the malicious and misleading report. (¶ 113.) More significantly, Brindis's email to Hearst referenced his review of Resolute's December 12 rebuttal demonstrating that Brindis and GP-USA continued to make these false charges notwithstanding knowledge of irrefutable evidence to the contrary. (¶¶ 113, 233.) On January 22, 2013, GP-USA published a blog post titled "Greenpeace calls for a halt on logging in five key areas in the Boreal Forest," which linked to the Exposed Report and putative supporting "evidence." (¶¶ 113, 355.)

It was not until Resolute threatened impending legal action by Resolute, and the campaign had been successfully launched, that the Enterprise retracted the lies in an effort to

escape legal liability. (¶ 114.) On March 19, 2013, *more than three months* after Resolute first rebutted the false allegations that Resolute was harvesting in violation of the CBFA, GP-Canada purported to issue a "Notice of Correction Regarding Resolute Forest Products' Operations," acknowledging that it "incorrectly stated that Resolute had breached the [CBFA] by . . . secretly engag[ing] in logging contrary to the terms of the [CBFA]." (¶ 115.) But Greenpeace misrepresented that these false claims were caused by "incomplete maps" and that it "did not intend to hurt the company but intended to promote a vision of the Boreal that includes Resolute," when, in fact, hurting the company was precisely the intention of these false claims, which the Enterprise members disseminating them knew were false when the dissemination began and continued to disseminate for months even after being provided with information categorically showing the claims were false. (¶¶ 108-16.) These intentionally false claims of innocent mistake were designed to conceal Enterprise's malice and preserve its credibility and ability to execute the next phases of the agreed upon campaign. (¶ 115.)[2]

Moreover, the denial of any intention to harm Resolute itself misrepresented the Enterprise's specific intent to hurt Resolute's brand and business that was the express objective of the campaign. (¶ 117.) Indeed, despite its admitted falsity of its stated basis for leaving the CBFA, GP-Canada refused to resume CBFA participation. (*Id.*) Instead, as the Operational Memo indicated, the Enterprise prosecuted an intensified campaign targeting Resolute and its customers. (¶¶ 117-19.)

C. Defendant Paglia Delivers The Enterprise's Extortive Threats

Shortly after these opening salvos of the campaign, defendant Paglia of Stand, on behalf of the Enterprise and according to the agreed upon plan, issued a series of threats to Resolute, which largely tracked the written campaign plan the Enterprise had created. (¶ 131.) On April

[2] While defendants claim that the parties executed a release in connection with the retraction (ECF No. 199 at 29, n.7), no release was ever executed. Indeed, defendants cite a pleading addressing the *possibility* of a release as support for the existence of an actual release. (*See* Koonce Ex. 9.) As the Court correctly stated at the October 10, 2017 hearing, because the release itself was not submitted by defendants, it cannot properly be considered by the court on this motion. (Agre Decl. Ex. C.)

25, 2013, Paglia wrote to Resolute threatening "very active campaigning" unless Resolute agreed to not only honor the previously agreed-upon protected areas and substantial additional areas Resolute had proposed adding to that protected areas, but also vast additional areas that Resolute alone could not possibly agree to meet and remain in business. (*Id.*) Paglia reiterated these threats during a May 7, 2013 meeting at Resolute's offices, where he threatened that the Enterprise would destroy Resolute's brand among its critical market constituents. (¶ 132.) Citing successful "campaigns" against Fortune 500 companies, including Staples, Dell, and Victoria's Secret, Paglia stated "[we] provide all these companies with the option of doing it the easy way. If they want to do it the hard way, we can see a tremendous amount of negative press and damage to their brand." (¶ 132-33.) Between May 10 and 14, Paglia, through an intermediary, threatened Resolute's CEO Richard Garneau with interference with Resolute's customer and industry relationships. (¶ 134.) At the time Paglia made these threats on behalf of the Enterprise, he knew that the threatened claims were false because, among other things, they misrepresented Resolute's operations in, and impact on, the Boreal Forest, and misrepresented that Resolute was an irresponsible environmental actor in the Boreal Forest while identifying identically situated, or less favorably situated, competitors as responsible actors. (¶¶ 87, 133.)

D. The "Resolute: Forest Destroyer" Campaign

When Resolute refused to acquiesce to the Enterprise's extortive demands, the Enterprise carried out their campaign plan consistent with the agenda set forth in the Operational Memo. Over the next four years and continuing to this day, GP-USA, GP-Canada, GPI, the Stand Defendants and the other Enterprise members aggressively prosecuted the "Resolute: Forest Destroyer" campaign. (¶ 88.) Most aggressively targeted were: (a) Resolute, against which the Enterprise relentlessly disseminated false statements and omissions designed to intentionally misrepresent it as the "most regressive forest products company" and to inflict enormous damage to its business and brand (¶¶ 135-221); (b) Resolute's customers, which the Enterprise misled with disinformation and pressured to endorse the campaign with fraudulent demands and extortive threats (¶¶ 228-81, 298-318); and (c) FSC, whom the Enterprise misled with

disinformation and pressured to support the campaign by applying materially different standards to Resolute than were applied to other identically situated companies. (¶ 282-88.)

1. The Enterprise's Manufactures And Disseminates Lies about Resolute

The campaign's narrative intentionally misrepresented its objective as ensuring that Boreal timber harvesting was conducted in a sustainable manner. (¶ 136.) In truth, as set forth in the Operational Memo, the objective was to harm Resolute, irrespective of the facts that (a) its operations were indistinguishable from, or more environmentally responsible than, those companies that the Enterprise praised and directed customers to patronize over Resolute; (b) it was complying with the terms the Enterprise members had requested under the CBFA; and (c) it was harvesting in areas in which the Enterprise members had agreed it could harvest prior to launching their campaign. (*Id.*; s*ee also* ¶¶ 75-87.)

The Enterprise also intentionally manufactured a false sense of urgency, importance, and magnitude by grossly misrepresenting and exaggerating the conditions in the Canadian Boreal forest and Resolute's involvement and impact there, and drew factually unfounded and materially misleading associations to hot-button issues such as global warming, endangered species, and the treatment of indigenous peoples for which they did not possess, and knew there was no, reasonable factual bases. (¶¶ 137-38.) To make such claims credible, the Enterprise misrepresented that they had "developed an expertise in matters related to the protection and conservation of Canada's boreal forests . . . .," that their campaign was developed in collaboration with "experts, scientists and researchers" and their claims of catastrophic impacts were based on the "best science" and "supported by the most recent scientific data." (¶ 139.) However, this was demonstrably untrue because the intentional misrepresentations that comprised the "Resolute: Forest Destroyer" campaign were not based on expertise or science, were not developed in collaboration with "experts, scientists, and researchers from across the globe"; and were not "supported by the most recent scientific data." (¶ 140.) To the contrary, the claims made against Resolute were motivated not by science or conservation but exclusively by the intent to hurt the brands of Resolute and its customers. (¶¶ 74-87, 141.)

That the campaign's core claims were intentionally misrepresented as based on science and fact is also demonstrated by the Greenpeace Defendants' subsequent concessions in defending this action that their claims about Resolute " do not hew to strict literalism or scientific precision," but were instead "hyperbole" and "rhetoric." (¶ 141.) Such disclaimers are utterly inconsistent with diametrically opposite presentations made in the actual campaign, and, had such disclaimers been included in that campaign, it would have fundamentally changed the meaning and import of the campaign's claims to any ordinary reader. (*Id.*)

The intentionally false claims about Resolute's operations and impact in the Boreal Forest were as follows:

a. The Enterprise Misrepresents That Resolute Was Causing The Destruction Of Vast Acres Of Forest

At the heart of the "Resolute: Forest Destroyer" campaign is the allegation that Resolute is a "Forest Destroyer" primarily responsible for "destruction of ***vast acres of Canada's magnificent Boreal forest***" and "threatening the future of the Boreal forest and the wildlife that rely on it to thrive." (¶ 144.) There is no reasonable doubt that the Enterprise intended their audience to understand Resolute's alleged destruction to be literal destruction. As defendant Paglia stated when asked for the "essential basis" for the campaign against Resolute: "It's really basic. So, there was a forest there. They come in, clear cut vast areas of it and *then there's not a forest there. So, thus it was destroyed.*" (Agre Decl., Ex. B.)

To convey the literal message that Resolute's harvesting alone would cause vast acres of the Canadian Boreal forest to no longer exist, the "Resolute: Forest Destroyer" campaign consistently associated Resolute's operations with significant land use changes worldwide that resulted in literal deforestation and tree loss from mass conversion (and permanent loss of) forests lands to agricultural and population centers and other non-forestry related conversions, such as deforestation events in Africa, Asia, and South America. (¶¶ 143-44, 150 n.2.)

The campaign reinforced this literal definition even more strongly by likewise associating Resolute's conduct with a magnitude of climate change risk that could only equate to deforestation on a scale not remotely comparable to Resolute's harvesting and regeneration.

Thus, almost every substantive communication about Resolute notes that the global Boreal forest was "the largest forest carbon storehouse" in the world holding "more carbon than all the rainforests combined." (¶ 145 n.1, ECF No. 185-1.) And having done so, the campaign would claim that Resolute's forestry practices posed a material risk that was of such a magnitude that it would "jeopardize[] one of the Earth's largest carbon sinks and put[] our global climate at risk." (*Id.*) The obvious intent and only reasonable interpretation of this information is that Resolute's activities constitute a material risk to the boreal forest's ability to store carbon. But this intended message is a gross misrepresentation. Whatever impacts Resolute's harvesting has on climate change, they are *de minimis* in the context of the global Boreal forest. (¶ 145.)

The Enterprise members, including GP-Canada, GP-USA, Stand, Paglia, Moas, Brindis, and Skar, knew based on their expertise that these associations and depictions were materially false and misleading because Resolute accounts for *no* forest loss, nor does any other forestry company in the Canadian Boreal. (¶¶ 146-47.) Less than .5% of Canada's vast Boreal forest is harvested annually, and Resolute is responsible for only a minority of that miniscule percentage. Where Resolute does harvest, each area is promptly and successfully regenerated either naturally (75% of the time) or by Resolute or the government seeding and planting. (*Id.*) There is virtually no permanent loss of the Boreal forest acreage annually and the nominal .02% that is lost is largely attributable not to forestry but to other causes such as industrial and urban development and transportation. (*Id.*) Indeed, when forced to defend this statement in this action, the defendants conceded that "*RFP did not literally destroy an entire forest.*" (¶ 149.)

Defendants' own expert likewise conceded that Resolute was not responsible for deforestation, but that "destruction" could also mean the possibility that harvesting might impact the forest composition of insects, fungi, fauna, and tree age because "a forest is made up of more than trees." (¶ 149.) Yet, this is most definitely the message conveyed in the campaign, which claimed literally that Resolute's "destruction" was literally comparable to the vast deforestation occurring in other parts of the world. (¶ 143, 150-51, 150 n.2.) Defendants' statements about Resolute were talking explicitly about "destroying *vast swathes* of the Canadian Boreal forest," not tree age or fungi; "forest loss" of a type comparable to other parts of the world where entire

forests were literally destroyed; and of a magnitude that the defendants said would "jeopardize[] one of the Earth's largest carbon sinks and put[] our global climate at risk." (*Id.*)

The same is true of their claims about climate change risk. The defendants knew from experience, and expertise that not only did Resolute's harvesting not create a climate change risk comparable to the deforestation in Asia, Africa, and South America, even all of the harvesting in the Canadian Boreal would not have created such a comparable climate change risk. (¶ 151.) To the contrary, the U.N. Intergovernmental Panel on Climate Change -- often cited by the Greenpeace Defendants elsewhere -- has declared that sustainable forest harvesting is one of the most important mechanisms for removing greenhouse gases from the atmosphere. (¶ 152.) As numerous studies have shown, greenhouse gas absorption and sequestration are maximized by harvesting old trees that have ceased absorbing greenhouse gases and are, or will soon begin, emitting greenhouse gases, and regenerating with new trees that absorb the most greenhouse gases during their growth and maintenance phases. (¶ 344.) The U.N.'s most recent reporting declares that deforestation in the Boreal caused less than 2% of Canada's total greenhouse gas emissions in 2012, amounting to 0.06% of global emissions. (¶¶ 151-52.) Thus, the Enterprise's efforts to falsely equate Resolute's harvesting with climate change risk comparable to deforestation in Asia, Africa, and South America which dramatically diminish the ability of the global forests to mitigate climate change is equally untethered to facts or science. (¶ 152.)

Thus, it is no surprise that the "scientific evidence" that GP-USA purports to rely on in its December 2016 letter to "support" its false claims about climate change risk is misrepresented. While GP-USA cites a 1998 study based on computer modeling of hypothetical forest landscapes with limited focus on the regions in question, a more recent (2013) study by the same scientist, which relied on observed data (not simulation) to evaluate the climate impacts of Canada's Boreal forest, concluded that the Boreal forest is having a slight *cooling* effect on global climate, helping rather than further warming the planet. (¶ 153.) As organizations that hold themselves out as "experts," and claim to base its campaigns on the "best available science" (¶ 139), GP-USA and Moas either intentionally failed to disclose or recklessly disregarded the 2013 study, which flatly contradicts its false claims about Resolute's impact on climate change. (*Id.*)

b. The Enterprise Misrepresents Resolute's Operations In The So-Called "Intact" and "Endangered Forest"

After it was forced to retract its false allegation that Resolute had violated the CBFA, the Enterprise renamed various areas and minted new areas where it claimed Resolute should not be harvesting. (¶¶ 155-59, 197-218, ECF No. 185-4.) These new areas the Enterprise claimed were undisturbed, "intact forests" that it designated "endangered" forests. (*Id.*) The campaign misrepresented material facts about Resolute and these so-called "endangered forests" in furtherance of its objective to harm Resolute's brand and business and that of its customers. (*Id.*)

First, the Enterprise made materially false and misleading statements misrepresenting the uniqueness of these so-called "intact forests" and the pressure they were under. (¶¶ 155-59.) For example, the February 2016 Endangered Forests In The Balance Report issued by GP-Canada and featured on the websites of GP-Canada, GP-USA, and GPI intentionally misrepresents that "*Canada leads the world in loss of intact forests, with 21% of intact forest loss worldwide between 2000 and 2013 occurring in Canada* . . . [b]etween 2000 and 2013 . . . nearly 50% of the Intact Forest Landscapes in the Montagne Blanches Endangered Forest have been lost or degraded." The study GP-Canada cites to putatively support this assertion states the exact opposite. In fact, the study reveals that far from leading the world in intact forest loss, North America combined lost the *least amount of intact forests* on Earth. (¶ 157.) Even more important, contrary to GP-Canada's assertion that Resolute controls the fate of any of these intact forests, the same study revealed that the majority of intact forest loss in North America was from fire and other natural disturbances. (*Id.*) This same false allegation was featured prominently in GP-Canada's and GP-USA's February 2016 Report "Certification Update: Montagnes Blanches Endangered Forest," which defendant Moas disseminated to Resolute customers throughout March and April of 2016; Moas's December 2016 letter to Book Publishers, and GP-USA's May 2017 Clearcutting Report. (*See* ¶ 278, 304, 309; ECF No. 185-4.)

In falsely alleging that Resolute's operations threaten "Canada's remaining large intact areas of undisturbed forest" or the last of the world's "[l]arge undisturbed and intact landscape," (¶ 158 n.3), GP-Canada, GP-USA, and Moas intentionally omit that 85% of so-called intact

forest landscapes are above the Area of Undertaking (Ontario) and the Northern Limit of Allocation (Quebec) where the law prohibits harvesting, and 90% of intact forest landscapes in Quebec are either beyond the Northern Limit or in otherwise protected areas. (¶ 158.) Resolute only harvests in a fraction of the remaining intact forest landscape in Quebec and Ontario, and those areas in which Resolute does harvest are predominately not intact forest landscapes, and any Resolute contribution is entirely immaterial, temporary, and important to the forest's cycle of regeneration and regrowth. (*Id.*)

To falsely accuse Resolute of harvesting in the Montagnes Blanches, the Enterprise simply redrew existing borders beyond the historical delineations of the Montagnes Blanches. (¶ 212.) Beginning in 2010 with the publication of GP-Canada's "Boreal Refuge" GP-Canada unilaterally designated large areas of land the "Montagnes Blanches," even though these regions fell outside the area historically designated as protected. (*Id.*) Remarkably, GP-Canada's revisions include only a portion of the actual Montagnes Blanches, but of course include forest management units managed by Resolute which are overwhelmingly located outside the Montagnes Blanches. (*Id.*) In 2013, GP-Canada and Brindis, further expanded the borders of the "Montagnes Blanches" beyond its 2010 delineation in the Boreal Alarm report. (¶¶ 213.)

The Greenpeace Defendants' 2013 delineation of the Montagnes Blanches continue to be featured in numerous GP-Canada and GP-USA reports. (¶¶ 214-16, ECF No. 185-4.) For example, in February 2016, GP-Canada and GP-USA published the expanded boundaries in their respective reports "Endangered Forests in the Balance" and "Certification Update" and falsely associated Resolute with the loss or degradation of "nearly 50% of the Intact Forest Landscapes in the Montagne Blanches Endangered Forest" by expanding the region's borders to include Resolute's forest management units. (¶ 216.) Throughout March and April 2016, Moas distributed the reports to Resolute's customers, claiming that Resolute was "central to the fate of the Montagnes Blanches Endangered Forest." (¶¶ 216, 274-81.)

In direct response, on May 31, 2016, Quebec's Forestry Minister admonished GP-Canada for unilaterally expanding the borders of the Montagnes Blanches: "[T]he map has major deficiencies that misrepresent geographical reality and are likely to mislead readers. The map

extends well beyond the Montagnes Blanches sector officially recognized by the Quebec government for the protection of the woodland caribou." (¶ 217.) The statement also linked to an official map of the Montagnes Blanches. (*Id.*)

Notwithstanding this corrective disclosure, Moas, Brindis, and Skar continued to publish the fake map of the Montagne Blanches and disseminate the false claim that Resolute was logging in the Montagnes Blanches, including in GP-USA's December 2016 letter and GP-USA's May 2017 Clearcutting Report. (¶¶ 218, 304-18, 357-60, ECF No. 185-4.)

c. The Enterprise Misrepresents the Sustainability of Woodland Caribou

The Enterprise also intentionally misrepresents that Resolute, alone, is "destroying critical habitat of the endangered woodland caribou" thereby "pushing woodland caribou to the brink of extinction." (¶ 160-62, 162 n.4, 247, ECF No. 185-2.) These claims are made solely to damage Resolute's brand and business and lack any basis in fact.

Initially, in connection with the CBFA, GP-Canada, the Stand Defendants and Canopy, agreed that forestry companies could and would harvest in areas outside the moratorium. That is because harvesting in these areas is not destructive. (¶161.) Indeed, in 2011, in talking about the CBFA that it negotiated, GP-Canada heralded that the Agreement provided, a "moratorium area that protected virtually all of the habitat of the threatened woodland caribou." (¶163.) Yet, to this day, Resolute's harvesting remains absent from "virtually all of [that] habitat," and, therefore, the woodland caribou could not possibly have gone from "protected" to "endangered" due to Resolute's activities. (*Id.*) To the extent that Resolute has harvested in some nominal portion of the moratorium areas since the end of the suspended period under the CBFA, such incursions were at miniscule levels of approximately .41% (.0041). (¶164.) It cannot be credibly stated that the reduction of .0041 from a 29 million hectare "area that protects virtually all of the caribou habitat" caused caribou to go from "protected" to "endangered." (*Id.*)

Moreover, the Enterprise fails to disclose that in both Quebec and Ontario, Resolute's harvesting is conducted according to management plans issued by the provincial governments, which have strict guidelines and regulations for caribou management. (¶ 337.) Indeed, pursuant

to these strict regulations, 77% and 76% of woodland caribou ranges, respectively, are located above the Area of Undertaking (Ontario) and Northern Limit of Allocation (Quebec), off-limits to forestry by law. (¶ 338.) Of the remaining habitat, Resolute is responsible for only a fraction, along with numerous other forestry companies. (¶¶ 165, 334.) Nevertheless, the Enterprise describes only Resolute as a destroyer of these habitats, attributing entirely the purported disruption of all the other forest companies in these same areas to Resolute. For example, in the Trout Lake-Caribou Endangered Forest -- one of the areas the Enterprise claims should be protected because it is intact and overlaps with a caribou range -- Resolute accounted for only .04% of the harvest from that area last year. (¶ 165.) Moreover, Resolute is responsible for just over 10% of the fibre harvested in the Caribou Zone in Ontario. Thus, if the Enterprise's assertion that harvesting would "jeopardize[e] woodland caribou" in Ontario and its "intact endangered forest" were true, then the forestry companies responsible for 99.06% of that harvesting, not Resolute, would be responsible for that impact. (*Id.*)

The Enterprise similarly creates the false impression that Resolute is harvesting in the last intact forests in Quebec and Ontario, thereby creating disturbances that lead to the population decline of woodland caribou in those regions. (¶ 169.) As set forth in the Environment Canada report which GP-USA purports to rely on, many of the regions in the managed forests of Ontario and Quebec -- including those in which Resolute does not hold harvesting rights -- have already been disturbed by impacts other than harvesting, such as fire. (*Id.*) Moreover, the land on which Resolute harvests is owned by the Province of Quebec and if Resolute was not harvesting there, some other forestry company would be. (¶ 171.)

The Enterprise's claim that "caribou herds whose range overlaps with Resolute's Montagne Blanches operations are unlikely to survive beyond 50 years due to continuing habitat destruction," featured in GPI's May 2014 FSC At Risk Report grossly, likewise misrepresents the studies on which they are relying. (¶ 162.) The overwhelming amount of the caribou range in Quebec is not disturbed and, according to the very studies GPI cites, 94% of the caribou herds that overlap with what GPI calls the Montagne Blanches enjoy undisrupted habitats and are

identified as self-sustaining. (*Id.*) Another 4% are stable. (*Id.*) Of the remaining 2%, in two herds of 150 caribou each, Resolute has harvested a nominal part of their habitat. (*Id.*)

d. The Enterprise Misrepresents Resolute's Relationship with First Nations Communities

The Enterprise also disseminated the lie that Resolute has exploited, "abandoned," and "impoverished" indigenous communities, known in Canada as "First Nations." (¶ 174 n.5, ECF No. 185-3.) In fact, Resolute provides substantial economic benefits to the communities in the Boreal through employment, vendor contracts, and various forms of joint ventures through which they share in the economics of Boreal forestry, and as a result, has numerous successful partnerships with various First Nations. (¶¶ 175-76.) While there are occasional conflicts as would be expected among any commercial endeavor involving multiple interested constituencies, there is no factual basis for the extreme claims of exploitation and impoverishment. (¶172.)

Indeed, in response to these false allegations, on April 17, 2014, Chief Klyne of the Seine River First Nation wrote to GP-Canada to "set the record straight" regarding Greenpeace's false claims that Resolute shows "disregard for Indigenous rights and disrespect for workers and the communities in which they operate," and "continues to generate conflict through unsustainable operations on culturally valuable forests." (¶ 184.) Admonishing GP-Canada, Chief Klyne stated: "Quite frankly, the Greenpeace assertion that it speaks for First Nations impacted by practices on our homelands is not only false, but insulting and misleading . . . in fact the First Nations of the Sapawe Forest area have engaged in negotiations with Resolute and Ontario since 2010 and, in agreeing to become the forest management unit for the Sapawe forest, gave free, prior and informed consent, which lead to partnerships with Resolute on other fronts that allows the First Nations to develop economic certainty for the future." (¶¶ 184-85.) Chief Klyne advised GP-Canada that rather than protect First Nations, the campaign had "sabotaged" this economic certainty "by contacting our destination market to not buy products from us." (¶ 185.)

2. The Enterprise Targets Resolute's FSC Certificates

As outlined in the Operational Memo, the disinformation campaign targeting Resolute's customers was prosecuted in tandem with its "coordinated attack" on "Resolute's FSC certs."

FSC is an international non-profit association, of which Greenpeace is a founding member and whose certifications the Enterprise Members had touted as the "gold standard" in the industry. (¶ 283.) By July 2012, Resolute held the largest number of FSC certificates in the world. (¶ 286.) This status would have made it difficult for the Enterprise to credibly depict Resolute as "the most regressive forest products company," and thus it was essential for the Enterprise to procure the loss or suspension of some of Resolute's FSC certificates. (¶ 285.)

Beginning in July 2012, immediately following Resolute's announcement that it had become the world leader in FSC certification, the Enterprise, through GP-Canada, filed a false complaint with FSC, alleging that Resolute was not in compliance with FSC standards. (¶ 286.) Rainforest Alliance was retained to conduct an independent audit of the disputed areas. (¶ 287.) However, the Enterprise contaminated the independence of the audit by, among other means, launching a parallel campaign attacking FSC for not being stringent enough and threatening to tarnish the FSC brand by accusing it of certifying Resolute despite its highly publicized claims that Resolute was harming the Boreal forest, woodland caribou, and First Nations. (¶¶ 192-93.)

The Enterprise's success in causing the suspension of certain of Resolute's FSC certificates is directly evidenced by the dramatically disparate treatment to which Resolute's FSC certificates were subjected. (¶ 194.) While Resolute did have three discrete certificates -- those for Lac St-Jean, Mistassini-Peribonka, and Black Spruce & Dog River -- suspended in December 2013, the audits that led to these temporary suspensions were not based on any wide-ranging findings of misconduct in connection with Resolute's on-the ground practices, but were based on narrow idiosyncratic issues, within the jurisdiction of the Quebec and Ontario governments. First, one audit cited a specific, complex territorial dispute between the Quebec Government and two First Nations, even though Resolute was not a direct party to the dispute and lacked any ability to control or resolve it. (¶ 194(a).) Second, both the Lac St-Jean and Mistassini-Peribonka audits challenged the adequacy of Resolute's habitat conservation plan -- a plan which fully complied with the provincial government's caribou conservation requirements -- even though other FSC holders relying on the same conservation plan did not have their FSC certification suspended. (¶ 194(b).) With respect to the certification of Black Spruce & Dog

River forest, in November 2015, the FSC overturned the suspension and reinstated Resolute's FSC certificate. (¶ 361.)

Once the Enterprise procured the suspension of Resolute's FSC certificates, the Enterprise, including Brindis of GP-USA, immediately purported to corroborate its false claims by misrepresenting that the suspensions and terminations resulted from Resolute's unsustainable practices. (¶¶ 260-61.) For example, in a March 30, 2015 email sent to Resolute's customer, Quad Graphics, Brindis stated: "This past year, and virtually unheard in the forestry certification world, two of Resolute's FSC certificates have been terminated and an additional two certificates have been suspended due to serious shortcomings related to Indigenous Peoples' Rights, old growth forest protections, endangered species (caribou) conservation and lack of stakeholder support for operations." (*Id.*)

The assertion of "serious shortcomings" was knowingly and/or recklessly false. First, as an "issues expert" on matters related to the Canadian Boreal Forest and FSC certification, Brindis and GP-USA knew and/or recklessly disregarded the fact that the termination of two of Resolute's FSC certificates resulted from the natural expiration of their five year terms, not "serious" or any shortcomings on the part of Resolute. (¶ 261.) Moreover, the suspension of Resolute's Lac St. Jean certificate was resulted from matters within the jurisdiction of the Quebec government. (*Id.*) Indeed, numerous public disclosures issued prior to Brindis's e-mail to Quad Graphics confirmed these facts, including: (i) an October 31, 2014 press statement by the Quebec Forestry Minister which explained that the suspension of the Lac St. Jean was due to narrow issues that were the responsibility of the Quebec government, not Resolute; (ii) a December 31, 2014 Rainforest Alliance press release announced that the Mistissini-Peribonka FSC certificate in Quebec reached the five-year expiration date of the certification agreement on December 3, 2014; (iii) a January 13, 2015 FSC press release stated that "[A]ll FSC certificates have a term of 5 years prior to renewal or expiration. In the absence of any renewal or transfer process, the Caribou Forest certificate has expired and thus terminated." (¶¶ 187, 261.)

Nevertheless, the Enterprise continued to falsely assert that these limited suspensions and terminations corroborated their false claims about Resolute, including in the December 2016 letters to book publishers and the Clearcutting Report. (¶¶ 186-96, 304-318, 365-66.)

3. The Enterprise Threatens And Contaminates Customer and Industry Relationships

The Greenpeace Defendants, the Stand Defendants, and GP-Canada ubiquitously disseminated the Enterprise's disinformation via websites, blog posts, Twitter, emails, letters, and innumerable direct in-person and telephonic conversations, to Resolute's critical business constituents, including "customers in Canada, the US and Europe" who the Enterprise threatened "don't buy from Resolute" and with the specific "intent of creating a threat to the brands of any customers who buy from Resolute." (¶¶ 76-85, 222-80, 298-318.)

Beginning in 2013, the Enterprise targeted key Resolute customers, UPM and Axel Springer, threatening these critical customers that if they continued to source pulp and paper from Resolute, the Enterprise would target them directly, harming their business and reputation among its key constituents. (¶¶ 238-39.) Thus, on April 2, 2014, UPM informed Resolute of its decision to suspend purchases. (¶ 238.) Axel Springer followed suit in August 2015. (¶ 239.) Upon learning of Axel Springer's decision, the Enterprise immediately leaked the news to multiple media outlets, and celebrated the news on Twitter, touting their direct involvement in Resolute's loss of the Axel Springer account. (*Id.*)

The Enterprise likewise targeted Resolute customer Kimberly-Clark, with disinformation about Resolute's purported FSC noncompliance, including during meetings in December 2012 and May 2013, and scores of emails, letters, and telephonic discussions throughout 2013, 2014 and 2015. (¶ 231.) Ultimately, on September 16, 2015, Kimberly-Clark informed Resolute that "[d]ue to Resolute's continued dispute with Greenpeace and the recent upsets in the CBFA we are not going to be able to pursue a contractual relationship." (*Id.*) The Enterprise employed similar tactics with respect to Procter & Gamble ("P&G"). (¶ 240.) As a result, during contract negotiations in 2013, P&G demanded "exit-clauses" in their contracts with Resolute, and, ultimately exercised certain of these exit clauses in March 2014, because it became increasingly

concerned about the lies disseminated by the Greenpeace Defendants and the negative impact doing business with Resolute would have on its customers and brands. (*Id.*)

As set forth in detail in the Amended Complaint, the Enterprise disseminated these same lies about Resolute and issued extortive threats to dozens of Resolute customers and trade associations. (¶¶ 222-80, 298-318, 406 (Table A), ECF Nos. 185-1 to 185-4.)

4. The Enterprise Publicly Attacks Resolute's Market Relationships

At the same time that the "Resolute: Forest Destroyer" campaign privately targeted certain Resolute customers, it was simultaneously publicly targeting other Resolute customers. The objective of this campaign was to exploit the Enterprise's false public narrative and leverage it to publicly intimidate, pressure, and shame these customers into terminating their business relationships with Resolute. (¶¶ 246-73.)

The Enterprise's first public target was 3M. On April 29, 2014, Moas of GP-USA issued "Exposed: 3M Sourcing From Forest Destruction," which reported that Greenpeace was "proud to stand with . . . our ally, ForestEthics" and joined their "demand that 3M immediately stops sourcing from forest destroyers" like Resolute. (*Id.*) The report falsely associated Resolute's harvesting in Canada with massive deforestation occurring in South America, Asia, and Russia, and falsely stated that "logging is the single greatest threat to caribou survival" and Resolute is "pushing woodland caribou to the brink of extinction." (*Id.*) The joint attack on 3M succeeded when, on March 6, 2015, 3M announced a new paper sourcing policy, which the Enterprise, through Skar of GP-USA, immediately announced in a report singling out Resolute, "3M has notified controversial logging giant Resolute Forest Products that it will need to comply with its new sourcing standards or lose business." (¶ 248.) Days later, on March 18, 3M informed Resolute after "work[ing] with ForestEthics and Greenpeace . . . we are not pursuing new business with Resolute." (*Id.*) By fall 2015, 3M informed Resolute it was eliminating it from its supply chain due to the "continued controversy" with Greenpeace. (*Id.*)

The Enterprise likewise targeted Resolute's customer Best Buy. On November 26, 2014, the eve of Black Friday, Best Buy's busiest online shopping season, Shane Moffatt of GP-Canada, in collaboration with Moas of GP-USA, published "Better Buying in the Boreal Forest."

(¶ 249.) That same day, Moas published "Best Buy is Wasting Ancient Forests, One Flyer At a Time." (*Id.*) The reports misrepresented that Resolute was "an outlier in the Canadian forest sector" "responsible for destruction of vast swathes of Canada['s] Boreal Forest, degrading critical caribou herds, and logging without consent of impacted First Nations." (¶¶ 249-50.)

At the same time, the Enterprise leveraged its ongoing relationships with cyber-hacktivists, to induce these cyber-hacktivists to launch massive attacks on their targets. (¶ 253.) The same day the Enterprise launched its BestBuy attack, a Twitter feed associated with the cyber-hacktivist group Anonymous, retweeted a tweet by Richard Brooks of GP-Canada announcing the BestBuy attack and announced that it had used cyber-attacks to take down Resolute's website. (¶ 254.) Best Buy's website began experiencing problems at the same time and crashed on November 28, the morning of Black Friday. (¶¶ 255-56.) Brooks presciently announced the Best Buy web crash via Twitter virtually the moment it happened and before it was publicly reported. (¶¶ 256.) A few days later, Aspa Tzaras of GP-Canada emailed volunteers to submit "false product review[s]" on Best Buy's website, resulting in Best Buy receiving over 52,000 false product reviews from Greenpeace supporters. (¶ 257.) In response, on December 8, 2014, Best Buy announced it would be shifting its business away from Resolute toward companies that support "sustainable forestry practices." (¶258.) Stand promised that other companies would soon follow suit, stating "Best Buy is just the beginning." (*Id.*)

The Enterprise sought to replicate the success of their Best Buy attack on other targets. In March 2015, Brindis of GP-USA targeted Quad Graphics, a supplier of Resolute products to Rite Aid and CVS. (¶ 260.) On March 30, 2015, Brindis sent an email to the CEO of Quad Graphics falsely accusing Resolute of "forest destruction and degradation in some of the most ecologically and culturally important areas of Canada's Boreal Forest," which Brindis purported to corroborate with the recent termination and suspension of Resolute's FSC certificates. Brindis threatened that Quad's sourcing represented "a risk to your company and your customers." (*Id.*)

Within weeks, the Enterprise followed through on its threat to Quad Graphics and began targeting its customers directly. In April 2015, Rite Aid was informed that the Greenpeace Defendants were preparing to launch a campaign against Rite Aid and was in the process of

distributing a presentation targeting Rite Aid's relationship with Resolute to canvassers who would make public appeals for donations. (¶ 262.) Days later, the Greenpeace Defendants sent a power point presentation directly to Rite Aid corporate falsely accusing Resolute of destroying the last remaining intact forests in the Boreal and harming woodland caribou. (*Id.*) On April 15, Brindis published a blog post on GP-USA's website titled "Rite-Aid Making the Wrong Choice For Ancient Forests" falsely accusing Resolute of "logging in the last undisturbed ancient forests in Quebec and Ontario, some of which is threatened Woodland Caribou habitat" and "ongoing conflicts with First Nations." (¶¶ 263-64.) Brindis made similar misrepresentations in an April 17 blog post titled "How Rite-Aid and Other Customers of Boreal Forest Products Can Support Real Solutions," falsely accusing Resolute of abandoning its commitment to FSC. (¶¶ 265.)

Resolute immediately responded to these false allegations. (¶ 266.) By letter dated May 21, 2015 sent to the Board of Directors of GP-USA and Brindis, Resolute rebutted the falsehoods in Brindis's communications with Resolute's customers, explaining that two of the FSC certificates in question had "terminated" due to natural expirations, and did not call into question Resolute's conduct. (¶ 267.) Resolute likewise informed Brindis and GP-USA that less than 1% of the Canadian Boreal forest where Resolute operates is harvested each year and Canada's forestry laws and regulations are among the most stringent in the world. (¶ 268.) Resolute further explained that approximately 75% of woodland caribou habitat in Quebec and Ontario are off-limits to the forest products industry, and that far from contributing to the "death spiral" of caribou, Resolute has been a leader in implementing provincial conservation plans. (¶ 269.) Finally, Resolute demonstrated that to convey the false impression that Resolute abandoned its commitment to FSC certification, GP-USA and Brindis doctored a quote from Resolute's 2014 Form 10-K, which omitted the context of the statement. (¶¶ 270.)

Nevertheless, GP-USA continued to disseminate these lies in new blog posts. (¶ 271.) Between July 21 and 28, 2015, GP-USA published three separate blog posts authored by defendant Moas on GP USA's and GP Canada's websites, which purported to criticize Rite Aid for "ignor[ing] what science tells us: the Canadian Boreal forest is at risk and Rite Aid's supplier, Resolute, is making a bad situation worse," by "needlessly destroying critical habitat of the

endangered woodland caribou and at times logging in the Indigenous Peoples' territories without their consent." On the basis of these lies, GP-USA implored Rite Aid to "make the Rite Choice," and stop "turning a blind eye to the forest destruction behind its throwaway flyers." (*Id.*)

E. The Enterprise's Continued Misconduct

The Enterprise's campaign against Resolute is ongoing. Notwithstanding numerous material public events, including press releases issued by the Quebec government, the filing of the May 2016 complaint, and the November 2016 declarations of Peter Reich and Frederick Cubbage, which rebutted the Enterprise's false allegations, the Enterprise launched a renewed campaign based on the same knowingly false claims. (¶¶ 304-18.) On December 16, 2016, GP-USA (Moas) and GP-Canada (Moffat) jointly wrote to numerous Resolute customers, including Macmillan Publishers, Holtzbrinck Publishing Group, Penguin Random House, Hachette Book Group, and Scholastic. (¶ 304.) The letter falsely stated that Resolute was operating in the Montagnes Blanches, despite the Quebec Forestry Minister's May 2016 press release admonishing Greenpeace for "misrepresent[ing] geographical reality" and "mislead[ing] readers," by extending the borders of the Montagnes Blanches "well beyond the Montagnes Blanches sector officially recognized by the Quebec government." (¶¶ 217, 304.) The letter also reiterated the false claims that Resolute was "jeopardizing" the survival of woodland caribou and "threaten[ing] Intact Forest Landscapes" in Quebec and Ontario, notwithstanding Moas's and Moffatt's knowledge that 85% of intact forest landscapes and more than 75% of woodland caribou habitat in Quebec and Ontario are off-limits to forestry. (¶ 304.) Additionally, the letter continued to associate FSC suspensions with forest mismanagement by Resolute. (¶ 304.)

Resolute responded by letter dated January 12, 2017, demanding that GP-USA, GP-Canada, and those working in concert with them, immediately cease and desist their false and malicious campaign and retract their false statements. (¶ 306.) But, rather than retract these false lies, the Enterprise launched a self-proclaimed "worldwide campaign" targeting Resolute's book publisher customers, including Penguin, HarperCollins, Simon & Schuster, and Hachette, with the publication of the false and misleading report "Clearcutting Free Speech: How Resolute Forest Products Is Going To Extremes To Silence Critics Of Its Controversial Logging Practices"

authored by defendant Moas of GP-USA. (¶ 308.) The report misrepresented that Resolute is destroying the last large intact areas of Canada's managed forest, negatively impacting climate change, and obtained three blocks of land in the Montagnes Blanches and harvested there. (¶ 309.) The report also misrepresented that the termination of three FSC certificates corroborated the Greenpeace Defendants' allegations of Resolute's forest mismanagement. (*Id.*)

The campaign against the book publishers was presciently timed to coincide with the 2017 Book Exposition at the Jacob Javits Center in New York. (¶ 311.) Between May 31 and June 2, the Greenpeace Defendants rented a booth at the Exposition and Moas, Skar, and Brindis, among others, distributed the false and misleading Clearcutting Report. (*Id*). Following the Exposition, GP-USA continued to use the threat of bad press and boycotts against the publishers to extort endorsements and meetings. (¶ 312.) For example, in June 2017, Moas wrote to the CEO of Simon & Schuster demanding a meeting and warning that if Simon & Schuster did not acquiesce, GP-USA would target Simon & Schuster's business and brand. (*Id.*) Similar threats were lodged against Penguin, MacMillan, and Hatchette. (¶¶ 315-18.)

The campaign has had its intended effect. Following a meeting with the Greenpeace Defendants, Penguin demanded that Resolute move its paper production from the Alma paper mill -- which the Greenpeace Defendants falsely represented as sourcing from the Montagnes Blanches -- to the Calhoun paper mill, or it would move to another vendor. (¶ 313.) Similarly, in response to false allegations about Resolute's Alma mill, Macmillan demanded a tour of Resolute's Boreal operations, including the Alma paper mill. (*Id.*) Most significantly, Hachette, a long-time Resolute customer, acquiesced to the Enterprise's extortive demands, issuing a public statement endorsing the Enterprise's campaign. (¶ 315.) Reflecting its reliance on the Enterprise's misstatements regarding Resolute's FSC certificates, Hachette cited the "importance of operating in line with the Forest Stewardship Council's sustainability standards." (¶ 314.)

F. Damages

The "Resolute: Forest Destroyer" campaign targeted dozens of Resolute's critical business constituents, leading to damages in an amount GP-USA itself has publicly calculated to be not less than C$100 million, including: (i) impaired or terminated relationships (¶¶ 390, 409);

(ii) expenses incurred to rebut and mitigate the campaign's disinformation (¶¶ 392, 411); (iii) legal fees incurred to respond to the disinformation campaign (¶ 392); (iv) lost market share (¶ 391); and (v) damage to Plaintiffs' reputation, goodwill, and brand (¶ 389).

THE COURT'S PRIOR ORDER

On October 16, 2017, the Court dismissed the original Complaint in this action. (ECF No. 173 ("Order").) The Court's decision was based primarily on four findings. First, the Court held that the Complaint failed to plead any actionable false statements. The Court found that the term "Resolute: Forest Destroyer" was not "provable as false" because the word "destroy" is a "perennial instrument of hyperbole" and can "mean many things." (Order at 16-17.) The Court likewise found defendants' publications to be protected opinions based on scientific research or fact. (*Id.* at 17-18.) Second, the Court found that plaintiffs "d[id] not meet [their] burden of pleading actual malice with the requisite specificity" because plaintiffs did not "identify the individual responsible for publication of a statement" and prove that individual "acted with actual malice . . . to be brought home to the persons in the defendant's organization." (*Id.* at 13-15.) While the Court recognized that allegations that defendants relied on fake photos and redrew maps suggest some degree of knowledge or intent, the Court held that the initial complaint failed to explain that defendants knew the photos were faked, rather than mistaken, and no such inference can be drawn because Greenpeace shortly thereafter issued a retraction. (*Id.* at 14.) Third, the Court held that the RICO claims did not meet Rule 9(b)'s heightened pleading requirements because "in many cases [the Complaint] does not identify the author of the reports" and did not "identif[y] the 'misconduct' or 'specific content' that constitutes the fraud in the reports." (*Id.* at 19.) Finally, the Court held that plaintiffs failed to plead proximate cause for RICO because plaintiffs "d[id] not explain how it is the victim of [the] fundraising scheme, given that the only persons who could have been defrauded were the donors who gave money." To the extent Resolute could claim harm, "determining the amount of Resolute's damages attributable [to] Greenpeace's advocacy would be very difficult, because there are numerous reasons why a customer might cease or interrupt its relationship with Resolute." (*Id.* at 20.)

The Amended Complaint cures each of these held deficiencies.

LEGAL STANDARD

On a motion to dismiss pursuant to Fed. R. Civ. P. 12, a complaint should be dismissed only where it appears that the facts alleged fail to state a plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The Court must assume all factual allegations in the pleadings are true and interpret them in the light most favorable to the nonmoving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A plaintiff's factual allegations are sufficient to survive a motion to dismiss "even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

ARGUMENT

I. THE FIRST AMENDMENT DOES NOT PROTECT DEFENDANTS' FALSE AND MISLEADING STATEMENTS

The Amended Complaint and accompanying appendices (ECF Nos. 185, 185-1 to 185-4) plead with specificity 296 false and defamatory statements about the impact of Resolute's business operations on the Canadian Boreal forest, its indigenous peoples and caribou populations, and climate change. For a complete list of the false and defamatory statements, the speaker, date, recipient and complaint reference see Appendix A.

Defendants argue for dismissal of all of Plaintiffs' claims on the grounds that the Amended Complaint does not plead any actionable false statements within the applicable statute of limitations by the named defendants, or in the alternative that Plaintiffs have not alleged that defendants acted with the requisite malice in publishing those statements. As set forth below, the Amended Complaint pleads hundreds of actionable statements.[3]

[3] Defendants limit their analysis to 22 statements by named defendants during the one-year statute of limitation for libel, yet fail to address statements within the two-year statute of limitations for trade libel and tortious interference, or those statements made by other enterprise members which defendants played a responsible part in publishing. (ECF No. 199 at 18.) These statements give rise to actionable trade libel and tortious interference claims.

A. The First Amendment Does Not Protect Publications That Express Or Imply False Statements Of Fact.

The First Amendment does not protect false statements of fact or opinions that are not reasonably based in fact, not honestly held, or which misrepresent or omit material facts. *See Illinois, ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 612 (2003) ("Like other forms of public deception, fraudulent charitable solicitation is unprotected speech."); *Time Inc. v. Hill*, 385 U.S. 374, 390 (1967) ("Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published should enjoy a like immunity."); see also ECF 75 at 41-45 (collecting cases). While defendants attempt to recast all their calculated falsehoods in furtherance of their fraudulent campaign as protected "opinions." (ECF 199 at 26-29), their entire "opinion" argument rests on the faulty premise that there is some talismanic significance to labeling a statement an "opinion." The Supreme Court expressly rejected this idea nearly three decades ago in *Milkovich v. Lorain Journal Co.*, when it eschewed the "artificial dichotomy between 'opinion' and fact." 497 U.S. 1, 19-21 (1990). Accordingly, the critical question is not whether a statement is one of fact or opinion, but whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact. *See Piping Rock Partners, Inc.*, 946 F. Supp. 2d 957, 970 (N.D. Cal. 2013).

To determine whether a reasonable reader would construe a statement as a false assertion of fact, California courts apply a "totality of the circumstances" analysis. *Id.* at 970. Under this analysis, courts: (i) examine the statement in the context in which it was uttered or published; (ii) consider all the words used, not merely a particular phrase or sentence; (iii) give weight to cautionary terms used by the person publishing the statement; and (iv) consider all of the circumstances surrounding the statement. *Id.* The final factor requires the Court to consider the "knowledge and understanding of the audience targeted by the publication." *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 701 (Ct. App. 2007). Under the totality of the circumstances analysis, "[s]o long as the publication is reasonably susceptible of a defamatory meaning, a factual question for the jury exists." *Piping Rock*, 946 F. Supp. 2d at 970; *see also*

Bently Reserve L.P. v. Papaliolios, 218 Cal. App. 4th 418, 427–28 (Ct. App. 2013) (collecting cases); *Hughes v. Hughes*, 122 Cal. App. 4th 931, 936-37 (Ct. App. 2004).

Even if the Court determines that a statement is an opinion, expressions of opinion are actionable if the statement: (i) implies statements of verifiably false facts; (ii) are based on incorrect or incomplete facts or if draws erroneous conclusions from those facts; (iii) or was not honestly held. *See Milkovich*, 497 U.S. at 18; *see also Dickinson v. Cosby*, 225 Cal. Rptr.3d. 430, 459 (Ct. App. 2017), *review filed* (Jan. 5, 2018) (statements based on disclosed facts were actionable because speaker did not disclose "all of the facts . . . making it impossible for the readers to judge for themselves whether the facts support the opinion."); *Fed. Reserve Bank of San Francisco v. HK Sys.*, 1997 WL 227955, at *5 (N.D. Cal. Apr. 24, 1997) (opinions were actionable where defendant "does not honestly or cannot reasonably believe" them).

1. The Full Context Of The Statements Signal To The Reader That Defendants' Statements Are Based on Statement of Fact.

By their own admission, defendants' publications were intended to be viewed as objective statements of fact. Indeed, defendants ubiquitously represent that their campaigns, including the Canadian Boreal Forest campaign, are based on "objective," "accurate" facts," "research," "data" and "expertise." (¶¶ 137-40.) GP-USA purports to "work with experts, scientists and researchers across the globe to build a deep understanding" of environmental issues and further represents that the Canadian Boreal Forest campaign is based in the "best available science" and "best available data." (¶¶ 139, 382.) Each page on GP USA's website reiterates that GP-Fund is a "charitable entity created to increase public awareness and understanding of environmental issues through ***research***, the media and educational programs." (emphasis added).[4] Thus, each of defendants' publications may be construed by the reader as conveying assertions of fact. *See*

[4] For these reasons, defendants' attempt to analogize their publications to op-ed is entirely without merit. (ECF No. 199 at 28.) In any event, even statements appearing in op-eds are not *per se* protected. *See Hatfill v. New York Times Co.*, 416 F.3d 320, 333 (4th Cir. 2005) (op-ed contained defamatory statement); *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1052-1055 (9th Cir. 1990) (assertion on 60 Minutes that a product "did not work" was a statement of fact, "the context of his broadcast notwithstanding"); *Madsen v. Buie*, 454 So. 2d 727, 729 (Fla. Dist. Ct. App. 1984) (letter to editor was defamatory).

Overstock.com, 151 Cal. App. 4th at 706 (reports actionable where "alerts" characterized as having been "prepared by professional certified public accountants and financial analysts"); *Melaleuca, Inc. v. Clark*, 66 Cal. App. 4th 1344, 1354-55 (Ct. App. 1998) (disclaimer that "'[t]he opinions expressed herein are based on my scientific research' . . . plainly suggests a factual basis for [defendant's] statements . . . [and] tends to reinforce the notion the book's contents are based on facts rather than opinion or theory").

Moreover, GP-USA holds out the authors of its "science-based" reports, including Moas, Skar, and Brindis, as "issue experts" in the Canadian Boreal Forest. (¶ 382-83.) California courts routinely recognize that where, as here, the author of the publication holds itself out as having specialized knowledge, a reader may reasonably believe that their publications are authoritative and supported by facts. *See Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 904 (Ct. App. 2004) ("An accusation that, if made by a layperson might constitute opinion may be understood as being based on fact if made by someone with specialized knowledge of the industry"); *Slaughter v. Friedman*, 32 Cal. 3d 149, 154 (1982) (statements "carry a ring of authenticity and reasonably might be understood as being based on fact" if made by someone with specialized knowledge).

Contrary to defendants' assertions, the mere fact that defendants are engaged in putative "advocacy does not give them blanket immunity to make false accusations." *See Restis v. Am. Coal. Against Nuclear Iran, Inc.*, 53 F. Supp. 3d 705, 722 (S.D.N.Y. 2014). Likewise, there is no scientific debate immunity for defamation. *See Melaleuca*, 66 Cal. App. 4th at 1354-55 (disclaimer that book expressed opinions of the author based on scientific research and case studies did not convert statement to non-actionable opinion); *Hi-Tech Pharm., Inc. v. Cohen*, 277 F. Supp. 3d 236, 245 (D. Mass. 2016) (rejecting any "scientific debate" privilege). Rather, courts regularly find that where, as here, a defendant purports to hold itself out as an expert or to be reporting facts, any argument that their statements "are non-actionable as pure opinion or rhetorical hyperbole is unpersuasive at the motion to dismiss stage." *Duffy v. Fox News Networks, LLC*, 2015 WL 2449576, at *3 (M.D. Fla. May 21, 2015); *see also Enigma Software Grp. USA, LLC v. Bleeping Computer LLC*, 194 F. Supp. 3d 263, 285-86 (S.D.N.Y. 2016)

(rejecting "opinion" defense at pleadings stage where defendant held itself out as expert); *Gross v. New York Times*, 82 N.Y.2d 146, 156 (N.Y. 1993) (statement was actionable where it was made after "what purported to be a thorough investigation").

2. Defendants Made Express Statements of Verifiably False Facts

Moreover, a cursory review of the defamatory statements alleged in the Amended Complaint and accompanying appendices demonstrates that the statements are capable of being proven false. For example, the Amended Complaint pleads that the May 2017 Clearcutting Report authored by Moas of GP-USA and featured on the websites of GP-Canada and GPI stated "Resolute has acquired three harvest blocks through auction sales inside the Montagnes Blanches" and "all three sites have been logged." (ECF 185-4.) However, the three harvest blocks purchased by Resolute were not within the Montagnes Blanches as evidenced by a review of the Quebec Government's official maps of the region featured prominently on the Quebec government's website. (¶(¶ 218, 309, 217.)

Similarly, defendant Moas's misrepresentation in GP-USA's January 2016 report "Resolute Forest Products: Key Risks and Concerns for Investors" that Resolute's FSC certifications were "terminated . . . for major non-compliances with FSC criteria" is an express statement of verifiable fact. (¶ 186 n.6, 365.)[5] In reality, FSC "terminations" result from natural expirations of five-year terms. (¶ 187.) This fact is verifiable simply by checking the FSC website or press releases, which plainly state, "[A]ll FSC certificates have a term of 5 years prior to renewal or expiration." (*Id.*) Moreover, the press releases announcing the two terminations at issue expressly attributed the terminations to expiration of their 5-year term. (*Id.*) Thus, defendants' false statements concerning the reason for termination of Resolute's FSC certificates are actionable. *See Unelko Corp. v. Rooney*, 912 F.2d 1049 (9th Cir. 1990) (assertion that product "did not work" was objectively verifiable); *Weller v. Am. Broad. Companies, Inc.*, 232

[5] *See also, e.g.*, ¶¶ 244 (Moas 2/26/2015 statement that Resolute had FSC "certificate suspensions/terminations" due to "shortcomings in the company's operations on-the-ground"); 260; ECF 185-2, 185-3 (Brindis 3/30/2015 statement "two of Resolute's FSC certificates have been terminated . . . due to serious shortcomings . . . .")).

Cal. App. 3d 991, 1005 (Ct. App. 1991) (statement that plaintiff had "acquired the candelabra at a grossly inflated price" could be objectively verified).

Defendants' statements attributing destruction of vast swathes of the Canadian Boreal forest to Resolute's forestry operations, are likewise provably false. Indeed, defendants concede that their statements that Resolute is responsible for destruction of vast swathes of the Canadian Boreal Forest are not true: "Resolute did not literally destroy an entire forest." (¶ 149.) While the Court previously held that these statements were not actionable because the term "destroy" can "mean many things" (Order at 16-17), the relevant inquiry is not what the word could mean, but whether under the specific circumstances (and procedural posture) here whether a reasonable reader could interpret the statement as declaring or implying that Resolute caused deforestation or loss of forest trees. *See Bently*, 218 Cal. App. 4th at 427–28. The answer is plainly yes. As set forth in the Amended Complaint, defendants intentionally juxtaposed statements that Resolute was responsible for destruction of the Canadian Boreal forest with significant land use changes and massive deforestation worldwide, to convey the false fact that Resolute's operation would likewise cause deforestation. (¶¶ 143-44, 150 n.2.) Indeed, defendant Paglia removed all doubt as to the meaning of the word "destruction" used in the "Resolute: Forest Destroyer": "It's quite simple. [Resolute] come[s] in, clear cuts vast areas of [the Canadian Boreal forest] and *then there's not a forest there*." (Agre Decl., Ex. B.) Thus, defendants' argument (ECF No. 199 at 29) that "destroy" is merely a "colorful" word and has no precise meaning is not only completely divorced from the context in which defendants' use it (as well as the precise definition it has in the English dictionary), but also negated by defendant Paglia's own admission. Considering the "totality of the circumstances," and affording the plaintiffs the benefit of every inference, as the Court must do on this motion, the statements that Resolute is responsible for destruction in the Canadian Boreal may be construed by a reasonable reader as express statements of verifiably false facts, and are thus actionable. *See Houlahan v. Freeman Wall Aiello*, 15 F. Supp. 3d 77, 83 (D.D.C. 2014) (statement that reporter has become a "destructive and biased force" was actionable); *Thomas H. Maloney & Sons, Inc. v. E.W. Scripps Co.*, 43 Ohio App. 2d 105, 108 (Ohio Ct. App. 1974) (statement that demolition crew had a "penchant for destruction" was

defamatory); *King Kullen Grocery Co. v. Astor*, 249 A.D. 655 (N.Y. App. Div. 1936) (statement that grocery company is a "price-wrecker" was defamatory). Thus, because the word "destroy" is susceptible to a defamatory meaning, the jury must decide how the statement was understood. *See, e.g.*, *Bently*, 218 Cal. App. 4th at 427–28.

3. The Statements Are Based On Incorrect Or Incomplete Facts Or Draw Erroneous Conclusions From Those Facts

Nor can defendants escape liability by arguing that all their publications are protected because the factual basis for the statements are provided in hyperlinks and footnotes. (ECF No. 199 at 27.) As an initial matter, this argument fails to address the numerous false and defamatory statements in direct communications to customers, by e-mail and on social media set forth in the Amended Complaint, which were not accompanied by any citations, and are thus actionable. *See, e.g.*, ECF Nos. 62-49 at 89; 62-38 at 85; 62-39 at 22; 62-51 at 49.[6]

In any event, "even if the speaker states the facts upon which he bases his opinion, if those are incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false statement of fact". *Milkovich*, 497 U.S. at 18-19.; *see also Overhill Farms, Inc. v. Lopez*, 190 Cal. App. 4th 1248, 1264 (Ct. App. 2010) (statements actionable where they "d[id] not fully and accurately disclose the facts surrounding" the alleged misbehavior). The Amended Complaint is replete with examples where defendants relies on incorrect or incomplete facts, or draw erroneous conclusions from those facts. (¶¶ 333-50.)[7] By way of example only:

- GP-USA's April 2015 article "Rite Aid Making the Wrong Choice for Ancient Forests" authored by Brindis stated that "Resolute is logging in the last undisturbed ancient forests in Quebec and Ontario" (¶ 263), which implies the false fact that as a result of Resolute's harvesting there will be no remaining intact forest landscapes.

[6] Additionally, some of the sources are virtually impossible for the reader to access or understand. For example, in the Clearcutting Report, some of the links are inoperable, some require clicking through a rabbit hole of further hyperlinks where the ultimate source either does not support defendants' assertion, or is indecipherable, some links require the reader to purchase the full article, and some footnotes simply refer to defendants' own prior publications. (¶ 173.)

[7] Contrary to the Stand Defendants' contention (ECF 197 at 14-15, 21-22), "[s]imply couching [defamatory] statements in terms of opinion does not dispel [their defamatory] implications." *Milkovich*, 497 U.S. at 19 ("In my opinion Jones is a liar,' can cause as much damage to reputation as the statement, 'Jones is a liar.'").

GP-USA omits that 85% of intact forest landscape is off-limits to forestry by law and in no danger of being harvested by any company, let alone Resolute. And in the remaining areas where Resolute does harvest, Resolute is responsible for only a fraction of the harvesting, with the remaining areas being harvested by other forestry companies that are not mentioned, and thus Resolute cannot be singularly responsible for the loss of the last remaining intact forest landscapes. (¶¶ 155-59; 334, 337.)

- GP USA's "Campaign Page: Boreal Forest" launched on June 29, 2015, states that "[Resolute]'s operations threaten iconic species such as woodland caribou" which implies the false fact that Resolute is threatening the last remaining woodland caribou. (ECF No. 185-2.) GP-USA omits that 77% and 76% of woodland caribou ranges in Quebec and Ontario, respectively, are located in areas off limits to forestry. (¶ 338.) And in the remaining areas where Resolute does harvest, Resolute is responsible for only a fraction of the harvesting, with the remaining areas being harvested by other forestry companies that are not mentioned, and thus Resolute cannot be singularly responsible for the destruction of woodland caribou. (¶¶ 160-73, 334, 337-38.)

- GP USA's July 2015 article "Why Forests Are Critical For Public Health" authored by defendant Moas draws the erroneous conclusion from a source discussing the benefits of reforestation and harms of massive deforestation by fire, industrial development and *illegal* logging in Indonesia, Brazil and Costa Rico, that "The Canadian Boreal forest . . . one of the largest reservoirs of carbon in the world and the largest intact ancient forest in all of North America . . . is under threat from unsustainable logging. One company *in particular*, Resolute Forest Products, is threatening the future of the Boreal forest and the wildlife that rely on it to thrive." (¶¶ 142-54, 145 n.1; ECF No. 185-1) (emphasis added).)

- The February 2016 Endangered Forests in the Balance Report intentionally misrepresents that "Canada ***leads*** the world in loss of intact forests, with 21% of intact forest loss worldwide between 2000 and 2013 occurring in Canada . . .." The study GP-Canada cites reveals that rather than leading the world in intact forest loss, North America combined lost the *least amount of intact forests* on Earth. The same study also revealed that the majority of intact forest loss in North America was from fire and other natural disturbances, not harvesting. (¶ 156-57.)

- In the December 2016 letter to book publishers, GP-USA (Moas) purports to rely on a 1998 study based on computer modeling of hypothetical forest landscapes with limited focus on the regions in question, but fails to disclose a more recent (2013) paper by the same scientist, which relied on observed data and concluded that managed Boreal forest is having a slight *cooling* effect on global climate. (¶ 342.)

- Brindis and Moas misleadingly claimed that the suspension of Resolute's FSC certificates was the result of "serious non-conformances" or "shortcomings in the company's operations-on-the-ground," without disclosing that the Quebec government has repeatedly and publicly stated that the suspensions were due to narrow issues within the exclusive control of the Quebec government, not Resolute. Defendants likewise omitted that Resolute remains one of the largest holders of FSC certificates in North America. (¶ 336, 361.)

Moreover, defendants deliberately pair general statements about deforestation generally with citations, and statements regarding Resolute's harvesting practices *without citations* to convey the false facts that Resolute's harvesting is, for example, causing the deforestation of the Boreal or the extinction of caribou. However, defendants' gross allegations of wrongdoing do not logically flow, or are not sufficiently supported by, the underlying citations. For example, in GP-USA's July 21, 2015 report authored by Moas "U.S. Pharmacy Giant Making Wrong Choice for the Boreal Forest," GP-USA cites articles and reports describing the degradation of forests generally that have nothing to do with Resolute or its logging practices, such as "[t]he Boreal Forest faces many threats," which describes forest fires, oil development and "destructive logging" and then asserts ***without citation*** that "Resolute is needlessly destroying [the Boreal]," or Resolute is primarily responsible for the loss of intact forests. (¶¶ 341-350.)

The juxtaposition of supported and unsupported assertions to convey the false impression that defendants' statements about Resolute are grounded in fact are actionable. *See Hatfill v. N.Y. Times Co.*, 416 F.3d 320, 333-34 (4th Cir. 2005) (publisher cannot "escape liability simply by pairing a charge of wrongdoing with a statement that the subject must, of course, be presumed innocent"); *Brown v. Tallahassee Democrat, Inc.*, 440 So. 2d 588, 589-90 (Fla Ct. App 1983) (reversing order dismissing defamation claim because juxtaposition of plaintiff's photograph with murder story "put ordinary readers in the sense" that plaintiff was "guilty of or on trial for murder"); Prosser, *The Law of Torts*, § 116 (5th ed. 1988) ("if the defendant juxtaposes [a] series of facts so as to imply a defamatory connection between them, or [otherwise] creates a defamatory implication . . . he may be held responsible for the defamatory implication").[8]

Defendants dismiss the intentional juxtaposition of supported and unsupported statements as a "scientific debate" that should not be resolved by the Court. (ECF No. 199 at 12.)

[8] *Standing Comm. on Discipline of U.S. Dist. Court for Cent. Dist. of Cal. v. Yagman*, 55 F.3d 1430, 1440 (9th Cir. 1995) and *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1233-34 (N.D. Cal. 2014), relied on by defendants are factually distinguishable. (ECF No. 199 at 17.) In *Standing Comm.*, the defendant "carefully phrased" the statement in question "in terms of an inference drawn" from "specified" true facts. In *Wynn*, the defamatory statement was "immediately qualified" with contentions that "would prevent a reasonable listener from interpreting [the] words as asserting that [the plaintiff] actually violated the FCPA." 75 F. Supp. 3d at 1233-34.

However, Resolute does not dispute the accuracy of the general assertions or the sources that the Greenpeace Defendants rely on to support those assertions. But there is likewise no debate that those sources do not support defendants' accusations about Resolute. Under these circumstances, defendants cannot escape liability by recasting their statements as opinions based on disclosed facts. *See Overstock*, 151 Cal. App. 4 at 706 (rejecting defense that plaintiffs' allegations amounted to "disagreement" on how to interpret sources).

Moreover, the Amended Complaint alleges that the defendants did not honestly believe the statement they were making, and alleged ample facts that, under the standards governing this motion, support that allegation. It is long-settled that purported "opinions" that are not honestly held, or which are corrupted by undisclosed interests, are actionable. Indeed, the substantial litigation and prosecutions against investment analysts after the internet bubble burst relied on precisely this basis. *Abu Dhabi Comm. Bank v. Morgan Stanley & Co.*, 651 F. Supp. 2d 155, 176 (S.D.N.Y. 2009) (even opinions are actionable "if the speaker does not genuinely and reasonably believe it of it is without basis in fact."); *Lapin v. Goldman Sachs Group, Inc.*, 506 F. Supp. 2d 221, 239 (S.D.N.Y. 2006) (same); *DeMarco v. Lehman Bros., Inc.*, 309 F. Supp. 2d 631, 634-35 (S.D.N.Y. 2004) (motion to dismiss denied and analyst research report was held actionable based on the "buy rating" itself and "bullish" analysis where complaint alleged report was issued for undisclosed ulterior motive of maintaining client relationship); *In re Oxford Health Plans, Inc. Sec. Litig.*, 187 F.R.D 133, 141 (S.D.N.Y. 1999) ("undisclosed facts . . . that seriously undermined the accuracy of their alleged opinions or beliefs" in research report are actionable); *Overstock*, 151 Cal. App. 4th at 704 (reports were actionable where defendant did not genuinely believe the opinions but were published in furtherance of a short selling scheme).

As with the precedent dealing with investment analyst opinions, and any number of thousands of securities fraud cases involving opinions, in which such opinions were not honestly held and failed to disclose corrupted interests and motivations, the Amended Complaint alleges the defendants did not honestly believe the statements they were making and were motivated by an undisclosed and misrepresented motivation to harm Resolute.

4. Defendants Are Liable For All Misrepresentations Which They Had A Responsible Part In Publishing

Finally, defendants seek to escape liability by arguing that they did not author the vast majority of the defamatory statements alleged in the Amended Complaint and therefore cannot be held liable. (ECF No. 199 at 17; ECF No. 198 at 23-25.)

First, GP-Fund argues that the Amended Complaint "does not list Greenpeace Fund as the author of any statements, do[es] not plead what Greenpeace Fund, Inc. said when Greenpeace Fund Inc. said it, how Greenpeace Fund, Inc. was involved in any publication, or even that it ever published any alleged statement in the first instance." (ECF No. 198 at 23-28.) In fact the Amended Complaint and annexed appendices plead ***dozens*** of false statements published by GP-Fund (together with GP-Inc.) under the name GP-USA, as well as the date and author of those statements. (¶ 31(b); ECF 185-1 to ECF 185-4.) Faced with these detailed allegations, GP-Fund argues that the Amended Complaint's references to GP-USA improperly conflates GP-Inc. and GP-Fund in violation of Rule 9(b) (ECF No. 198 at 25), however it is GP-Fund and GP-Inc., not Plaintiffs, that attribute the publication of the reports to GP-USA. (*See, e.g.*, ECF No. 201 at Supplemental Tabs 1, 3, 10.) Indeed, the cover of each report annexed to the supplemental appendix accompanying the Greenpeace Defendants' motion bears the name "Greenpeace USA." (*Id.*) Moreover, each of these reports were published on the "Greenpeace USA" website. (*Id.*) Finally, while GP-Fund argues that the fact that the authors of the publications, including defendants Moas, Brindis and Skar, were employed by GP-Inc. not GP-Fund undermines any claim that GP-Fund had a hand in publishing the reports (ECF No. 198 at 26), the publications themselves represent that Moas, Brindis and Skar worked for GP-USA. (*See, e.g.*, ECF No. 201 Tab 1 (Moas, Senior Forest Campaigner for GP-USA); ECF 62-43 at 14 (Skar, Forest Campaign Director at GP-USA) ECF 62-37 (Brindis, "Senior Campaigner-Forests" for GP-USA). Under these circumstances, GP-Fund may be held liable for statements published by GP-USA. *See In re Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, And Products Liability Litigation*, 2018 WL 1335901, at *32 (N.D. Cal. Mar. 15, 2018) ("if there has been lumping together of [d]efendants in the FAC, that is a direct result of how [ ] [d]efendants have chosen to operate");

In re Volkswagen 'Clean Diesel' Marketing, Sales Practices, and Products Liab. Litig., 2017 WL 4890594, at *9, 11 (N.D. Cal. Oct. 30, 2017) (same).

Defendants' assertions that they cannot be held liable for statements published by non-party GP-Canada (ECF No. 199 at 17), are similarly without merit. It is long-settled that "every person who takes a responsible part in a defamatory publication -- that is, every person who, either directly or indirectly, publishes or assists in the publication of an actionable defamatory statement -- is liable for the resultant injury." 50 Am. Jur. 2d Libel and Slander § 334; *see also Osmond v. EWAP, Inc.*, 153 Cal. App. 3d 842, 852 (Ct. App. 1984) (general rule is that "everyone who takes a responsible part in the publication is liable for the defamation"); *Eastech Elecs. v. E & S Int'l Enters., Inc.*, 2009 WL 322242, at *7 (C.D. Cal. Feb. 9, 2009) (individual defendants liable for defamation even though they did not directly author the defamatory letter because "[o]therwise, [a] person dictating a defamatory statement could simply escape liability . . . by employing an innocent agent to write, sign and send the libelous publication.");

The express terms of the Operational Memo state that each defendant and enterprise member agreed to "work on the same team" to launch a "coordinated attack" the self-described "objective" of which was to "make Resolute and its products highly controversial," and "position[ ] Resolute as the most regressive forest products company." (*See supra*.) Given the shared objective and agreed upon plan between the Stand Defendants, GPI, GP-USA, and GP-Canada each defendant is liable for the publications authored by their co-conspirators in furtherance of the "Resolute: Forest Destroyer" campaign. Moreover, GP-USA's involvement in authoring publications by GP-Canada is further evidenced by Skar's and Brindis's references to GP-Canada's reports as "our" reports or letters. (¶¶ 103-04, 113.)[9]

[9] Moreover, each defendant is liable in conspiracy for all reports published by their co-conspirators in furtherance of the conspiracy set forth in the Operational Memo. *See Sheppard v. Freeman*, 67 Cal. App. 4th 339, 349 (Ct. App. 1998) (cited in *Perlow v. Mann*, 2013 WL 5727259, at *5 (C.D. Cal. Oct. 22, 2013)); *Navarrete v. Meyer*, 237 Cal. App. 4th 1276, 1291 (Ct. App. 2015), *as modified* (July 22, 2015).

B. Actual Malice Is Adequately Alleged

A complaint pleads actual malice where it alleges that defendant "made the false publication with a 'high degree of awareness of . . . probable falsity,' or [ ] 'entertained serious doubts as to the truth of his publication.'" *Harte-Hanks Commc'ns., Inc. v. Connaughton*, 491 U.S. 657, 667 (1989) (citations omitted); *see also New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). Direct evidence of actual malice is not required. Rather, a "plaintiff is entitled to prove the defendant's state of mind through circumstantial evidence[.]" *Harte-Hanks*, 491 U.S. at 668. "[A]ll relevant circumstances surrounding the transaction may be shown . . . including threats, prior or subsequent defamations, subsequent statements of the defendant, circumstances indicating . . . ill will, or hostility between the parties, facts tending to show a reckless disregard of the plaintiff's rights . . . ." *Herbert v. Lando*, 441 U.S. 153, 164 n. 12, 170 (1979) (recognizing plaintiff will "rarely be successful in proving awareness of falsehood from the mouth of the defendant himself").

In conducting a constitutional malice inquiry, a court must examine each piece of relevant circumstantial evidence *within the context of the total evidence* to determine whether the evidence *as a whole* supports an inference of actual malice. *Id.* at 165 n.15 (directing court to consider all relevant circumstances surrounding the transaction); *Solano v. Playgirl, Inc.*, 292 F. 3d 1078, 1085 (9th Cir. 2002) ("accumulation" of "negligence, motive and intent" may supply sufficient inferences to establish the "existence of actual malice"); *Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 257 (1984) (same). For this reason, "actual malice is a subjective standard that must be determined on a case-by-case basis." *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 66 F. Supp. 2d 1117, 1124 (C.D. Cal. 1999). Thus, courts universally hold that "the issue of 'actual malice' is a question of fact inappropriate to resolve [on a motion to dismiss]." *Gressett v. Contra Costa Cty.*, 2013 WL 6671795, at *6 (N.D. Cal. Dec. 18, 2013); *see also Flowers v. Carville*, 310 F.3d 1118, 1131 (9th Cir. 2002) (reversing dismissal of plaintiffs' claims prior to discovery because "the issue of actual malice [is rarely]

properly disposed of by a motion to dismiss, where the plaintiff has had no opportunity to present evidence in support of his allegations") (internal quotation marks and citations omitted).[10]

1. Defendants Disseminated False Information With Actual Knowledge Of, Or Reckless Disregard, For Falsity

a. Fabrication Of Evidence Shows Malice

The Amended Complaint alleges that defendants and those working in concert with them fabricated GPS coordinates and video images putatively demonstrating Resolute harvesting in violation of the CBFA as a pretext to withdraw from the Agreement and launch the "Resolute Forest Destroyer" campaign. Between September 2012 and March 2013, defendants GP-USA, Skar, Brindis, the Stand Defendants, and Enterprise members GP-Canada, Mainville, Goodwin, and Cox disseminated this false charge in a series of reports and direct communications to Resolute's customers and other critical market constituents, notwithstanding knowledge that the "evidence" they purported to rely on were fake. (*See supra* § B.1.) These calculated publications of knowingly false information is the hallmark of actual malice. *See, e.g., St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) ("Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant [or] is the product of his imagination"); *Am. Dental Ass'n v. Khorrami*, 2004 WL 3486525, at *11-12 (C.D. Cal. Jan. 26, 2004) ("fabricat[ion] of bases for the [allegedly defamatory] statements" supported inference of actual malice evidence").

[10] For this reason, all but five of the cases defendants rely on to argue that actual malice is not adequately alleged were not decided on the pleadings alone. (*See* ECF No. 199 at 17-18, 20-25.) The few cases defendants cite which find allegations of actual malice insufficient on a motion to dismiss involve pleadings that are entirely devoid of factual allegations of malice. *See Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1239 (N.D. Cal. 2014) (complaint "merely recites an element of slander and does not present any potential supporting facts"); *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1109 (N.D. Cal. 1999) (complaint contained only "conclusory statements that [defendant] should have known the truth"); *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1122 (N.D. Cal. 1984) (dismissing complaint "for failure to plead actual malice with sufficient particularity"); *Barger v. Playboy Enters., Inc.*, 564 F. Supp. 1151, 1156 (N.D. Cal. 1983), *aff'd*, 732 F.2d 163 (9th Cir. 1984) (failure to investigate "does not *by itself* constitute recklessness"); *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 704 (11th Cir. 2016) (same, and dismissing without prejudice).

Defendants argue that these allegations of fabricated evidence are not probative of actual malice because the events and statements occurred outside the statute of limitations for the common law claims. (ECF 199 at 20-21.) However, the Supreme Court has rejected precisely this sort of arbitrary limit on evidence that a court may consider for purposes of assessing actual malice. *See Herbert*, 441 U.S. at 165 n.15 (rejecting argument that there are "special limits" to proving malice). To the contrary, is well-settled that "all relevant evidence" may demonstrate malice, including "prior . . . defamations."[11] *See id.* at 165 n.15; *id*. at 168 n.17 ("[defendants'] actions prior to the publication" bears on the "question of culpability); *see also id.* at 165 n.15 (same; collecting cases); *Welsh v. City & Cty. of San Francisco*, 1995 WL 714350, at *6 (N.D. Cal. Nov. 27, 1995) (considering time-barred statements in "evaluating whether statements were false and made with actual malice").[12] Indeed, defendants' prior defamatory statements and actions against Resolute are particularly relevant here given that they are part of a four-year coordinated scheme to harm Resolute. *See Fiber Sys. Int'l, Inc. v. Roehrs*, 470 F.3d 1150, 1170 (5th Cir. 2006) (smear campaign evidence of malice); *Overstock*, 151 Cal. App. 4th at 710-12 (business model to defame was evidence of malice); *Pacquiao*, 803 F. Supp. 2d 1208, 1214 (D. Nev. 2011) ("a course [of conduct] designed" to injure plaintiff was evidence of malice); *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 158 (1967) (a "policy" of defamation was evidence of malice).

[11] None of the cases cited by defendants hold that time barred statements are irrelevant to the malice inquiry. *N.Y. Times*, 376 U.S. at 286, and *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 512 (1985) merely hold that malice is determined at the time of publication. But as shown *supra*, a jury may consider all relevant evidence prior to publication in making that determination. Moreover, in *Shoen v. Shoen*, 48 F.3d 412, 417-18 (9th Cir. 1995), the court held that the movant failed to show a "compelling need" for *post*-statement discovery.

[12] *See also Antonovich v. Superior Court*, 234 Cal. App. 3d 1041, 1052-53 (Ct. App. 1991) (considering events in 1980 to determine if statement made in 1988 was made with malice); *Celle v. Filipino Reporter Enters. Inc.*, 209 F.3d 163, 184 (2d Cir. 2000) ("earlier disputes" bear on malice); *Pisani v. Staten Island Univ. Hosp.*, 2008 WL 1771922, at *17 (E.D.N.Y. Apr. 15, 2008) (materials created 2 years before publication relevant to show knowledge of falsity); *In re Application of N.Y. Times Co.*, 1984 WL 971, at *2-4 (S.D.N.Y. Oct. 9, 1984) (pre- and post-publication materials relevant to fault); *N.J. Steel Corp. v. Latin*, 297 A.D.2d 557, 558 (1st Dep't 2002) (prior attempts to harm plaintiffs "relevant" to prove actual malice).

Moreover, the fact that GP-Canada ultimately retracted its allegation that Resolute violated the CBFA does not -- as defendants argue (ECF No. 199 at 21) and this Court previously held (Order at 14) -- negate any inference that GP-Canada, GP USA, Skar, Brindis, and the Stand Defendants had knowledge of the falsity of the allegations at the time they were made. While Resolute immediately rebutted the allegations and "evidence" in the Exposed Report by letter dated December 12, 2012 (*supra* § B.2), GP-Canada, and those working in concert with it failed to immediately retract the allegations or conduct any investigation to determine the validity of the evidence it purported to rely on, but instead continued to disseminate the fabricated photographs and videos in reports, blog posts, and direct communications to Resolute's customers, *for more than three months* after Resolute first presented irrefutable evidence of falsity. (¶ 105-18.)[13] Moreover, when GP-Canada did ultimately retract its false allegations in response to the threat of legal action, it used the excuse of "incomplete maps" and denied any intent to harm Resolute to conceal the real motivation for claiming Resolute had violated the CBFA. Indeed, the denial of intent to harm Resolute is utterly irreconcilable with GP-Canada's refusal to rejoin the CBFA after conceding its entire stated basis for leaving had been wrong. At a minimum, these allegations -- which must be accepted as true on this motion -- raise questions of fact as to whether defendants acted with malice when disseminating the false claims that Resolute violated the CBFA. *See Isuzu Motors Ltd.*, 66 F. Supp. 2d at 1124 (malice is determined on a "case-by-case" basis); *Santana v. Cty. of Yuba*, 2016 WL 1268107, at *31 (E.D. Cal. Mar. 31, 2016) ("If there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6).") (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).[14]

[13] While defendants cite an "independent consultant" as the claimed reason for delay in issuing a retraction (ECF No. 199 at 15), defendants proffer no proof for this assertion which is outside the pleading and not before the Court on this motion. In any event, the fact that defendants continued to disseminate the false claim for months after Resolute's rebuttal undermines any assertion that the delay in issuing the retraction was due to a good-faith investigation.

[14] By contrast, in the cases relied on by defendants, the retraction was issued under completely different circumstances *See, e.g., Hoffman v. Wash. Post Co.*, 433 F. Supp. 600, 605 (D.D.C.

b. Continued Dissemination Of False Claims Following Corrective Disclosures Is Evidence Of Actual Malice

Defendants' knowledge of falsity at the time of publication is further evidenced by the fact that defendants continued to publish false statements about Resolute even after Resolute and other industry participants presented irrefutable evidence of falsity.

CBFA: As set forth *supra* § B.2, following the December 6, 2012 publication of the Exposed Report and accompanying photographs and videos, Resolute immediately rebutted the false allegations that had violated the CBFA and demonstrated point-by-point the falsity of the putative corroborating "evidence," by letters dated December 12, 2012 sent to all CBFA signatories (including GP-Canada), and letter dated December 17, 2012 sent to GP-Canada. (¶ 106-09, 353.) GP-USA's knowledge of Resolute's December 12, 2012 letter is explicitly evidenced by defendant Brindis's reference to "our review of Resolute's counterclaims" in a January 22, 2013 email to Hearst (¶ 113, 354), and may likewise be inferred from the fact that GP-USA was working closely with GP-Canada in developing and publishing this information as evidenced by defendants Skar's and Brindis's references to "evidence ***we*** had collected" and references to "***our***" letters and reports (¶ 103). Notwithstanding knowledge of the falsity of their statements that Resolute violated the CBFA, GP-Canada and GP-USA continued to publish this false statement in numerous reports throughout January 2013. (¶¶ 352-56.)

Harvesting In Montagnes Blanches: Similarly, as set forth *supra* § D.1.b, following GP-Canada's and GP-USA's respective publications of the February 2016 reports "Endangered Forests in the Balance" and "Certification Update: Montagnes Blanches Endangered Forest," which falsely associated Resolute with the loss or degradation of nearly 50% of the Intact Forest Landscapes in the Montagne Blanches Endangered Forest by unilaterally expanding the borders of the Montagnes Blanches to include three of Resolute's forest management units, on May 31,

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1977) (publisher retracted story authored by independent contractor within one day); *Trans World Accounts, Inc. v. Associated Press*, 425 F. Supp., 814, 823 n.6 (N.D. Cal. 1977), (denying summary judgment motion noting that the publisher's retraction "only nine days after publication" "*may* create a large obstacle" for proving malice) (emphasis added); *Dongguk Univ. v. Yale Univ.*, 734 F.3d 113 131 (2d Cir. 2013) (no defamatory statements were published between learning that its statement was false and its retraction).

2016, the Quebec's Forestry Minister admonished GP-Canada for unilaterally expanding the borders of the Montagnes Blanche: "[T]he map has major deficiencies that misrepresent geographical reality and are likely to mislead readers. The map extends well beyond the Montagnes Blanches sector officially recognized by the Quebec government for the protection of the woodland caribou." The statement also linked to an official map of the Montagnes Blanches. (¶ 217.) GP-Canada knew or recklessly disregarded the press release by the Government of Quebec which expressly referenced GP-Canada's report and admonished the inclusion of maps which were "likely to mislead the reader." (¶ 357-60.) Likewise, it can be inferred that Moas, Brindis, Skar, and GP USA's Canadian Boreal Forest team had knowledge of or recklessly disregard the Quebec Minister of Forest's press release by virtue of the fact that GP-USA and GP-Canada collaborated and shared knowledge and information with respect to the "Resolute Forest Destroyer" campaign as set forth in Operational Memo and further evidenced by joint letters, calls, and meetings with Resolute's customers. (¶ 320.) Notwithstanding this corrective disclosure, Moas, Brindis, and Skar of GP-USA, continued disseminate the fake maps and the false statement that Resolute was operating in the "Montagnes Blanches," including in the following reports and communications: (i) December 2016 Letters to Book Publishers jointly authored by Moas of GP-USA and Moffat of GP-Canada; (ii) May 2017 Clearcutting Report authored by Moas of GP USA; and (iii) at the June 2017 Book Exposition, where Moas, Skar, and Brindis were each observed distributing the Clearcutting Report. (¶ 359.)

FSC: Defendant Brindis likewise disseminated the false allegation that two of Resolute's FSC certificates had been terminated and two certificates suspended due to "serious shortcomings" including in a March 30, 2015 e-mail to Resolute's customer Quad Graphics (¶ 260), notwithstanding numerous press releases and disclosures issued prior to Brindis's e-mail, which demonstrated the falsity of allegations of noncompliance, including: (i) an October 31, 2014 press statement by the Quebec Forestry Minister; (ii) a December 31, 2014 press release by FSC auditor Rainforest Alliance; (iii) a January 13, 2015 FSC press release. (¶ 261.)[15]

[15] For additional examples of defendants' dissemination of false statements about Resolute following material events demonstrating falsity, *see* ¶¶ 351-78.

The Amended Complaint also pleads that defendants continued to disseminate false information about Resolute after Plaintiffs demonstrated their falsity in the May 2016 Complaint, declarations of Professors Reich and Cubbage and the Cease and Desist Letter. (¶¶ 351-78.) While defendants dismiss these allegations as mere disagreements, "evidence of [a defendant's] complete disregard of [a plaintiff's] denials may, by accumulation and by appropriate inferences, show recklessness" sufficient to establish actual malice. *Aghmane v. Bank of America*, 696 F. App'x 175, 178 (7th Cir. 2017); *see also Church of Scientology of Cal. v. Dell Pub. Co.*, 362 F. Supp. 767, 770 (N.D. Cal. 1973) (plaintiff's "prepublication denials and demands for retraction" may be considered by trier of fact in connection with actual malice inquiry).[16]

Finally, defendants' malice and scienter is further evidenced by their failure to retract their prior false statements following the foregoing material events/public disclosures or remove the offending publications from their websites. (¶¶ 351-78.) Subsequent acts, such as refusals to retract and "[r]epublication of a statement after the defendant has been notified that the plaintiff contends that it is false and defamatory may be treated as evidence of reckless disregard." Restatement (Second) of Torts § 580A cmt. d (1977); *see also Golden Bear Distrib. Sys. of Texas v. Chase Revel, Inc.*, 708 F.2d 944, 950 (5th Cir. 1983) (refusal to retract statement after it has been demonstrated to be false is evidence of malice); *Zerangue v. TSP Newspapers Inc.*, 814 F.2d 1066, 1072 (5th Cir. 1987) (defendant's failure to correct original computer file after retraction supported finding of actual malice).

c. Reliance On Incorrect Or Incomplete Facts Is Evidence Of Malice

Defendants' malice and scienter is further evidenced by their omissions of material information and reliance on incomplete facts. (*See supra* § I.A.3; *see also* ¶¶ 333-50.) As this

[16] While failure to investigate will not in and of itself give rise to a finding of actual malice, the law is settled that "[i]naction . . . which was a product of a deliberate decision not to acquire knowledge of facts that might confirm the probable falsity of [statements], will support a finding of actual malice." *Antonovich*, 234 Cal. App. 3d at 1048; *see also Suzuki Motor Corp. v. Consumers Union of U.S., Inc.*, 330 F.3d 1110, 1136 (9th Cir. 2003); *St. Amant*, 390 U.S. at 732 (a publisher cannot feign ignorance or profess good faith when there are clear indications present which bring into question the truth or falsity of defamatory statements).

Court has recognized, "an actor is deliberately reckless if he had reasonable grounds to believe material facts existed that were misstated or omitted, but nonetheless failed to obtain and disclose such facts although he could have done so without extraordinary effort." *Shenwick v. Twitter, Inc.* 2017 WL 4642001, at *12 (N.D. Cal. Oct, 16, 2017) (Tigar, J).; *see also Janklow v. Newsweek, Inc*., 759 F.2d 644, 648 n.4 (8th Cir. 1985) ("A relevant omission may, *of course*, be considered as evidence of . . . the culpability of the assertor."); *Am. Dental Ass'n*, 2004 WL 3486525, at *12 (malice alleged where "[d]efendant purposefully avoided the truth in making the [s]tatements, and that there was ample information from other sources available to him that would have raised doubts as to the truth of the [s]tatements"); *Isuzu Motors Ltd.*, 66 F. Supp. 2d at 1125 (plaintiff raised genuine issue of material fact as to defendant's malice where, *inter alia*, defendant omitted reference to relevant statistics that contradicted statements).

Defendants' manipulation of source material to support their defamatory statements likewise evidences actual malice. (*See supra* § I.A.3; *see also* ¶¶ 333-50.) Defendants' contention that certain discrete facts find some support in scientific literature does not preclude a finding of actual malice where, as here, defendants intentionally created the false impression that scientific studies validated the defamatory statements when in fact defendants' conclusions do not logically follow, or are not sufficiently supported by, the underlying factual predicates. *See Visant Corp. v. Barrett*, 2013 WL 3450512, at *8 (S.D. Cal. July 9, 2013) (actual malice alleged where the sources cited by defendant provided no support for defendants' statements); *Am. Dental Ass'n*, 2004 WL 3486525, at *12 ("One cannot fairly argue [the defendant's] good faith or avoid liability by claiming that he is relying on the reports of another if the latter's statements or observations are altered or taken out of context.").

d. Participation In A Conspiracy Shows Malice

Finally, actual malice may be inferred by virtue of the fact that each of the tactics and misrepresentations set forth above were carried out in furtherance of an explicit plan to label Resolute the "most regressive forestry company" and interfere with Resolute's critical market constituents. (¶¶ 78-79.) Because actual malice is inherent in the publication of false and misleading statements authored in furtherance of a scheme to defraud, the existence of such a

scheme can be adduced to establish actual malice. *See Overstock.com*, 151 Cal. App. 4th at 710-12 ("[t]he malice [was] in the very business model"); *Curtis Pub. Co.*, 388 U.S. 130, 158 (Opinion of Harlan, J.) ("policy of 'sophisticated muckraking,'" was evidence of malice); *Pacquiao v. Mayweather*, 803 F. Supp. 2d 1208, 1214 (D. Nev. 2011) (malice adequately alleged where complaint pleaded that defendants "set out on a course designed to destroy [plaintiff]"); *Fiber Sys. Int'l*, 470 F.3d at 1170 ("smear campaign involving a calculated and relentless attempt by [one party] that will go to any lengths to destroy [the other]" was evidence of malice).

The Amended Complaint pleads that defendants and those working in concert with them agreed to disseminate false and misleading information about Resolute to achieve the preconceived result of "mak[ing] Resolute and its products highly controversial" and using that "negative press" to interfere with Resolute's customers and other critical market constituents. (¶¶ 78-79.) The agreement and plan were memorialized in a written operational memo. In carrying out the campaign plan, defendants worked backwards from the conclusion that Resolute was engaged in unsustainable practices and published reports to support this conclusion. Thus, defendants' actual malice in authoring false statements about Resolute may be inferred from the overwhelming evidence of their participation in the conspiracy to harm Resolute.[17]

[17] Defendants argue that the Operational Memo is not evidence of malice because it does not expressly state that the plan was to disseminate false information. (ECF No. 199 at 19-20.) The Amended Complaint pleads that the entire premise of the campaign plan was false because there was no basis to label Resolute as "the most regressive company" and promote its competitors who at a minimum were similarly situated. (¶¶ 78-87; 323-25.) Moreover, the explicit objective of the campaign plan (as memorialized in the Operational Memo) was to injure Resolute and interfere with its relationships which is circumstantial evidence of malice. *See Aghmane*, 696 F. App'x at 177 ("anger and hostility toward the plaintiffs" may show malice); *Solano*, 292 F. 3d at 1085 (an "accumulation" of "negligence, motive, and intent" may supply sufficient inferences to establish "the existence of actual malice").

The Greenpeace Defendants' contention that the Operational Memo is not probative of whether the Greenpeace Defendants acted with actual malice because the memo was not authored by Greenpeace, is likewise entirely without merit. The Operational Memo explicitly stated that "[a]ll ENGOs [would be] involved in that campaign . . . [with] GP US and GPI becom[ing] actively involved" (¶ 78, 85), and further noted that the campaign had the "full support from at least some of the funders," which included enterprise members GP-Fund and GPI). (¶ 85.) Thus, the Court may draw inferences that the campaign plan was shared and approved by the GP-Defendants.

2. The Amended Complaint Pleads Each Defendant's Actual Malice

Notwithstanding these detailed allegations that defendants published actionable statements about Resolute with knowledge of their falsity or reckless disregard for their truth, defendants argue that the actual malice allegations are insufficient because they don't prove actual malice as to each defendant.

The Complaint alleges that each defendant published defamatory statements with actual knowledge of the falsity of those statements. Additional examples of facts establishing each speakers' knowledge of falsity and/or reckless disregard of the truth is set forth in **Appendix B**. By way of example only, the Amended Complaint pleads the following facts demonstrating each defendants' actual malice in disseminating false claims about Resolute:

Daniel Brindis: As set forth above, defendant Brindis had actual knowledge of or recklessly disregarded the falsity of his January 2013 allegations that Resolute had engaged in active road-building in violation of the CBFA (¶ 355), as evidenced by Brindis's reference to his prior review of Resolute's December 12, 2012 letter, which presented irrefutable evidence that the photographs and videos were phony and fabricated. (¶ 113.) Brindis likewise possessed actual knowledge of, or recklessly disregarded, facts demonstrating the falsity of his allegation in his March 30, 2015 email to Resolute's customer Quad Graphics that the suspension or loss of Resolute certificates were due to serious nonconformance, including press releases issued by the FSC and Quebec Ministry prior to the March 30, 2015 publication demonstrating that the limited terminations and suspensions of FSC certificates were due to the certificates natural expirations and narrow issues that were the responsibility of the Quebec Government (as the government had repeatedly publicly stated). (¶ 261.) Brindis's actual malice and scienter in misrepresenting Resolute's FSC certificate status is further evidenced by: (i) the fact that he holds himself out as an "issue expert" on the Canadian Boreal whose "portfolio" includes the FSC certification scheme; (ii) Brindis omitted the relevant facts that notwithstanding the limited terminations and suspensions, Resolute remained the largest holder of FSC certificates in the world; and (iii) Brindis distorted Resolute's statement in its 2014 Form 10-k to falsely imply that Resolute was

abandoning FSC certification, and failed to retract or correct this misrepresentation after Resolute alerted him to the misstatement. (¶ 260-73.)

Amy Moas: As set forth above, defendant Moas had actual knowledge or recklessly disregarded the falsity of her December 2016 and May 2017 statements that Resolute was not harvesting in the last remaining intact forests in the Montagnes Blanches (¶ 360), by virtue of the Quebec Forestry Minister's May 2016 public statement posted on the Government of Quebec's website admonishing GP-Canada for unilaterally expanding the historically delineated borders of the Montagnes Blanches and attaching a map of the official government-recognized borders. (¶ 217.) Moas's knowledge, or reckless disregard, of the May 31, 2016 statement by the Quebec Ministry may be inferred by virtue of the fact that Moas collaborated with GP-Canada and shared knowledge and information with respect to the "Resolute Forest Destroyer" campaign as set forth in Operational Memo and further evidenced by joint letters, calls, and meetings with customers. (¶ 320; *see, e.g.*, ¶¶ 216, 304.) Moreover, like Brindis, as an "issue expert" on matters related to the Canadian boreal forest, Moas had actual knowledge or recklessly disregarded facts demonstrating the falsity of her January 2016 and May 2017 statements that Resolute's FSC certificates were terminated and/or suspended due to "shortcomings in the company's practices on-the-ground," including the press releases issued by FSC and the Government of Quebec. (¶ 244.)

Rolf Skar: As set forth above, defendant Skar had actual knowledge of or recklessly disregard facts demonstrating the falsity of his December 6, 2012 statements to Hearst that Resolute was building roads in off-limits regions in violation of the CBFA, as evidenced by his direct involvement in collecting the purported evidence "exposing" Resolute and drafting the letter to the CBFA signatories accusing Resolute of this false charge. (¶ 233 (referencing evidence "*we*" collected).) Moreover, as an "issue expert" with more than 10 years of experience campaigning on forest issues, including in the Canadian boreal, Skar knew that the images in the video were misrepresented, including that the video misrepresented regeneration/scarification equipment as harvesting equipment and passed off images depicting areas destroyed by fire as harvesting by Resolute. (¶¶ 94-100, 383.) Nevertheless, Skar emailed this purported "evidence"

to Resolute customer Hearst in December 2012. (¶ 113.) Moreover, like Brindis and Moas, Skar knew that Resolute was not logging in the Montagnes Blanches because of the Quebec government's May 31, 2016 public statement that Greenpeace's map misrepresented geographical reality. (¶ 217.) Skar's knowledge, or reckless disregard, of the May 31, 2016 statement by the Quebec Ministry may be inferred by virtue of the fact that Skar and GP-USA collaborated with GP-Canada and shared knowledge and information with respect to the "Resolute Forest Destroyer" campaign as set forth in Operational Memo and further evidenced by joint letters, calls, and meetings with customers. (¶ 320; *see, e.g.*, ¶¶ 216, 304.) Nevertheless, Skar knowingly or recklessly disseminated this false charge, including when he distributed the Clearcutting Report at the May 2017 Book Exposition.

GP USA: (comprised of GP-Inc. and GP-Fund (*see supra* § I.A.4) is liable for the publications of employees Brindis, Moas, and Skar under the "traditional doctrines of respondeat superior" which render the publisher liable for the knowing or reckless falsehoods of its staff writers. *See Cantrell v. Forest City Pub. Co.*, 419 U.S. 245, 253 (1974); *Schiavone Constr. Co. v. Time, Inc.*, 847 F.2d 1069, 1089 n.34 (3d Cir. 1988) ("Time is responsible for [its employee's] actual malice under a theory of respondeat superior").

GPI: GPI had actual knowledge of or recklessly disregarded facts demonstrating the falsity of its statement in the May 2014 FSC at Risk Report that "caribou herds whose range overlaps with Resolute's Montagne Blanches operations are unlikely to survive beyond 50 years due to continuing habitat destruction" as evidenced by the gross misrepresentation of the studies it purports to rely on. Those studies reveal that the overwhelming amount of the caribou range in Quebec is not disturbed and, according to the very studies GPI cites, 94% of the caribou herds that overlap with what the GPI calls the Montagne Blanches enjoy undisrupted habitats and are identified as self-sustaining. Another 4% are stable. (¶ 166.) Likewise, in publishing GP-USA's false and defamatory Clearcutting Report on its website, GPI had actual knowledge of the report's false statement that Resolute had harvested in the Montagnes Blanches due to the Quebec Forestry Minister's May 2016 statement and link to the actual borders of the Montagnes Blanches. (¶ 217.) GPI's knowledge, or reckless disregard, of the May 31, 2016 statement by

the Quebec Forestry Minister may be inferred by virtue of the fact that GPI collaborated with GP-USA and GP-Canada and shared knowledge and information with respect to the "Resolute Forest Destroyer" campaign as set forth in Operational Memo. (¶¶ 78, 85.)

Finally, there are a number of publications that do not identify the individual author(s) but indicate only that they were authored by GP-USA or GPI. With respect to these publications, Resolute cannot possibly "bring home" the state of mind to individual defendants without discovery, and thus the motions to dismiss should be denied. *See ZL Techs., Inc. v. Does 1-7*, 13 Cal. App. 5th 603, 633 (Ct. App. 2017) (plaintiff "need only 'produce evidence of those material facts that are accessible to it'") (citation omitted); *see also Doe v. Cahill*, 884 A.2d 451, 464 (Del. 2005) (plaintiff need not produce evidence of actual malice when defendant's identity is unknown to him; he must only plead facts that are within his control.).

3. Dismissal For Failure To Plead Actual Malice Is Premature.

Discovery with respect to actual malice is particularly appropriate here given the numerous factual issues raised in defendants' motions. For example, the Stand Defendants dispute the intent of the Operational Memo. (ECF No. 197 at 12 (Operational Memo "simply indicate[d] that the Stand Defendants intended to advocate their viewpoint").) And, the Greenpeace Defendants assert -- contrary to the allegations of the Amended Complaint which must be accepted as true on this motion -- that: (i) that they "had every reason to single out Resolute" as a unsustainable harvester (ECF No. 199 No. at 20); (ii) they simply "misread[]" maps and videos rather than manipulated them (*id*. at 21); (iii) hired "an independent consultant to help determine whether its maps were in error" (*id*. at 25); and (iv) their statements were supported by footnote and hyperlink-sources, even though those sources are neither part of the pleadings nor attached to defendants' motions (*id*. at 22-23).

Moreover, counsel for GP-Canada recently conceded that GP-Canada was withholding documents in contempt of a court order in the Canadian action out of concern that those documents could be used to bolster Resolute's claims in the RICO proceeding. (*See* Agre Decl. Ex. A (attaching Pendrith affidavit which details recent admission by counsel for GP-Canada). Under these circumstances, Plaintiffs should be afforded the opportunity to, at a

minimum, conduct limited discovery concerning issues uniquely within defendants' control, before the Court rules on defendants' motions. *See, e.g.*, *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 848 (9th Cir. 2001) ("[T]he issue of 'actual malice'. . . cannot properly be disposed of by a motion to dismiss in this case, where there has been no discovery. . . . The defendants may challenge whether the asserted implication was made with 'actual malice' at summary judgment, should the case proceed that far.") (citation omitted); *see also Heller v. NBC Universal, Inc.*, 2016 WL 6583048, at *9 (C.D. Cal. June 29, 2016) (mandating discovery before ruling on actual malice because "it is indeed plausible that Plaintiff could uncover proof of actual malice in discovery"); *Coleman v. Sterling*, 2010 WL 11508571, at *7 (S.D. Cal. Mar. 24, 2010) (requiring discovery before ruling on actual malice).

II. THE FEDERAL RICO CLAIMS ARE PROPERLY PLED

The federal RICO statute makes it unlawful for "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." 18 U.S.C. § 1962(c).[18] RICO authorizes a private right of action for "[a]ny person injured in his business or property by reason of [RICO's substantive provisions]." *Id.* § 1964(c). To plead a RICO violation, a plaintiff must allege defendant: (1) conducted, (2) an enterprise, (3) through a pattern, (4) of racketeering activity, (5) resulting in damages to business or property. *See Odom v. Microsoft Corp.*, 486 F.3d 541, 546-47 (9th Cir. 2007) (elements of § 1962(c) claim).

Congress mandated that the RICO statute is to "'be liberally construed to effectuate its remedial purposes.'" *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985) (quoting Pub. L. 91-452, § 904(a), 84 Stat. 947). Consistent with this mandate, the Supreme Court has interpreted

[18] The statute also makes it unlawful for any person to conspire to violate sections § 1962(c). 18 U.S.C. § 1962(d). To plead a violation of 18 U.S.C. § 1962(d), a plaintiff must establish "[p]roof of an agreement the objective of which is a substantive violation of RICO." *United States v. Tille*, 729 F.2d 615, 619 (9th Cir. 1984). Section 1962(d) "does not require proof that a defendant participated personally, or agreed to participate personally, in two predicate offenses." *Id.* A plaintiff need allege "only that the defendant was 'aware of the essential nature and scope of the enterprise and intended to participate in it.'" *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015).

the RICO statute broadly and "repeatedly refused to adopt narrowing constructions of RICO in order to make it conform to a preconceived notion of what Congress intended to proscribe." *Bridge v. Phoenix Bond and Indem. Co.*, 533 U.S. 639, 660 (2008).[19] The Ninth Circuit has held that in the face of broad Congressional language and the Supreme Court's expansive interpretation of the RICO statute, it is beyond the court's authority to restrict the reach of the statute, if its elements are adequately pled. *See Odom*, 486 F.3d at 547.

The Supreme Court has expressly recognized that where, as here, an enterprise disseminates misrepresentations about plaintiff to a third party and plaintiff is injured by reason of those misrepresentations, such conduct is indictable under RICO as mail and wire fraud:

> [S]uppose an enterprise that wants to get rid of [plaintiffs] mails misrepresentations about them to their customers and suppliers, but not to [plaintiffs] themselves. ***If [plaintiffs] lose money as a result of the misrepresentations, it would certainly seem that they were injured in their business 'by reason of' a pattern of mail fraud*** . . .

Bridge, 553 U.S. at 649-50 (emphasis added).

The Amended Complaint details defendants' participation in a wide-ranging scheme to extort, defraud, and interfere with Resolute's customers, certification partners, and the public, whose endorsements and donations premised on misrepresented claims furthered defendants' business and political agendas, drove traffic and donations to defendants' websites, and funded the perpetuation of the scheme. Accordingly, as set forth in detail below, the Amended Complaint pleads each element of RICO in accordance with the applicable standards.[20]

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[19] The Supreme Court has rejected the types of narrow construction of RICO urged by defendants for the threat of "over-federalization" of traditional state-law claims. *Bridge*, 553 U.S. at 659 (rejecting argument that RICO claim was disguised tortious interference claim). Where additional requirements are not supported by RICO's text, the Court is "not at liberty to rewrite RICO to reflect [defendants'] views of good policy." *Id.* at 660.

[20] While defendants attempt to analogize their conduct to lawful "association," every case defendants cite involves truthful statements or advocacy clearly distinguishable from the calculated falsehoods and unlawful conduct alleged here. *See, e.g., Savage v. Council on America-Islamic Relations, Inc.*, 2008 WL 2951281, at *10 (N.D. Cal. July 25, 2008) (challenging the republication of plaintiffs' own statements); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 902-03, 915 (1982) (no allegations that boycotts were based on intentionally false statements); *Citizens Against Rent Control/Coal. for Fair Hous. v. Berkeley*, 454 U.S. 290 (1981) (involving political campaign contributions; no allegation of false statements).

A. The RICO Claims Are Pled With The Requisite Specificity

Defendants argue for dismissal of the RICO claims for failure to meet the heightened pleading requirements under FRCP 9(b), asserting that the Amended Complaint impermissibly "lumps together the defendants without identifying the particular acts or omissions that each defendant committed." (ECF No. 198 at 30-31; *see also* ECF No. 197 at 9.) These arguments grossly mischaracterize the Amended Complaint's detailed allegations of each individual's wrongdoing, which is all that is required at the pleading stage.

1. Each Defendant's Individual Wrongdoing Is Adequately Alleged

While Rule 9(b) imposes a more exacting standard for pleading fraud, it is axiomatic that Rule 9(b) does not require a plaintiff to allege every conceivable detail. *See Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997) (courts "cannot make Rule 9(b) carry more weight than it was meant to bear"). Rather, Rule 9(b) "must be read in harmony with [FRCP 8's] requirement of a 'short and plain' statement of the claim." *Baas v. Dollar Tree Stores, Inc.*, 2007 WL 2462150, at *2 (N.D. Cal. Aug. 29, 2007); *Weiner v. Ocwen Fin. Corp.*, 2015 WL 4599427, at *4, 10 (E.D. Cal. July 29, 2015) (sustaining fraud-based RICO claims). As this Court has recognized "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." *Opperman v. Path, Inc.*, 84 F. Supp. 3d 962, 975 (N.D. Cal. 2015) (Tigar, J.) (*citing* Fed. R. Civ. P. 9(b)); *Ronpak, Inc. v. Electronics for Imaging, Inc.*, 2015 WL 179560, at *3 (N.D. Cal. Jan. 14, 2015) (Tigar, J.) ("scienter pleading may be put forth generally [a]s to matters peculiarly with the opposing party's knowledge . . . in these circumstances, plaintiffs may aver scienter generally . . . simply by saying that scienter existed.").

Applying the foregoing standard, courts in the Ninth Circuit and this District regularly sustain RICO claims involving allegations directed against a group of defendants where, as here, the complaint identifies each defendant's individual wrongdoing. *See, e.g., Blake v. Dierdorff*, 856 F.2d 1365 (9th Cir. 1988) (allegations against corporate directors satisfied Rule 9(b) even though no individual defendant was alleged to have devised the fraudulent scheme, since it was

reasonable to assume corporate scheme was collectively devised); *State Comp. Ins. Fund v. Khan*, 2013 WL 12132027, at *4 (C.D. Cal. July 30, 2013) (RICO complaint containing "significant 'group pleading'" satisfied Rule 9(b) because the complaint "included enough factual detail to clarify the role and specific claims asserted against each defendant"); *Tatung Co., Ltd. v. Hsu*, 2015 WL 11072178, at *17 (C.D. Cal. Apr. 23, 2015) (similar); *In re TFT LCD (Flat Panel) Antitrust Litig.*, 599 F. Supp. 2d 1179, 1184-85 (N.D. Cal. 2009) (rejecting argument that the complaint was insufficiently pled where it "'lump[ed] together' the twenty-six different named defendants in general allegations referring to 'defendants'").

To the limited extent the Amended Complaint alleges claims against defendants generally, group pleading is appropriate here, as the factual information concerning the fraud is "within the opposing party's knowledge." *Waldrup v. Countrywide Fin. Corp.*, 2015 WL 93363, at *4, 8 (C.D. Cal. Jan. 5, 2015) (sustaining RICO fraud claims where "[a]bsent discovery . . . plaintiff [could not] point to the specific fraudulent misrepresentations or omissions allegedly made by the four parent company defendants as part of the alleged scheme"); *Terra Ins. Co. v. N.Y. Life Inv. Mgmt., LLC*, 2009 WL 2365883, at *3 (N.D. Cal. July 30, 2009) ("In cases of corporate fraud . . . the pleading standard is relaxed since the circumstances may make it difficult to attribute particular fraudulent conduct to each defendant as an individual."). Thus, "there is no absolute requirement that where several defendants are sued in connection with an alleged fraudulent scheme, the complaint must identify *false statements* made by each and every defendant." *Capen*, 2015 WL 13298073, at *12 (emphasis in original).

The Amended Complaint and accompanying appendices plead the date, author, recipient and statement for each of the 296 publications that Plaintiffs allege constitute separate acts of mail and wire fraud. (*See* ECF Nos. 185, 185-1 to 185-4.) As set forth above, GP-Fund's contention that the Amended Complaint fails to meet Rule 9(b)'s specificity requirements because it fails to parse which statements were made by GP-Inc. and which statements were made by GP-Fund is without merit because GP-Fund and GP-Inc. failed to hold themselves out as separate entities but rather operated under, and held their employees out, under the separate name GP-USA. (*See supra* § I.A.4.) Thus, to the extent Plaintiffs lump together GP-Inc. and

GP-Fund, this is a direct result of how defendants have chosen to operate, and is thus sufficient at the pleading stage. *See In re Chrysler-Dodge-Jeep*, 2018 WL 1335901, at *32 (sustaining RICO claims based on group pleading where plaintiffs were unable to parse out individual defendants because of how "[d]efendants have chosen to operate"); *In re Volkswagen* 2017 WL 4890594, at *9, 11 (same). Thus, each of the fraudulent statements published by GP-USA constitute a separate act of mail and wire fraud attributable to GP-Fund.

The Amended Complaint likewise details the Stand Defendants' direct participation in the RICO enterprise, including its role in drafting the Operational Memo, communicating the Enterprise's threats to Resolute directly, and its subsequent aggressive dissemination of the Enterprise's disinformation directly to Resolute's critical market constituents with the specific intent of interfering with Resolute's customer relationships, including the September 2012 letter to members of FPAC falsely accusing Resolute of violating the CBFA. (*See, e.g.*, ¶¶ 76-86, 131-34, 224.) Thereafter, the Stand Defendants continued to carry-out the campaign plan, including by directly threatening Resolute with "very active" "brand damaging" campaigning unless Resolute acquiesced to the Enterprise's demands. (¶¶ 131-34; 247-48.)

These allegations satisfy Resolute's obligation to provide defendants with notice of their specific involvement in the scheme to defraud. *See State Comp.*, 2015 WL 13298073 at *11. Thus, group pleading with respect to certain allegations is appropriate here because the Amended Complaint, and Appendices annexed thereto, contain detailed allegations concerning each defendants' role in the RICO enterprise sufficient to put each defendant on notice of their individual wrongdoing.

2. Each Defendant Is Liable For The Full Conduct Of The RICO Enterprise

Moreover, defendants' assertion that the Amended Complaint fails to put each defendant on notice of the individual claims asserted against them ignores the fundamental legal premise that as a member of the RICO enterprise, each defendant is liable for all the acts of their co-conspirators reasonably linked to the Enterprise's goals irrespective of whether they participated in the commission of the predicate act or had knowledge thereof. *See Salinas v. United States*,

522 U.S. 52, 63 (1997) (a RICO "conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense"); *see also id.* at 63, 64 ("[if] conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators" and "[e]ach is responsible for the acts of each other"); *see also United States v. Fiander*, 547 F.3d 1036, 1042 (9th Cir. 2008) (defendant can be prosecuted for a RICO conspiracy, even where he could not be prosecuted for a substantive violation of RICO); *Christensen*, 828 F.3d at 781 ("[t]he RICO net is woven tightly to trap even the smallest fish, those peripherally involved with the enterprise").

As set forth in the Operational Memo, GP-Canada, GP-USA, GPI, GP-Fund and the Stand Defendants agreed to engage in a scheme targeting Resolute and its businesses through the dissemination of false information to Resolute's customers and critical stakeholders. (ECF No. 185 at ¶¶ 75-88.) Under these circumstances each defendant is legally responsible for the acts of its co-conspirators reasonably foreseeable within the scope of the conspiracy. *See Salinas*, 552 U.S. at 63-64. Thus, the failure to parse the specific misconduct of each defendant is immaterial, because each defendant is liable for all of the conduct undertaken by the Enterprise.

B. Proximate Cause Is Adequately Alleged

Proximate causation is a "flexible concept" used to assign "responsibility for the consequences of that person's own acts." *Bridge*, 553 U.S. at 654 (quoting *Holmes*, 503 U.S. at 268). Thus, a plaintiff merely needs to demonstrate that there is "some direct relation between the injury asserted and the injurious conduct alleged." *Id.* The Amended Complaint plainly satisfies these standards.

1. Plaintiffs Are Direct And Intended Victims Of Defendants' Racketeering Scheme

The Supreme Court has held that a plaintiff who is a "primary and intended victim[ ] of a scheme to defraud" has standing to bring RICO claims. *Bridge*, 553 U.S. at 649-50. This standard applies equally to cases where the RICO defendants are alleged to have directed their scheme at third parties with the intention of injuring plaintiff. *See Bridge*, 553 U.S. at 649-50.

The Amended Complaint details defendants' participation in a wide-ranging scheme to extort, defraud, and interfere with Resolute's customers, certification partners, and the public, whose endorsements and donations premised on misrepresented claims furthered defendants' business and political agendas, drove traffic and donations to defendants' websites, and funded the perpetuation of the scheme. Defendants' contention that Plaintiffs' injuries are not cognizable because "any alleged acts . . . would have been directed at third parties" (ECF No. 199 at 40), is "contradicted by the long line of cases in which courts have permitted a plaintiff directly injured by a fraudulent misrepresentation to recover even though it was a third party, and not the plaintiff, who relied on the defendant's misrepresentation." *Bridge*, 553 U.S. at 657; *see also Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539, 565 (5th Cir. 2001) (proximate causation alleged where misrepresentations to third parties were intended to and did contemporaneously, injure plaintiff's reputation and business relationships); *Mid Atl. Telecom, Inc. v. Long Distance Servs., Inc.*, 18 F.3d 260, 263-64 (4th Cir. 1994) (sustaining RICO claims where plaintiff alleged defendants' false advertising caused it to lose customers); *Transcription Comm'ns Corp. v. John Muir Health*, 2009 WL 666943, at *13 (N.D. Cal. Mar. 13, 2009) (plaintiff may "recover for the injuries it alleges resulted from [d]efendants' fraudulent misrepresentations to [plaintiff's customer]"); *C&M Café v. Kinetic Farm, Inc.*, 2016 WL 6822071, at *7 (plaintiff was "a direct victim of the alleged identity theft scheme because the enterprise specifically targeted [plaintiff] by creating [an] imposter website, displaying [plaintiff's] trademarks and menu, and diverting [customers] away from [plaintiff]," even though plaintiff itself did not rely on misrepresentations).[21]

While this Court previously held that defendants' donors were the direct victim's of defendants' racketeering scheme (Order at 18-19), the express terms of the Operational Memo evidence that Resolute was a primary and intended victim of the Enterprise's fraudulent scheme. In their own words, defendants planned to "commence [a] very targeted market campaign *directed at Resolute* . . . with the intent of creating a threat to the brands of any customers *who*

[21] *See also Cement-Lock v. Gas Tech. Inst.*, 2006 WL 3147700 (N.D. Ill. Nov. 1, 2006); *Sandwich Chef of Tex. v. Reliance Nat'l Indem.*, 319 F.3d 205, 221, 224 (5th Cir. 2003).

buy from Resolute . . . ." (¶ 77-78 (emphasis added).) The "objective" of the campaign was "simply [ ] to make *Resolute* and its products highly controversial." (¶ 79 (emphasis added).) To do so, the Enterprise manufactured "very negative press and communications directed at [Resolute's] customers in Canada, the US and Europe . . . saying don't buy from *Resolute* unless they meet our demands . . . ." (*Id.* (emphasis added).) At the same time, defendants commenced "coordinated attacks" on "*Resolute* FSC certs." (¶¶ 82-83 (emphasis added).) Defendants' contention that they did not "target[ ] the property" of Resolute (ECF 199 at n. 15) is belied by the express terms of their written campaign plan which plainly states that the objective of the campaign was to interfere with Resolute's market relationships and otherwise "increas[e] [the] amount of [Resolute] senior executive time . . . dedicated to managing the impacts of the campaign, responding to customer concerns, and diverted away from managing the core business." (¶ 82.) Resolute has standing to recover for the intended, direct, and foreseeable harm to resulting from the campaign plan outlined in the Operational Memo.

The fact that donors were *also* targeted or harmed by the Enterprise's scheme does not preclude Plaintiffs' standing to bring this RICO claim. "[E]ven if there are other classes of potential plaintiffs who could recover for the alleged illegal [ ] scheme . . . [t]his factor does not bar suit for different classes of plaintiffs, each of which suffered a different concrete injury, proximately caused by the violation." *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1171-72 (9th Cir. 2002); *see also Bridge*, 553 U.S. 656 n.6 (it is not the case "that the only injuries proximately caused by the misrepresentation are those suffered by the recipient" of the misrepresentation). "No precedent suggests that a racketeering enterprise may have only one 'target' or that only a primary target may have standing." *Baisch v. Gallina*, 346 F.3d 366, 375 (2d Cir. 2003) ("there is a broad class of plaintiffs under RICO)"; *Morning Star Packing Co. v. SK Foods, LP*, 2011 WL 4591069 (E.D. Cal. Sept. 30, 2011). Indeed, where, as here, the fraud on Resolute directly promoted the fraud against defendants' donors, and the fraud against the donors was the basis for the fraud on Resolute, they are "intertwined as coordinated parts of one racketeering enterprise," and injuries to both targets are directly and proximately caused by the racketeering pattern of mail and wire fraud. *Baisch*, 346 F.3d at 374.

Thus, in *Feld*, the court held that plaintiff properly alleged standing and proximate causation to assert RICO claims against animal rights organizations arising from the organizations' dissemination of fraudulent fundraising materials, which misrepresented Ringling Brothers' animal handling practices in order to induce donations. *Feld Ent. Inc. v. Am. Soc'y for the Prevention of Cruelty to Animals*, 873 F. Supp. 2d 288, 321-22 (D.D.C. 2012). In rejecting defendants' arguments that the donors, not plaintiff, were the intended and foreseeable victim of defendants' wrongful conduct, the court held:

> The Supreme Court has held that [a] scheme that injures D by making false statements through the mail to E is mail fraud, and actionable by D through RICO, if the injury is not derivative of someone else's. Here, [plaintiff] claims that it was directly and contemporaneously injured as a result of the alleged fraud committed against the donors . . . Moreover, [plaintiff's] injury is not derivative of the alleged losses suffered by the donors. Instead, it claims an independent injury: lost revenue due to the necessity of defending the [litigation against the circus].

Id. at 321-22 (citations omitted); *see also Commercial Cleaning Servs., LLC v. Colin Serv. Sys., Inc.*, 271 F.3d 374, 384 (2d Cir. 2001) (the concern of duplicative recoveries does not bar suit for "different classes of plaintiffs, each of which suffered a different concrete injury, proximately caused by the violation").

The Amended Complaint pleads Resolute was directly injured by the misrepresentations disseminated to donors. Each publication disseminating false and misleading allegations about Resolute urged readers to "DONATE NOW," and the donated funds were then used to perpetuate the scheme against Resolute. (¶ 413-14, 417-19.) As a direct result, Resolute was forced to expend monies defending against the disinformation campaign. It is precisely this "independent injury" inflicted on Resolute -- which was the direct and intended result of the defendants' campaign -- the Amended Complaint seeks to redress.

2. The Amended Complaint Alleges Direct and Cognizable Harm

While Defendants attempt to recast all the damages arising from their fraudulent scheme as "reputational injury" (ECF No. 99 at n.21), the Amended Complaint alleges concrete economic harm sustained by virtue of the fact that every constituency critical to Resolute's business including, among others, its customers, stakeholders, and certification agencies relied on the Enterprise's disinformation. (¶¶ 389-93, 409-11, 418.) By way of example only, the

Amended Complaint pleads that as a direct result of the Enterprise's misrepresentations BestBuy, 3M, Kimberly Clark, UPM, Axel Springer, and Hatchette terminated their contractual relationships with Resolute. (¶¶ 390, 409.) Moreover, countless other customers, regulators and other stakeholders, demanded information or accommodations from Resolute, directly referencing defendants' false and misleading publications, resulting in Resolute being forced to expend costs and resources to rebut the false allegations directed at its customers. (¶¶ 410-11.)

All of these injuries constitute cognizable injuries to business or property. The Ninth Circuit has recognized that the property right protected by the RICO statute is "a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes." *Mendoza*, 301 F.3d at 1168 n.4. Interference with "[b]oth current and prospective contractual relations" constitute "injury to business or property" under the RICO statute. *Diaz v. Gates*, 420 F.3d 897, 900-02 (9th Cir. 2005); *Hunter Consulting, Inc. v. Beas*, 2013 WL 12131581 (C.D. Cal. Sept. 30, 2013) (same). Moreover, defendants' contention that other injuries to Plaintiffs' business such as resources diverted responding to defendants' false allegations to customers are "non-actionable injuries" (ECF No. 199 at 40-41) is expressly rejected by the Ninth Circuit, which has held that "time [spent] away from [plaintiff's] usual work and [money expended toward] . . . responding to a fraudulent allegation . . . amount[s] to a loss to business or property sufficient to confer standing." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1119 (9th Cir. 2017) (time and expenses incurred to rebut defendant's false allegations constitute injury to business or property); *see also C&M Café*, 2016 WL 6822071, at *8 (allegations "show a [ ] direct injury to [ ] business interest" because "defendants inserted themselves between [plaintiff] and the consumer," causing "direct injury to [plaintiff's] property interest in its business"); *Xcentric Ventures, LLC v. Borodkin*, 798 F.3d 1201, 1203 (9th Cir. 2015) (costs incurred to pay an expert to mitigate defamation sufficiently alleged RICO injury at the pleading stage). Likewise, "[l]egal fees may constitute RICO damages when they are proximately caused by a RICO violation." *C&M Café*, 2016 WL 6822071, at *8 (fees incurred in preparing cease and desist letter in response to unlawful imposter website were cognizable RICO damages) (citations omitted).

Nevertheless, defendants argue that injuries sustained by Plaintiffs are not cognizable because they are "difficult to quantify" and there are "numerous reasons why a customer might cease or interrupt its relationship with Resolute." (ECF No. 199 at 41.) As an initial matter, courts have expressly rejected "the proposition that no RICO injury could ever be asserted unless it was ***solely*** attributable to the alleged unlawful activity." *Feld*, 873 F. Supp. 2d at 322 n.17 (emphasis added); *Wallace v. Midwest Financial Mortg. Servs, Inc.*, 714 F.3d 414, 421-22 (6th Cir. 2013); *Cox v. Adm'r U.S. Steel v. Carnegie*, 17 F.3d 1386, 1399 (11th Cir. 1994).

In any event, the relevant inquiry at the pleading stage is whether a plaintiff has "put forth allegations that raise a reasonable expectation that discovery will reveal evidence of proximate causation." *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 804 F.3d 633, 644 (3d Cir. 2015) (citations omitted); *Feld*, 873 F. Supp. 2d at 321 (third-party reliance for proximate causation "are not [yet] established, but they are alleged in the complaint . . . which is all that is required at the motion to dismiss stage"). The Ninth Circuit has explicitly held that "it is inappropriate at [the pleading] stage to substitute speculation for the complaint's allegations of causation." *Mendoza*, 301 F.3d at 1171. Thus, in *Mendoza*, the Ninth Circuit reversed the trial court's determination that "factors other than the scheme coupled with [the scheme] *could* account for the plaintiff's depressed wages," holding that the plaintiffs "must be allowed to make their case through presentation of evidence . . . at a later stage in the proceedings." *Id.* (emphasis in original). Explaining that "it is important to distinguish between uncertainty in the fact of damage and in the amount of damage," the Ninth Circuit held that the complaint's allegations of proximate causation were plausible on a motion to dismiss, irrespective of "whatever difficulty might arise in establishing" the exact amount of damage. *Id.*; *see also Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1056 (9th Cir. 2008) (proximate cause raises "factual questions which we cannot resolve on a Rule 12(b)(6) motion in this case"), *remanded to* 2011 WL 1899404 (N.D. Cal. May 19, 2011) ("the Ninth Circuit held that the 'proximate cause' requirement for RICO could not be resolved on a Rule 12(b)(6) motion in this case").

Consistent with this standard, district courts in the Ninth Circuit routinely deny motions to dismiss based on arguments that damages will be difficult to calculate. *See In re Volkswagen*,

2017 WL 4890594 (at the pleading stage, "it is sufficient that the relationship between [plaintiffs'] alleged injuries and [defendant's] alleged [RICO] violation is not 'speculative in the extreme' . . . . [Q]uestions as to the *amount* of damage, as opposed to the plausibility of damage, are best resolved at a later stage in the litigation"); *Transcription Comm'ns*, 2009 WL 666943, at *13 (plaintiff "may be able to recover for the injuries it alleges resulted from [d]efendants' fraudulent misrepresentations to [third party]; whether such injuries occurred is inappropriate for resolution on a motion to dismiss"); *Brewer v. Salyer*, 2007 WL 1454276, at *12-13 (E.D. Cal. May 17, 2007) (rejecting defendants' argument that "a host of intervening factors" caused plaintiff's alleged injuries because "it is important to distinguish between uncertainty in the fact of damage and in the amount of damage . . . [w]hether plaintiff can prove these allegations [of proximate causation] is a subject for discovery and a motion for summary judgment").

The same result is compelled here. The Amended Complaint pleads that customers directly referenced defendants' false publications in terminating relationships with Resolute. For example, UPM, Axel Springer, Proctor & Gamble, Georgia Pacific, Best Buy, Kimberly Clark, and 3M specifically cited defendants' campaign as the reason for abandoning large contracts with Resolute. (¶¶ 238-40, 242, 248, 259, 409.) Defendants' contention that other customers, such as Hachette, may have factored in Resolute's "choice to pursue RICO and defamation claims against Greenpeace" into the decision to terminate its business relationship with Resolute (ECF No. 199 at 41), at best raises questions of fact. As defendants acknowledge, Resolute's RICO claim was only "one of the reasons" Hachette provided for terminating its relationship with Resolute. (ECF No. 199 at 41.) Hachette also referenced loss of FSC certificates, which, as set forth in the Operational Memo, "c[a]me under coordinated attack" by the Enterprise. (¶ 83, 309.)

Moreover, the Amended Complaint alleges numerous other concrete injuries directly resulting from defendants' disinformation campaign. By way of example only, in response to defendants' false and misleading allegation that Resolute's Alma paper mill sources from the Montagnes Blanches, Penguin demanded that its paper be sourced from the Calhoun mill instead. (¶ 313.) Similarly, Plaintiffs were forced to divert resources and revenue to provide tours of the Alma paper mill and other operations to Macmillan. (¶ 313.) Wooden Books likewise

forwarded defendants' false publications to Resolute, demanding "some more details about this, so we can make an informed decision regarding our paper sources going forward." (¶ 307.) And in direct response to defendant Brindis and GP-USA's April 2015 series of articles targeting Rite-Aid's contractual relationship with Resolute, Resolute incurred legal expenses to send a cease-and-desist letter to Brindis and the Board of Directors of GP-USA. (¶¶ 260-70.) In numerous additional instances, Plaintiffs' customers referenced defendants' false statements to demand responses or accommodations. (*See, e.g.*, ¶¶ 234, 241, 244.)

C. Racketeering Activity Is Adequately Alleged

The Amended Complaint adequately alleges hundreds of predicate acts, including mail fraud (18 U.S.C. § 1341); wire fraud (18 U.S.C. § 1343); illegal interference with commerce (18 U.S.C. § 1951); and illegal monetary transactions (18 U.S.C. § 1957).

1. The Complaint Pleads Mail and Wire Fraud

The mail and wire fraud statutes make it unlawful to use the mails or wires in furtherance of "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. §§ 1341, 1343. To plead mail or wire fraud, a plaintiff must allege: (1) a scheme to defraud, (2) the use of the mails or wires to further that scheme, and (3) the specific intent to defraud. *Odom*, 486 F.3d at 554. The Ninth Circuit has held the mail and wire fraud statutes are broad in scope and "[t]he fraudulent nature of the 'scheme or artifice to defraud' is measured by a non-technical standard," condemning conduct which is "contrary to public policy or which fail[s] to measure up to the reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general and business life of members of society." *United States v. Woods*, 335 F.3d 993, 998 (9th Cir. 2003).

The Amended Complaint details defendants' use of U.S. mails and wires in furtherance of a scheme to harm Resolute through misleading Resolute's customers, certification agencies and other critical stakeholders about Resolute's operations in the Boreal forest by, among other things: (i) preparing false and misleading reports concerning Resolute and its customers; (ii) broadly disseminating the false and defamatory reports and other statements through GP USA, GP Canada, and GPI's websites and other internet platforms, such as Twitter and

Facebook; (iii) communicating and coordinating with one another to effectuate the dissemination of false and misleading information necessary to perpetrate the scheme to harm Resolute; (iv) disseminating the false and misleading information directly to Resolute's stakeholders, customers, and other critical market constituents through email, U.S. mail, and phone; (v) harassing Resolute's customers with extortionate threats; (vi) soliciting fraudulent charitable donations from the public by means of false pretenses, representations, or promises; and (vii) wiring fraudulently obtained funds to sustain the Enterprise's "campaign" against Resolute. ((¶¶ 167-318, 401-430, ECF No. 185-1 to 185-4.) [22]

The dissemination of calculated falsehoods to third parties with the intent of depriving plaintiff of property rights constitutes mail and wire fraud under black-letter law. *See, e.g.*, *Bridge*, 553 U.S. at 647-48 (sustaining mail and wire fraud claims where defendants' scheme to obtain valuable liens by submitting false information to county officials harmed petitioners who lost the bid for valuable liens); *Feld*, 873 F. Supp. 2d at 318 (mail fraud adequately alleged where animal rights group disseminated fundraising materials misrepresenting plaintiff circus's elephant handling procedures); *Procter & Gamble*, 242 F.3d at 565 (sustaining mail and wire fraud claims arising from defendants' dissemination of false information to lure away plaintiffs' customers and cause boycotts); *Texas Air Corp. v. Air Line Pilots Ass'n Int'l*, 1989 WL 146414, at *5 (S.D. Fla. July 14, 1989) (union's "scheme [to] publicly disseminat[e] false information about [the airline's] safety and its treatment of employees" constituted mail and wire fraud);

[22] GP-Fund's contention that the Amended Complaint fails to plead that it engaged in two predicate acts because it is not the "author of the statements" is without merit. As set forth *supra*, GP-Fund authored dozens of statements under the name GP-USA. In any event, "statements and acts of co-participants in a scheme to defraud [are] admissible against other participants" for purposes of establishing mail and wire fraud under 18 U.S.C. 1964(c). *In re Volkswagen*, 2017 WL 4890594, at *12 (quoting *United States v. Stapleton*, 293 F.3d 1111, 1117 (9th Cir. 2002). "[K]nowing participants in the scheme are legally liable' for their co-schemers' use of the mails and wires." *Id.* Thus, GP-Fund may be held liable for mail and wire fraud under 18 U.S.C. 1964(c) irrespective of whether it made a separate misrepresentation. *Id.*

Cement-Lock, 2006 WL 3147700 (use of wires to disseminate false statements to government agencies and financing sources constituted mail and wire fraud).[23]

Defendants concede that the Amended Complaint pleads that defendants disseminated false and misleading statements to Resolute's customers with the specific intent of interfering with those relationships. (ECF No. 199 at 36 ("Resolute now appears to claim that Defendants made misrepresentations to Resolute's customers . . . in order to harm Resolute").) Nevertheless, defendants argue that the Amended Complaint fails to plead mail and wire fraud because the Amended Complaint fails to plead that defendants obtained property from those customers who received the misrepresentations. (ECF No. 199 at 36.) This argument is without merit.

As defendants concede, "[m]ail and wire fraud can [ ] involve fraud intended to deprive another of property, ***whether or not it is obtainable by the party committing the fraud***." (ECF 199 at n. 15 (citing *United States v. Kincaid-Chauncey*, 556 F.3d 923 (9th Cir. 2009) (emphasis added); *see also United States v. Welch*, 327 F.3d 1081, 1108 n.27 (10th Cir. 2003) ("neither the mail nor wire fraud statute requires that a defendant 'obtain' property before violating the statute"). This is because "intent to deprive," not "intent to gain," is the essence of the scheme to defraud. *Kincaid-Chauncey*, 556 F.3d at 941; *see also United States v. Hedaithy*, 392 F.3d 580, 602 n.21 (3d Cir. 2004) (mail and wire fraud are "intended to cover 'any scheme or artifice to defraud [one of his money or property]"); *United States v. McMillan*, 600 F.3d 434, 447 (5th Cir. 2010) (scheme to defraud "may be met by a variety of schemes, but the relevant form of the scheme in this case is the deprivation of money or property"); *Feld*, 873 F. Supp. 2d at 318 ("[m]ail fraud lies whether or not the perpetrator ends up with the victim's property or money").

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[23] Defendants attempt to recast Plaintiffs' allegations as defamation which defendants allege do not constitute predicate acts under RICO. Obviously, false claims made to support a scheme to defraud might equally support a defamation claim, but the claims are not mutually exclusive. Moreover, none of the cases cited by defendants allege a disinformation campaign -- like the one here -- intended to cause harm to business or property through deceptive means. *See Kimberlin v. National Bloggers Club*, 2015 WL 1242763 (Bankr. D. Md. Mar. 17, 2015), (dissemination of calculated falsehoods for the purpose of causing reputational harm); *Kimm v. Lee*, 2005 WL 89386 4 (S.D.N.Y. Jan. 13, 2005) ("Though [plaintiff] may well have suffered reputational injury . . . no one was 'induced to part with anything of value as a result.'").

Moreover, there is no requirement that the party that is harmed (or deprived) by the mail and wire fraud scheme is the party that is deceived. As the Supreme Court has explained, a "plaintiff asserting a RICO claim predicated on mail fraud need not show, *either as an element of its claim or as a prerequisite to establishing proximate causation*, that it relied on the defendant's alleged misrepresentations." *Bridge*, 553 U.S. at 661 (emphasis added). Thus, the direct victim of a scheme to defraud may recover through RICO even if it was not the direct recipient of the false statements. *Id.* at 650; *see also In re Volkswagen*, 2017 WL 4890594, at *11 ("[t]he misrepresentation also does not need to be made to the RICO plaintiff, but instead may be made to a third party"); *Just Film, Inc. v. Merchant Servs, Inc.*, 2012 WL 6087210, at *11 (N.D. Cal. Dec. 6, 2012) ("[F]irst party reliance is not an element of a RICO claim based on mail fraud."); *Hoffman v. Zenith Insurance Co.*, 2010 WL 11558157 (C.D. Cal. Aug. 31, 2010) ("reliance is not required to establish a claim under the mail fraud or wire fraud statutes").

Accordingly, each false statement disseminated to Resolute's customers, certification agencies, and other market constituents constitutes a separate predicate act of mail or wire fraud.

2. The Complaint Pleads Extortion

Defendants argue that the Amended Complaint fails to plead Hobbs Act extortion because it is devoid of allegations that defendants obtained property from Resolute. (ECF No. 199 at 27-28.) However, allegations that defendants wrongfully sought to divert business away from the victim and toward third parties of defendant's choosing state a claim for extortion under the Hobbs Act. *See, e.g.*, *United States v. Gotti*, 459 F.3d 296, 326 (2d Cir. 2006) (diverting service contracts to defendants' preferred vendors constituted extortion); *U.S. v. Coffey*, 361 F. Supp. 2d 102, 108-09 (E.D.N.Y. 2005) (cited with approval in *Sekhar v. United States*, 570 U.S. 729, 743 (2013) (Alito, J. concurring)) (same). For example, in *Coffey*, the court found that defendants' efforts to divert potential customers away from plaintiff to organized crime-affiliated companies through extortionate means precluded dismissal of the Hobbs Act claim. *See* 361 F. Supp. 2d at 106, 108-09. The *Coffey* court explicitly recognized that "[t]he fact that neither [individual defendant] may have personally benefitted from the charged conduct under the Hobbs

Act" does not warrant dismissal because "extortion as defined in the statute in no way depends upon having a direct benefit conferred on the person who obtains the property." *Id.* at 109.

The same conclusion is compelled here. As set forth in the Amended Complaint, between April and May 2013, the Enterprise, through defendant Paglia, issued a series of extortive threats to Resolute demanding that Resolute cease operating in certain areas of the Canadian Boreal forest, which would allow Resolute's competitors to operate in those areas in Resolute's absence. (¶ 131 (demanding that Resolute agree not to harvest in an unspecified amount of vast areas that Resolute could not agree to meet and remain in business).) When Resolute failed to acquiesce to the Enterprise's demands, the Enterprise -- consistent with the plan set forth in the Operational Memo -- targeted Resolute with a fraudulent campaign by manufacturing "very negative press and communications directed at customers in Canada, the US and Europe" "saying don't buy from Resolute unless they meet our demands . . . *buy from these other companies instead.*" (¶¶ 78-79 (emphasis added).) Thus, by targeting Resolute to the exclusion of other forestry companies that were operating in the same areas, and who were (at minimum) similarly situated with Resolute, the Enterprise attempted to transfer the rights away from Resolute toward companies that were willing to endorse their campaign. These facts adequately plead a claim for extortion under *Coffey*.

D. The Amended Complaint Pleads A RICO Enterprise And Each Defendant's Participation In The Enterprise

The RICO statute defines an enterprise as "any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). The Supreme Court has held the "very concept of an association in fact is expansive" and encompasses any "continuing unit that functions with a common purpose." *Boyle v. United States*, 556 U.S. 938, 945, 948 (2009) (rejecting any "extra textual" requirement of formal structural attributes, including "hierarchical structure," "role differentiation," "unique modus operandi," "chain of command," "regular meetings," "rules and regulations," and method of decision-making).

Defendants challenge the sufficiency of a RICO enterprise on grounds that the Amended Complaint "fails to plausibly identify a common racketeering purpose" and "plead the necessary

'relationships' between the various 'Enterprise members.'" (ECF No. 199 at 43.) The Amended Complaint alleges that the Stand Defendants, GP Canada, GP-USA, GPI, and Canopy each agreed to "commence [a] very targeted market campaign directed at Resolute," the "objective" of which was "to make Resolute and its products highly controversial," with "all ENGOs focusing their energy resources on positioning Resolute as the most regressive forest products company." (¶¶ 78-79.) The Operational Memo, authored by Paglia in late 2012 to early 2013, stated that "GP US and GPI [would] becom[e] actively involved, with the intent of creating a threat to the brands of any customers who buy from Resolute." (¶ 78.)[24] The campaign had "full support" from funders GP-Fund and GPI. (¶ 85.) The Memorandum made clear that Enterprise members would "*work[ ] on the same team*" to manufacture "very negative press and communications directed at customers in Canada, the US and Europe . . . saying don't buy from Resolute unless they meet our demands . . . ." (¶ 79 (emphasis added).) At the same time, "Resolute FSC certs come under *coordinated attack* by all ENGOs." (¶ 83 (emphasis added).)[25]

Moreover, the "coordinated attack" against Resolute is consistent with the Enterprise members' long history of collaboration. As "close-allies," the Stand Defendants and Greenpeace

[24] Defendants' contention that the Operational Memo does not support a common purpose because it does not explicitly state that the "ENGOs should publish knowing falsities about Resolute" (ECF No. 199 at 44) at most raises a question of fact which must be resolved in Plaintiffs' favor on this motion. *See Perryman v. Litton Loan Servicing, LP*, 2014 WL 4954674, at *15 (N.D. Cal. Oct. 1, 2014) (Tigar, J.) ("[w]hether or not [d]efendants made material misrepresentations, and whether they intentionally created a scheme to defraud, are questions of fact."). Moreover, the inference that the Operational Memo intended the dissemination of false information is strongly supported by defendants' subsequent fabrication of admittedly false evidence accusing Resolute of violating the CBFA. (¶ 89-118.)

[25] The Greenpeace Defendants argue that the Operational Memo is not evidence of an enterprise because it "does not set forth any organizational structure." However, "[a]n associated-in-fact enterprise under RICO does not require any particular organizational structure." *Odom*, 486 F.3d at 551; *Boyle*, 556 U.S. at 948. *Boyle* likewise rejects the Stand Defendants' argument that the Amended Complaint fails to plead an enterprise that is "distinct from the pattern of predicate acts" (ECF 197 at 18), holding that "evidence used to prove [a] pattern of racketeering activity and evidence establishing an enterprise 'may in particular cases coalesce.'" *See Boyle*, 556 U.S. at 947.

Defendants have collaborated on numerous coercive and manipulative "campaigns," which have targeted, among others, Victoria's Secret, 3M, and Staples. (¶ 41(m).)[26]

While GP-Fund and the Stand Defendants attempt to reduce the "coordinated attack" against Resolute to "independent" or "parallel activity" (ECF No. 197 at 18-19; ECF No. 199 at 33), these arguments are belied by both the explicit terms of the Operational Memo and the Amended Complaint's detailed allegations of collaboration in targeting Resolute. As alleged, these defendants collaborated to disseminate the Enterprise's false allegation that Resolute was engaging in "active logging and road building" in violation of the CBFA. (¶¶ 224, 89-118.) Likewise, GP-USA, GPI, GP-Canada, and the Stand Defendants collaborated to target Resolute's key customer, including 3M. (¶¶ 247-48.)

These allegations plainly plead the existence of a RICO enterprise. *See Boyle*, 556 U.S. at 941; *Perryman*, 2014 WL 4954674, at *16 (allegations of "ongoing collusive relationship between [Enterprise members] in which they agreed to misrepresent the nature of [certain] charges at the [plaintiff's] expense for their collective benefit" satisfies enterprise element). The same allegations are likewise sufficient to establish GP-Fund's and the Stand Defendants' role in directing "some part" of the Enterprise's affairs. *See In re Volkswagen*, 2017 WL 4890594, at *16 (RICO liability not limited 'to those with primary responsibility for the enterprise's affairs") (quoting *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993)).

III. THE TORTIOUS INTERFERENCE CLAIM IS PROPERLY PLED

Defendants argue for dismissal of the tortious interference with prospective business claim (Count VII)[27] on grounds that the Amended Complaint fails to plead the elements of the

[26] Defendants' assertion that absent allegations of a criminal purpose, the enterprise element will render the right of association meaningless (ECF No. 199 at 32-34), has been rejected by the Ninth Circuit which has held that the enterprise element of RICO has "withstood the attack that it unconstitutionally punishes associational status," because "RICO's proscriptions are directed against conduct, not status. *United States v. Rubio*, 727 F.2d 786, 792 (9th Cir. 1983).

[27] The Complaint also alleges a claim for tortious interference with contract (Count VI) arising from defendants' tortious interference with Plaintiffs' contractual relationships with, among others, Best Buy, Kimberly Clark, P&G, 3M, and UPM.

claim with the requisite specificity. (ECF No. 199 at 45.) These arguments are belied by the detailed allegations of the Amended Complaint.

The Operational Memo explicitly states that interference with Resolute's customers was an explicit objective of defendants' scheme. (¶ 79.) As alleged, the unrelenting campaign of disinformation targeting Resolute's customers resulted in the loss of other prospective business relationships including, but not limited to, Georgia Pacific. (¶ 247, 248.) The Amended Complaint pleads the author of the defamatory publications, the targeted customer, the date of the wrongful interference and the resulting damage to Resolute. (¶¶ 231-73, 389.) These allegations are more than sufficient at the pleading stage. *See Swingless Golf Club Corp. v. Taylor*, 2009 WL 2031768, at *4 (N.D. Cal. July 7, 2009) (although "plaintiff ha[d] not stated which parties plaintiff contracted with, which contracts were interfered with, and when those contracts were entered into[, t]hese facts will be readily obtainable in discovery"); *Silicon Valley Test & Repair, Inc. v. Gen. Signal Corp.*, 1993 WL 373977, at *5 (N.D. Cal. Sept. 13, 1993) (allegation that "[d]efendants have interfered with 'customers [located] in Oregon, Texas and Arizona' . . . gives [d]efendants fair notice of [plaintiff's] claim.").

IV. THE TRADE LIBEL CLAIM IS PROPERLY PLED

Defendants' challenges to the trade libel claim (Count V) are similarly unavailing. While defendants assert that the Amended Complaint fails to plead actionable statements about Resolute's products, "trade disparagement extends to the quality of a plaintiff's 'business in general.'" *See Aetna Cas. and Sur. Co., Inc. v. Centennial Ins. Co.*, 838 F.2d 346, 351 (9th Cir. 1988) (trade libel is directed "at the goods a plaintiff sells *or the character of his [ ]business*") (emphasis added); *MGA Entm't, Inc. v. Hartford Ins. Grp.*, 2009 WL 10657353, at *5 (C.D. Cal. June 24, 2009) (fact defendant did not disparage "Mattel's products specifically does not detract from the Court's ultimate conclusion because California courts have held that trade disparagement extends to the quality of a plaintiff's business in general."); *Am. Shooting Ctr., Inc. v. Secfor Int'l*, 2015 WL 1914924, at *7 (S.D. Cal. Apr. 27, 2015) (same).

In any event, the Amended Complaint pleads statements disparaging Resolute's products. As set forth in the Operational Memo, the explicit objective of the "Resolute: Forest Destroyer"

campaign was "to make Resolute and *its products* highly controversial." (¶ 79 (emphasis added).) In furtherance of this objective, defendants ubiquitously disparaged Resolute's products by falsely asserting that they were sourced using unsustainable methods. (¶¶ 251, 260.) These statements are actionable in trade libel. *See Shores v. Chip Steak Co.*, 130 Cal. App. 2d 627, 628, 630 (Ct. App. 1955) (trade libel pled where advertiser "stat[ed] in substance . . . that plaintiff's product was not 'quality' food, or prepared or packaged by modern, safe or sanitary methods").

Moreover, the Amended Complaint pleads special damages in the form of lost business in the amount no less than C$100M which is sufficient at the pleading stage. *See G.U.E. Tech, LLC v. Panasonic Avionics Corp.*, 2015 WL 12696203, at *5 (C.D. Cal. Sept. 15, 2015) (trade libel alleged where plaintiff "gives reasonably specific estimates of the [special] damages").

V. THE UCL CLAIM IS PROPERLY PLED

Defendants seek dismissal of Count IX for Unfair Business Practices pursuant Cal. Bus. & Prof. Code §§ 17200 and 17500 ("UCL") on the grounds that the Amended Complaint fails to plead either an underlying tort, or that defendants were competitors. However neither the statue or the authorities relied on by defendants impose such requirements.

In arguing that the UCL claim requires allegations that defendants are Plaintiffs' competitors, defendants rely on inapposite case law addressing claims under Cal. Bus. & Prof. Code §§ 17043, 17044 ("UPA"). (ECF No. 199 at 38.) However, no corresponding requirement exists under the UCL. *See* Cal. Bus. & Prof. Code § 17200 (penalizing "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misdealing advertising").

Defendants' assertion that the UCL claim should be dismissed for failure to plead an underlying tort is likewise without merit. *See Cel-Tech Comm'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) ("A practice may be deemed unfair even if not specifically proscribed by some other law."). "California's UCL 'has always been given a broad and sweeping ambit by our Legislature and our Supreme Court.'" *Overstock.com*, 151 Cal. App. 4th at 715; *Smith v. State Farm Mut. Auto. Ins. Co.*, 93 Cal. App. 4th 700, 719 (Ct. App. 2001). Moreover, even if an underlying tort is required -- which it is not -- the Amended Complaint pleads defamation, trade libel and tortious interference. (*See supra.*)

VI. THE COURT HAS PERSONAL JURISDICTION OVER GPI

Notwithstanding that the case has been transferred to defendants' chosen forum, GPI[28] argues, that it is not subject to personal jurisdiction because it neither has "minimum contacts," nor caused any harm, in this State. (ECF No. 199 at 39.)[29]

GPI directed its activities to the State through its ongoing licensing agreement with California-based GP-Inc. and GP-Fund whose activities GPI directs and funds, including with respect to the "Resolute: Forest Destroyer." (¶ 41.) These contacts are sufficient to confer jurisdiction over GPI. *See Dubrose*, 2017 WL 2775034, at *2 (exercising personal jurisdiction over defendant because a "small fraction" of defendant's many "multi-center clinical trials" took place in California); *see also Nissan Motor Co. v. Nissan Computer Corp.*, 89 F. Supp. 2d 1154, 1159-60 (C.D. Cal. 2000) (defendant had contracts with forum companies to display advertising banners and links on his website); *Harris Rutsky & Co. Ins. Servs. v.Bell & Clements Ltd.*, 328 F.3d 1122, 1131 (9th Cir. 2003) (defendant "purposefully sought out a business relationship with a California corporation and had ongoing contacts with the state over a five-year period").

Alternatively, GPI is subject to long-arm jurisdiction in this State, pursuant to FRCP 4(k)(2) which confers jurisdiction over foreign defendant who lack substantial contacts with any single state, but have sufficient contacts with the United States as a whole to satisfy due process standards. *See In re Volkswagen*, 2017 WL 4890594, at *17. Courts have adopted a burden-shifting mechanism so that if the defendant contends that he cannot be sued in the forum state and refuses to identify any other where suit is possible, then the federal court is entitled to use Rule 4(k)(2). *Id.* Here, Plaintiffs' federal RICO claims arise under federal law, and GPI does not

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[28] GPI may also be subject to general jurisdiction in this State by virtue of the fact that it maintains an office in California. *See* https://www.greenpeace.org/ international/worldwide/ (last visited March 20, 2018); *see also United States v. Cathcart*, 2010 WL 1048829, at *3 (N.D. Cal. Feb. 12, 2010), *report and recommendation adopted*, 2010 WL 807444 (N.D. Cal. Mar. 5, 2010).

[29] The Ninth Circuit has established a three-prong test for specific personal jurisdiction: (1) non-resident defendant must purposefully direct his activities or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum; (2) the claim must arise out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, *See Dubose v. Bristol-Myers Squibb Co.*, 2017 WL 2775034, at *2-4 (N.D. Cal. June 27, 2017).

identify a state court of general jurisdiction. Moreover, in addition to the California contacts set forth above, GPI has numerous minimum contacts with the U.S., including soliciting donations from U.S.-based citizens to execute its campaigns. (¶ 41.) Moreover, as set forth in the Amended Complaint, GPI traveled to Augusta, Georgia to disseminate defamatory statements about Resolute at its Annual Meeting in May 2015. (¶ 296.) Finally, while GPI baldly asserts that "Resolute's reputation is in Canada," four of the plaintiffs are domiciled in the United States and operate mills throughout the U.S. (¶¶ 24-26, 28.) Thus, the exercise of jurisdiction is proper under Rule 4(k)(2). *See S.E.C. v. Carrillo*, 115 F.3d 1540, 1545-46 (11th Cir. 1997) (targeting U.S. citizens through phone, mail, internet, and in person constitutes minimum contacts for purposes of Rule 4(k)(2)).[30]

VII. DEFENDANTS' MOTIONS TO STRIKE PLAINTIFFS' STATE LAW CLAIMS SHOULD BE DENIED IN THEIR ENTIRETY.

A motion to strike pursuant to California's anti-SLAPP statute will be denied where the plaintiff demonstrates a probability of success on each of the challenged claims. *See* Cal. Civ. Proc. Code § 425.16(b)(1). Courts in this District have held that plaintiff need only show "'*a mere possibility of success*[.]'" *Bautista v. Hunt & Henriques*, 2012 WL 160252, at *7 (N.D. Cal. Jan. 17, 2012) (emphasis added).

Motions to strike brought in federal court must be "treated in the same manner as a motion under Rule 12(b)(6)." *Choyce v. SF Bay Area Indep. Media Ctr.*, 2013 WL 6234628 at *5 (N.D. Cal. Dec. 2, 2013) (Tigar, J.). Under this standard, plaintiff satisfies the burden to demonstrate a probability of prevailing at the pleading stage, where "the complaint is legally sufficient and supported by a *prima facie* showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." *Bulletin Displays, LLC v. Regency Outdoor Adver., Inc.*, 448 F. Supp. 2d 1172, 1179 (C.D. Cal. 2006) (citations omitted). As with Rule 12(b)(6) motions, "the complaint [must] be read liberally . . . all well-pleaded allegations [must]

[30] If this Court finds that Resolute has failed to establish personal jurisdiction over GPI, limited jurisdictional discovery should be granted. *See Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977).

be taken as true, and [ ] dismissal generally [must] be with leave to amend." *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp. 2d 973, 982 (C.D. Cal. 1999) (citations omitted).

As set forth herein, Plaintiffs have alleged all the requisite elements of the state law claims (Counts IV to IX), which is all that is required at the pleading stage. *See Bulletin*, 448 F. Supp. 2d at 1179. Accordingly, defendants' motions to strike and recover attorneys' fees should be denied in their entirety. *See Garcia v. Allstate Ins.*, 2012 WL 4210113, at *14 (E.D. Cal. Sept. 18, 2012) (denying costs with respect to both first and second SLAPP motions because Ninth Circuit requires Plaintiffs be given an opportunity to amend their complaint, and thus grant of initial SLAPP motion was only a "technical" victory); *Masimo Corp. v. Mindray DS USA, Inc.*, 2014 WL 12597114 (C.D. Cal. Jan. 2, 2014) (no fees were granted to defendant on initial motion to strike where plaintiffs re-pleaded successfully).

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss and Strike the Amended Complaint should be denied in their entirety. To the extent the Court is inclined to grant defendants' motions in whole or in part, any dismissal should be without prejudice and with leave to amend.[31]

Dated: March 27, 2018

KASOWITZ BENSON TORRES LLP

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[31] The FRCP instruct that "[t]he court should freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a); *see also Mai Ngoc Bui v. Ton Phi Nguyen*, -- Fed. Appx. --, 2017 WL 4653438, at *3 (9th Cir. Oct. 17, 2017) (In dismissing plaintiff's complaint a second time, "[t]he district court abused its discretion by not allowing [plaintiff] at least one more attempt to amend her complaint" where "there may be additional facts and legal theories that could be incorporated into a Third Amended Complaint which, as required by the Federal rules, '[t]he court should freely give . . . when justice so requires.'") (citation omitted).