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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Index No. 08 CIV 2062

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SELIM ZHERKA,

Plaintiff,

**DECLARATION IN  
SUPPORT OF MOTION  
FOR SUMMARY  
JUDGMENT**

-against-

Michael F. Bogdanos, individually, Michael R. Edelman a/k/a "The Consultant", individually, Phillip Amicone, individually and in his capacity as Mayor of the City of Yonkers, New York David "Doe" a/k/a "Ethan Edwards", individually, Edmund Roe a/k/a "MOB Buster", individually, John Poe, individually, William Roe, Individually, and Janet Doe, individually,

Defendants.  
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MICHAEL R. EDELMAN an attorney admitted to practice before this court hereby declares the following:

**INTRODUCTION**

1. I am a defendant in this action and submit this Declaration in support of my Motion for Summary Judgment to Dismiss the Complaint pursuant to F.R.C.P. Rule 56.
2. The Complaint alleges the defendants, including me, violated plaintiff's rights as guaranteed by the First Amendment to the United States Constitution, 42 USC Section 1983 USC Section 1985(2) and the common law of the State of New York.

3. The Complaint alleges that the illegal acts of the defendants, were so-called postings by certain of the defendants on a blog maintained by the Gannett Suburban Newspapers referred to as *lowhudblogs.com*. Paragraph 25 of the Complaint alleges that the statements referred to in the Complaint made by the defendants were false, reckless disregard of the truth and constitute *per se* defamation under the common law of the State of New York. A copy of the Complaint is annexed hereto as **Exhibit A**.

4. The Complaint also alleges that I and certain of the other defendants entered into a conspiracy with defendant Mathew A. Bogdanos, (“Bogdanos”), an Assistant District Attorney in New York County, to have him undertake a criminal investigation of the plaintiff.

5. The gravamen of the complaint is that the defendants have joined together in an effort to intimidate and/or threaten plaintiff from engaging in political activities in Westchester County and more specifically in the City of Yonkers. See Complaint ¶¶ 25-28.

6. I respectfully submit that the facts are just the opposite and by this action and other actions filed by plaintiff and his associates he is trying to intimidate, harass and restrict myself and other people from engaging in any criticism of him.<sup>1</sup>

#### **THE PLAINTIFF**

7. Plaintiff, as alleged in his Complaint:

- a) Is the owner/publisher of a weekly periodical (the Westchester Guardian) which in 2001 was highly critical of defendant Amicone’s performance as Mayor of the City of Yonkers (paragraph 3).

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<sup>1</sup> There are 14 other related actions filed by Zherka and his associates.

- b) In 2007 plaintiff actively supported the candidacy of Dennis Robertson a candidate who ran against defendant Amicone in the 2007 mayoral Election in the City of Yonkers; (¶ 3)
- c) that Bogdanos is investigating plaintiff by reason of his Albanian mob connection, tax fraud, money laundering, elicit drug dealings, and operation of a prostitution ring. (¶ 28)<sup>2</sup>
- d) That Bogdanos has issued dozens of grand jury subpoenas to every corporation and/or person as having made financial contribution to the Robertson election campaign (¶ 28).<sup>2</sup>

8. On October 10, 2007 during the 2007 Yonkers mayoral campaign and when the postings complained of were being posted plaintiff issued the following press release:

I am proudly fighting to oust this oppressive regime (Amicone) and will not stop until Amicone is gone. Any elected official who steals news racks, violates the Civil Rights of the people, in order to silence its critics is a dangerous man, and the people must be told. I am a man of principal and will fund whatever is needed to finish the job. Let this be a lesson to all local governments in Westchester County; if you deny anyone of their civil rights you will feel the “wrath and fury of the Righteous”.

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<sup>2</sup> Also see Memorandum of Law filed on behalf of defendant Bogdanos to dismiss or to Stay this action which confirms that the plaintiff is the subject of a grand jury investigation.

The Press Release further stated that multiple mailings were being sent out and additional commercials were being scheduled to air on Cable News 12. It continued stating:

The money I am spending is not important. It's my constitutional right, and the rights of the people I am fighting for. Injustice to one is injustice to all.

9. Any doubt as to plaintiff's willingness to intimidate persons who post on the lowhublog.com are dispelled by his own posting of July 15, 2008 which stated as follows:

I promise all six or seven of you maggots, that I will go to trial, and that all the defendants in all these lawsuits will pay a very heavy price. Now about this Yonkers Tribune site, keep it clean, no defamation or slander. If you cross the line, make sure you have a lot of money to defend your self, because I will be coming knocking on your door with a set of very unpopular papers.

As far as Hezi, if any one defames or slanders me on your site I will name you as a defendant for encouraging that kind of behaviour. I will go back through the archives and if I read any thing slanderous or defamatory, on your site, put aside 200k for legal bills – You will need it! I promise.

Make sure there is no slander or defamation. Even if its border line,

I will challenge it, so be careful.

Free Speech not Defamation or slander.

Now if there is some one who has something to say that is slanderous and would like to say it to my face, here is my address: 240 North Avenue, New Rochelle, NY 10801. (914) 576-1481. I am all ears. I respect a person who says something to some ones face.

I love the fact that you people can't get me and the Guardian out of your minds. That just confirms that we are doing something right.

God Bless and keep blogging.

Good Night.

Sam Zherka

10. Clearly, plaintiff is a contentious person, well versed in political matters and is at least, a limited purpose public figure.

#### **MY QUALIFICATIONS**

11. I am a partner in the Law firm of Worby Groner Edelman, a personal injury firm in White Plains, New York. I was admitted to the New York State Bar in 1972 and I am a member of the Bar of the United States District Courts for the Southern and Eastern Districts,

the United States Circuit Court of Appeals for the Second Circuit and the United States Supreme Court.

12. I have worked as a political consultant under the name **THE HASTINGS GROUP**.

13. Since 1982 I have acted as a consultant for the Republican Party's Judicial Committee for the Supreme Court, County Court and Family Court reviewing candidates for the Ninth Judicial District.

14. I was an Assistant District Attorney in Westchester County under District Attorney Carl Vegori for- 7 years and the Corporation Counsel for the City of Yonkers for approximately one year.

15. As noted I served as a consultant to defendant Amicone in the 2007 Yonkers Mayoral Race and the 2005 District Attorney race on behalf of Janet DiFiore.

16. I have appeared as a political commentator for over 14 years on Cablevision News 12 as well as on CBS Radio affiliates across the nation. I have also been requested by various news publications to comment on political matters including the New York Times, the New York Post, the Daily News, Long Island Newsday, the Washington Times and the Gannett News chain.

17. In short, I have been a practicing attorney for 38 years with no client complaints against me and I have been politically active for many years with no complaints against me like those leveled by plaintiff.

**PLAINTIFF HAS A POLITICAL ISSUE WITH ME**

18. I submit that any complaint that plaintiff has against me is strictly political and does not form the basis for this action or any other claim by him that I have violated any of his rights.

19. I was a consultant to defendant Amicone in the Yonkers mayoral Election of 2007, while plaintiff actively supported the candidacy of his opponent Dennis Robertson (complaint paragraph 3).

20. This conclusion is further supported by the fact that Richard Blassberg, the editor of the Westchester Guardian was the campaign manager for Anthony Castro in his campaign to be elected for the District Attorney of Westchester County. At the same time I was a campaign consultant to Castro's opponent Janet DiFiore who was successfully elected and re-elected as the district attorney of Westchester County.<sup>3</sup>

21. There is no question that I was critical of plaintiff for the amount that he and his affiliates contributed to the Robertson campaign which I calculated to be approximately 65% of all funds raised by or on behalf of Robertson. I believe that the comments with respect to this were appropriate in that it suggested that plaintiff would have an extraordinary amount of influence over Robertson if he were to be elected Mayor of Yonkers.

22. I submit that plaintiff's allegations against me are without foundation in fact and at least particularly because I have successfully backed political candidates whom he opposes.

### **THE WORLD OF BLOGS**

23. A Blog is quite simply a website maintained by an organization or person which permits other parties to post statements with respect to the basic subject matter of the blog.

24. As noted, the lowhudblog.com is a blog operated and maintained by Gannett Suburban Newspapers which permits anyone to post statements thereon.

25. It is not unusual for postings which involve controversial issues, political or otherwise to be posted anonymously.

26. Moreover while it is true that I use the handle “The consultant” this is not a handle that is copyrighted and can be used by any person at any time to post on the lowhubblogs.com.

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3 Plaintiff has instituted an action in this court against District Attorney DiFiore after holding a press conference at which he issued a press release stating that he was looking for information leading to the arrest and conviction of Westchester DA Janet DiFiore and co-defendant Manhattan ADA Matthew Bogdanos. (08 Civ. 3469)

## **THE ALLEGATIONS OF THE COMPLAINT AGAINST ME**

### **SECOND PARAGRAPH 5 OF THE COMPLAINT**

27. This paragraph alleges as follows:

1. On October 3, 2007, at 4:48 p.m. Edelman posted as ‘THE CONSULTANT’ on the blog reference to “Albanian organized crime” and identified as if a matter of fact: “. . . .Sam [Selim] Zherka is the kingpin who runs this group. Ask the feds, who have been protecting him for years in exchange for info on other organized crime families. Sam Zherka . . . run[s] it [a gentlemens club] today along with various other clubs, diners, bakeries – anywhere they can launder their ill gotten strip club cash from the IRS. They’re pretty feared, as muslim Albanians go”.

28. I did not post this on lowhubblog.com and do not know who did. At the time of this posting, I did not even know plaintiff was Albanian or that he was allegedly involved with Albanian organized crime.

29. Moreover, I have reviewed all postings on the lowhubblog.com with respect to Yonkers Political Matters and plaintiff for the period October 3, 2007 through October 9, 2007



and there is no such statement posted by me or any other person. A copy of all such posting are annexed hereto as **Exhibit B**.

30. I did make postings on October 3, 2007 at 12:12 p.m., 2:23 p.m. and 7:55 p.m. The Second of these postings does refer to plaintiff but this is not complained of by the plaintiff.

### THE YONKERS TRIBUNE

31. When I could not find the posting referred to in Second Paragraph 5 of the plaintiff's Complaint on lowhuddblog.com I checked the archives of the Yonkers Tribune, an online newspaper and found that there was an anonymous posting on October 3, 2007 at 3:20 p.m. which stated as follows:

The posters are right about Sam Zherka. His brother Ali has been arrested for assault and rape in the past, was involved in the SCORES murders and fled the country, and is now indicted as part of a federal RICO investigation involving Albanian organized crime. **But Sam Zherka is the kingpin who runs this group. Ask the feds, who have been protecting him for years in exchange for info on other organized crime families. Sam Zherka and his gang went in and threw the mafia out of the VIP strip club on W. 20<sup>th</sup> street about a decade ago, and still run it today along with various other clubs, diners, bakeries – anywhere they can launder their ill gotten strip club cash from the IRS. They're pretty feared, as muslim albanians go.** His wife took a tax fraud arrest for him and went to federal prison for him. How did Sam repay her? By divorcing

her. His sister has also been arrested. The poster is also right in the reason for the Robertson-Zherka unholy alliance. Zherka wants to open strip clubs around Yonkers Raceway. He supported former Yonkers Mayor Zaleski for the same reason. That's how far back Zherka's been trying to get in to Yonkers. Birds of a feather . . . (Emphasis Added)

A copy of that posting is annexed hereto as **Exhibit C**.

32. Any doubt that the posting plaintiff referred to in Second Paragraph 5 was posted on the Yonkers Tribune Blog is dispelled by an article by the Publisher of the Yonkers Tribune which stated as follows:

While the lawsuit ascribes some quoted passages to Edelman in the *Politics on the Hudson* blog, the fact is they are to be found outside of the blog quoted by Gannett Suburban Newspapers. The fact that the alleged comment(s) is/are quoted more than once in the lawsuit, verbatim, negates the "Fact Statement" of the lawsuit. The "Fact Statement" is thereby incorrect. Its use therefore allegedly exacts a fraud upon the court by its very use.

A Civil Action lawsuit by Plaintiff Genaro Morales (a personal friend of Selim Zherka, a partner of Zherka in certain real estate related businesses, and a retired member of the NYPD) against the Plaintiffs named at the top of this article, is an addendum of sorts on

the original lawsuit. In the June 26, 2008 suit, Edmund Hartnett (Police Commissioner Edmund Hartnett), John Fleming (Executive Assistant to Mayor Philip Amicone), a/k/a “Mob Buster,” and Lawrence Porcari (Assistant Corporation Counsel), a/k/a “Ethan Edwards,” and the City of Yonkers.

An examination of the blog entries on LoHud.com and the Yonkers Tribune.Typepad.com, prove conclusively that the allegations brought by “Sam” Selim Zherka alleging that Mike Edelman, blogging as “The Consultant” stated that “Zherka was a kingpin in Albanian organized crime” and that the feds were protecting him for years” were not said by any blogger claiming to be “The Consultant.” A comparison of the language stated in the Zherka lawsuit with all blog entries on LoHud.com and YonkersTribune.Typepad.com reveal that an anonymous blogger posted the language that Zherka is complaining about.

In addition, the legal papers submitted by the Manhattan County ADA, who has evidently opened a grand jury investigation of Zherka according to Zherka’s own legal complaint, categorically states that he had no previous relationship with any of the defendants.

A copy of this article is annexed as **Exhibit D**.

33. It is clear that the posting quoted in Second Paragraph 5 of the Complaint was lifted from the Yonkers Tribune and made to appear as though it was posted by me on lowhubblog.com nor did I post it in the Yonkers Tribune.

34. I respectfully submit that it is the plaintiff, who by bringing this action is, trying to stifle any criticism of his political activities on behalf of candidates he supports.

35. Whether it was plaintiff or counsel for plaintiff who filed the Complaint it is not only not true but it reeks of Fraud.

#### **PARAGRAPH 11 OF THE COMPLAINT**

36. Paragraph 11 of the Complaint alleges as follows:

11. On October 5, 2007, at 5:25 p.m. Edelman as “THE CONSULTANT” published on the blog: “The only thing that remains to be determined in the breadth of the zherka influence in the Robertson campaign . . . sifting through the numerous corporations contributing there are a number that have one incorporator in common . . . sam zherka. I believe that of the [\$]63,000 that is raised [for the Robertson campaign] over 50% comes from a zherka owned entity”.

37. I acknowledge that I posted the statement referred to in paragraph 11 of the plaintiff's Complaint.

38. However this is a fair comment with respect to the activities of plaintiff who is clearly at least a limited purpose a public figure in connection with *inter alia* his political

activities, his alleged problems with the City of Yonkers Administration and in no way can be construed to infringe on any of his rights.

**PARAGRAPH 26 OF THE COMPLAINT**

39. Paragraph 26 of the Complaint alleges as follows:

26. On or subsequent to October 17, 2007, Defendants Edelman, Amicone, David Doe, Edmund Roe, John Poe and William Roe provided and/or caused to be provided to Bogdanos the complaint (referenced by “ETHAN EDWARDS” *supra* in paragraph “12”) embodying all of the false information that they had published on the blog and/or at Asbury Church with the objective of having Bogdanos take additional retaliatory action against Plaintiff. In that connection they sought to arrange for Bogdanos to investigate that information with a view towards: retaliating against Plaintiff for his First Amendment exercises; intimidating, deterring, and threatening Plaintiff in connection with a federal injunctive trial conducted late in 2007 before the Hon. Charles L. Brieant in The Guardian News v. Amicone, 07 Civ. 7078 (CLB) and the forthcoming trials in the other civil rights actions referenced in paragraph “9”, *supra*; injuring him in his person and property by communicating with members of the business community to the effect that Plaintiff is a

drug dealer, that he runs an escort service, that he is an Albanian mobster, that he is engaged in money laundering, that he is involved in prostitution, and otherwise engaged in the commission of felonies.

40. I never heard of defendant Bogdanos prior to service of the Complaint. I never met Bogdanos or provided or caused to be provided any information to him about plaintiff or sought to have plaintiff investigated.

41. Moreover I have never communicated with Bogdanos by phone, mail, e-mail, fax or any other way.

42. This allegation, like the allegation of the Second Paragraph 5 is made up without any foundation in facts and again reeks of fraud.

#### **NOTICE TO COUNSEL FOR PLAINTIFF**

43. At my request, my counsel wrote to counsel for plaintiff with respect to the fact that the posting referred to in the Second Paragraph 5 was not on lowhublog.com but was posted anonymously on the Yonkers Tribune Blog.

44. My counsel also forwarded to counsel for plaintiff all of the postings on lowhublog.com for the period October 3, 2007 through October 9, 2007 as well as the posting on the Yonkers Tribune Blog and the posting by the Publisher of the Yonkers Tribune and requested plaintiff to discontinue this action against me. My counsel has had no response. A copy of my counsel's correspondence is annexed hereto as **Exhibit E**. The exhibits referred to these are already annexed hereto as **Exhibits B, C and D**.

**CONCLUSION**

37. It is clear that Second Paragraph 5 of plaintiff's Complaint was not posted on lowhubblog.com; that plaintiff and his counsel know it was not; and they ignored the proof my attorney forwarded before this motion was filed.

38. I submit that there is no factual basis for plaintiff's claims against me and the complaint should be dismissed.

**WHEREFORE**, it is respectfully requested that the Court issue an Order granting Summary Judgment dismissing the Complaint and all Cross-Claims against me and granting such other and further relief as to the court deems just and proper.

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

Executed in Westchester, New York

this 11 day of <sup>Aug</sup>~~July~~, 2008

(S) MICHAEL R. EDELMAN  
MICHAEL R. EDELMAN

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CONCLUSION

37. It is clear that Second Paragraph 5 of plaintiff's Complaint was not posted on lowhuddblog.com that plaintiff and his counsel know it was not, and they ignored the proof my attorney forwarded before this motion was filed.

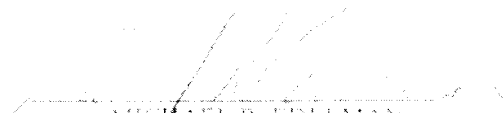
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this 11<sup>th</sup> day of July, 2008



MICHAEL R. FELDMAN

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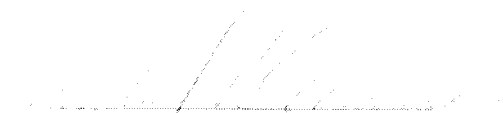
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MICHAEL R. FELDMAN



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SOUTHERN DISTRICT OF NEW YORK

08 civ 2062 (CLB)(GAY)

**SELIM ZHERKA,**

**Plaintiff,**

**-against-**

**Michael F. Bogdanos, Individually, Michael R. Edelman a/k/a "The Consultant", Individually, Phillip Amicone, Individually and in his capacity as Mayor of the City of Yonkers, New York David "Doe" a/k/a "Ethan Edwards", Individually, Edmund Roe a/k/a "MOB Buster", Individually, John Poe, Individually, William Roe, Individually, and Janet Doe, Individually,**

**Defendants.**

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**DECLARATION IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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By: William D. Gallagher (4761)

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