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(Cite as: Not Reported in N.Y.S.2d)**H**

Rombom v. Weberman
Not Reported in N.Y.S.2d
N.Y.Sup.,2002.

Not Reported in N.Y.S.2d2002 WL 1461890, 2002 N.Y.
Slip Op. 50245(U)

This opinion is uncorrected and will not be published in
the printed Official Reports.

Digest-Index Classification:

Libel and Slander--Opinions

Steven **ROMBOM** a/k/a Steven Rambam and Pallorium
Incorporated, Plaintiffs,
v.

Notice of Motion/Order to Show
Cause/Petition/Cross Motion and
Affidavits (Affirmations) An-
nexed

Opposing Affidavits
(Affirmations)

Reply Affidavits (Affirmations)
(Affirmations)

Other Papers

Upon the foregoing papers, defendants A.J. Weberman (“Weberman”), Mordechai *3 Levy (“Levy”) and the Jewish Defense Organization (“JDO”) move to set aside the jury verdict rendered March 25, 2002 finding them liable for defamation and awarding plaintiffs \$50,000 in compensatory damages and \$250,000 in punitive damages against Weberman, \$100,000 in compensatory damages and \$250,000 in punitive damages against Levy, and \$200,000 in compensatory damages against the JDO.

Plaintiffs “request a judgment granting a permanent injunction”--denominated by this court as a cross motion-

A.J. WEBERMAN, Mordechai Levy, and Jewish De-
fense Organization, Inc., Defendants.

Index No. 1378/00.

At an IAS Term, Part 14 of the Supreme Court of the
State of New York, held in and for the County of Kings,
at the Courthouse, at Civic Center, Brooklyn, New
York, on the 13th day of June, 2002

June 13, 2002.

Present: Hon. THEODORE T. JONES, Justice.

*The following papers number 1 to 8 read on this mo-
tion:*

Papers Numbered

1-2, 3

4, 5, 6

7

8

-(1) directing defendants to a) remove any and all published statements about plaintiff Rombom and his family in all existing web sites, including but not limited to rambam-steve.com, JDO.org and acidtrip.com, and all mirror cites; b) to serve a copy of the judgment granting a permanent injunction upon all persons who have copied and/or adopted and/or extracted any portions of the false statements contained in the web sites ramdam-steve.com, JDO.org, acidtrip.com and/or any mirror cites, to serve upon those persons a written statement informing them that the information is false and defamatory, and to direct those persons to remove the false statements from publication; c) to serve a copy of the

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permanent injunction upon Google, Yahoo, Lycos, Altavista, Hotbot, Northern Lights, Yahoo Groups, web.archive.org, and upon all free host mirror sites, including but not limited to tri-pod.com, geocities.com, xoom.com and all web sites that have copied and adopted the false and defamatory content of rambam-steve.com, JDO.com and/or acidtrip.com regarding plaintiff Rombom, including but not limited to UKAR.org; d) to publish an apology; e) to appear at a hearing showing proof of compliance with the permanent injunction or, in the event of noncompliance, to show *4 cause why they should not be held in contempt; and e) to appear at a supplementary proceeding examination for the purpose of disclosing their assets or, in the event of noncompliance, to show cause why they should not be held in contempt, and 2) prohibiting the future publication by defendants of any information about plaintiff Rombom and/or his family.^{FN1}

Rombom and Pallorium, the private investigation firm Rombom owns, commenced this action alleging that defendants libeled Rombom by disseminating defamatory statements about him on several internet web sites, namely that:

- Rombom was confined to a mental institution during much of his youth because he was a dangerous psychopath;
- Rombom is not Jewish because his natural mother was not Jewish;
- Meyer Kahane, founder of the Jewish Defense League (“JDL”), recruited Rombom while he was in a mental institution despite warnings from psychiatrists, and Rombom bombed several Soviet installations on behalf of the JDL;
- *5 -Rombom kidnaped people but was never charged by the police;
- Rombom “cut a deal” with the Federal Government while he was in prison to become an informant so he could become a private eye.

During the course of the trial, the parties stipulated that some of the statements were defamatory per se, namely that “pathological liar” was a character disorder, that a “psychopath” was a loathsome disease and that burglary, kidnaping and fraud were crimes. A unanimous

jury found that the statements made by defendants were defamatory and awarded damages as indicated above.

Discussion

Although defendants do not indicate the grounds upon which their motion is premised, they first argue that several of the court's evidentiary rulings were erroneous, entitling them to a new trial. The court views this branch of the motion as an application to set aside the verdict in the “interests of justice,” “which encompasses important errors in ruling on admissibility of evidence,” and addresses these arguments in seriatim (CPLR 4404; 4 Weinstein-Korn-Miller, NY Civ. Prac ¶ 4404.08; 8B Carmody-Wait 2d, NY Prac § 62:12, at 31; *Smith v. Kuhn*, 221 AD2d 620).

1. Criminal Acts/Psychiatric Facility Issue

*6 Relying primarily upon *Green v. Montgomery*, (95 NY2d 693), defendants argue that the court erred in precluding them from making reference to or introducing documentary evidence of plaintiff Rombom's (hereinafter plaintiff) criminal acts at trial via plaintiff's criminal and sealed youthful offender records, which prevented them from establishing their defense of reasonable belief. Specifically, defendants assert that by commencing this action and placing in issue elements that were related to his prior criminal actions, plaintiff waived his privilege to keep these documents confidential. Similarly, defendants argue that the court erred in precluding them from introducing evidence at trial that a school attended by plaintiff named Pleasantville is a psychiatric facility, evidence which would have purportedly permitted defendants to establish the truthfulness of their web site statements on this issue, that plaintiff's “mental health records” were “discoverable” for the same reason, and that plaintiff waived any confidentiality as to these records by commencing this action. Lastly, defendants contend that they were “entitled to disclosure of [plaintiff's] criminal records” despite their youthful offender status since their web sites, which are entitled to the same First Amendment protections as any media outlet--enjoy immunity pursuant to

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(Cite as: Not Reported in N.Y.S.2d)**Civil Rights Law § 74.**

In opposition, plaintiffs' counsel argues that plaintiff testified truthfully about the crime to which he plead guilty, and did not deny serving prison time for that youthful offense. As to both the criminal and medical records, plaintiffs' counsel asserts that defense counsel did not attempt to introduce any documents relating to plaintiff's *7 youthful offender adjudication or plaintiff's medical records at trial, which renders the cases upon which defendants rely inapplicable.

Initially, the court notes with disapproval the lack of any citation to the record in support of defendants' arguments, despite defendants' repeated unspecified reference to the record and reliance thereon to support their position. In any event, the court is not persuaded that its ruling precluding defendants from admitting records relating to plaintiff's youthful adjudication warrants a new trial.

First, procedurally, the court notes that prior to trial, defense counsel conceded that his request for plaintiff's Pleasantville records had been denied by two different justices, was denied on reargument, and that the time to appeal that denial had expired. Moreover, although defense counsel requested introduction of the indictment and the records underlying plaintiff's youthful adjudication prior to plaintiff's cross-examination, he failed to articulate the basis for their introduction, as he does on the instant motion.^{FN2} Nor did counsel articulate the arguments he now makes when he renewed his request to introduce these records (as well as the certificate of disposition) before plaintiff's direct examination of defendant Levy. As such, these arguments may not serve as a basis to set aside the verdict. In addition, in response to defense counsel's request to introduce the youthful offender documents, the court ruled that defense counsel could cross-examine plaintiff about any prior illegal or immoral acts and could cross-examine plaintiff based *8 upon the indictment if the inquiry was made in good faith, which defense counsel declined to do.

Substantively, while the court recognizes that “when a privilege is designed to protect an individual by keeping certain information or conduct secret, that protection

may be deemed waived where the individual affirmatively places the information or conduct in issue,” (*Green*, (95 NY2d at 700), it finds that *Green* is distinguishable from this case. In *Green*, the Court of Appeals held that by bringing a civil suit alleging that the police had used excessive force in apprehending him, the plaintiff, found previously to have committed acts that, if committed by an adult, constituted, *inter alia*, reckless endangerment in the first degree, had placed at issue the very conduct for which he had been adjudicated a juvenile delinquent, namely whether he had driven his car at the police officers, justifying the officers' response of shooting at him. The Court also held that the District Court had properly permitted defendants to use plaintiff's juvenile delinquency adjudication in support of their motion for summary judgment for collateral estoppel purposes. Here, in contrast, defendants sought to introduce the records underlying plaintiff's youthful adjudication, as opposed to the adjudication itself. Review of these documents reveal that they consist mainly of extraneous hearsay statements without probative value. In addition, unlike *Green*, defense counsel made no showing at trial that the substantive elements of plaintiff's youthful adjudication directly negated plaintiff's claim that defendants defamed him by posting statements on their web sites that he exploded bombs (c.f. *Bellman v. Etro U.S.A., Inc.*, NYLJ, December 7, 2001, at 18, col 4 *9 [“commonality and relatedness of the claims asserted in the two proceedings are key factors to be demonstrated in order to warrant a judicial finding that there has been a waiver of the attorney-client privilege”]).^{FN3}

Even assuming the applicability of *Green*, any error in failing to admit these records was harmless. The documents defense counsel sought to introduce do not indicate that plaintiff bombed Soviet installations, that plaintiff remained in a mental institution for much of his youth, or that the Pleasantville school plaintiff attended was a mental institution, and would therefore not have aided defendants in their defense. Moreover, plaintiff testified during direct and cross-examination that he was arrested for traveling in a car which contained two cans of black powder when he was 17 years old, that he plead guilty to this crime (transporting gunpowder), was

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sentenced as a juvenile, went to prison for two years, and that the records were expunged and sealed. Thus, the jury heard evidence that plaintiff committed an act which was related or similar to the type of acts defendants attributed to plaintiff on their web sites.

The court also rejects defendants' claim based upon [Civil Rights Law § 74](#) since defendants' statement on the web sites that plaintiff was in a mental institution for much of his youth does not constitute a fair and accurate reporting of a judicial proceeding. Moreover, defendants' reliance upon recent newspaper articles to show that Pleasantville *10 is a psychiatric facility is misplaced as defense counsel never sought to introduce these articles at trial. Further, defense counsel never sought to establish at trial, as he does now, that plaintiff has given contradictory statements about Pleasantville.

Based upon the foregoing, the court finds that its ruling regarding the admission of confidential records pertaining to plaintiff's youthful adjudication does not warrant a new trial.

2. Plaintiff's California Deposition

Defense counsel argues that the court erred in precluding him from offering the transcript of plaintiff's deposition in a defamation action plaintiff commenced in California against the JDO on the grounds that the deposition was not signed. In this regard, defense counsel contends that under New York and California law, the deposition transcript is deemed signed if the deponent failed to sign it within thirty days of the time the transcript was made available to him or her. Defense counsel asserts that the transcript was essential for gauging plaintiff's credibility since plaintiff denied having heard of Pleasantville therein, despite his testimony at trial that he attended a school of that name.

The court rejects this argument. At trial, plaintiffs' counsel advised the court that defense counsel sought to use the deposition transcript, but that it was inadmissible because it did not contain a signature page or a certified page from the court reporter, was never served upon plaintiff, and that the case was settled before the

deposition was exchanged and signed. Defense counsel did not refute this representation, offer any *11 evidence to the contrary, or argue that the deposition was deemed signed under New York or California law. As such, defense counsel's argument that the transcript was deemed signed and should have been admitted is without merit ([CPLR 3116\[a\]](#)). The court notes that in their reply, defendants do not dispute the assertions of plaintiffs' counsel that the transcript did not contain a signature page, a court reporter certification or signature, or that it was incomplete. Finally, defense counsel did not object when the court advised him that he could use the statements made by plaintiff in the deposition during cross-examination, but not for impeachment purposes because the deposition was unsworn.

3. Newspaper Articles

Defense counsel argues that the court erred in precluding him from introducing newspaper articles to establish: (1) that plaintiff was a public figure and (2) the truthfulness of defendants' statements, on the grounds that the articles constituted hearsay. In this regard, counsel contends that the court excluded newspaper articles reporting plaintiff's arrest for acts of violence he committed with the Jewish Defense League in the 1970's and a 1983 New York Daily News article which described the allegations that he kidnaped and beat up two teenagers, but admitted a Village Voice article, without distinguishing between the article which was admitted and those which were precluded.

In opposition, plaintiffs' counsel responds that defense counsel stipulated that plaintiff was a public figure at the commencement of trial; that the jury instructions and *12 the verdict sheet included a charge for a public figure; and that defense counsel did not identify these above-referenced articles at trial or seek to admit them.

Defense counsel again makes no citation to the record to support his arguments. In any event, review of the trial transcript reveals that they are without merit. In this regard, after plaintiff's direct examination, defense counsel asked the court if he could admit a Village Voice article which contained phrases and some of the

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material that appeared on defendants' web sites. Counsel said that the article would mitigate damages because it would show that information written by defendants on their web sites was available elsewhere. The court denied the application since the article's author was not present, which would have precluded defense counsel from establishing the source of the article's information. However, the court indicated that counsel could refer to the article on his direct case to minimize punitive damages or the effect of malice, since counsel could not make that showing through plaintiff. Counsel indicated that he accepted the court's ruling.

After plaintiff rested his case, defense counsel objected to the court's exclusion of the Village Voice article, except for one statement in the article which the court permitted counsel to quote.^{FN4} The court denied the application, ruling that the remainder of the article was hearsay and self-serving, since Levy was quoted extensively therein.

At the end of defendants' case, defense counsel advised the court that he wanted to *13 enter "some exhibits on the record," including a series of newspaper articles to establish plaintiff's reputation within the community "as a result of [the articles] having been disseminated." Of the proposed articles, the court marked as exhibits only those two which made reference to plaintiff's youthful offender guilty plea and sentence, respectively, and did not mark the remainder of the articles, which counsel conceded made no reference to plaintiff. When the court inquired as to how the two articles related to the trial, defense counsel reiterated that the articles "were disseminated so a wide public would know this, so it would have to go to [plaintiff's] reputation in the community how he has testified here today [sic]." The court responded that the gravamen of plaintiff's complaint was not that defendants published statements that he was arrested, but that defendants defamed him in his profession. Defense counsel said he understood and the court made the two articles a part of the record. Finally, defense counsel sought to "enter" into evidence an article indicating that plaintiff trained a man who was known to have shot Arabs in a holy place. In response to the court's inquiry, defense counsel said that there

was nothing in the web site that related to plaintiff training anybody. The court marked the article as a trial exhibit as it was "relevant to these proceedings on its face."

As indicated, the court finds that it did not err in making the above rulings. As to defense counsel's claim that he was deprived of establishing that plaintiff was a public figure, defense counsel made that stipulation at trial and received permission from the court to make this argument in his opening statement. Moreover, the jury instructions *14 included a public figure charge, which was incorporated into the verdict sheet, and the court played a short video-tape in which plaintiff was interviewed on the television program "60-Minutes," which, along with defense counsel's description of newspaper articles about plaintiff during defense counsel's summation, more than adequately reflected plaintiff's standing in the community. Thus, this branch of defense counsel's argument is without merit.

Nor is there merit to defense counsel's claim that it was error to preclude him from introducing newspaper articles at trial to establish the truthfulness of defendants' web site statements. In this regard, defendants argue that the court admitted into evidence the Village Voice article and made no distinction between this article and those which were excluded. Contrary to defendants' suggestion, the court explained its reasoning for admitting part of the Village Voice article, namely that it was relevant to the statements defendants posted on their web sites. In addition, since the article was based primarily upon Levy's own statements, Levy's testimony about the article would have been entirely self-serving. Counsel's reliance upon *McInerney v. New York Work-Telegram Corp.* (162 Misc 341, rev'd 251 AD 741) in support of his argument that newspaper articles are admissible at trial to establish libel is misplaced. First, defendants herein sought admission of the articles in mitigation of their damages. Second, the court in *McInerney* merely denied that branch of a defendant's motion to strike two of the plaintiff's exhibits which referred to a newspaper article which served as the basis of the plaintiff's libel claim on the ground that the full meaning of the article in issue could not be conveyed *15

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without reference to the exhibits.

As to defense counsel's request at the end of defendants' case, defense counsel merely asked the court to make the two remaining newspaper articles part of the record, to which the court complied.^{FNS} Notably, neither of these articles was the 1983 Daily News article defendants now claim should have been admitted. In addition, one of the articles did not indicate its source, namely the newspaper or publication from which it came. In any event, although the court recognizes that a prior publication of a third person may be admitted for the purposes of admitting punitive damages (44 NY Jur 2d, [Defamation and Privacy, § 230](#)), any error in precluding the one remaining newspaper article was harmless since plaintiff had already testified about his youthful adjudication and the underlying plea and sentence, about which that article reported.

The court also does not find that it erred in denying defense counsel's request to admit an article about plaintiff training a shooter since defense counsel conceded that there were no statements to that effect posted on defendants' web sites ([Crane v. New York World Tel. Corp.](#), 308 NY 470, 478, citing [Cudlip v. New York Evening Journal Pub. Co.](#), 180 NY 85, 87 [“while defendant may offer proof of plaintiff's bad general reputation prior to the publication, to reduce the value of the injured interest, he may not plead or prove for that purpose ‘specific acts, or instances, of plaintiff's misconduct’ having no connection with the charge of the libel. Such specific misconduct ... may be *16 admitted only if it also tends, but fails, to prove the truth of the libel's charge.”]).

4. Authentication of E-mails

Defense counsel argues that the court erred in allowing into evidence e-mails allegedly sent to plaintiff since they were unsworn and unauthenticated. This argument has been improperly raised for the first time in defendants' reply. In any event, since defense counsel did not object to admission of the e-mails sent to plaintiff, this argument may not serve as the basis for his motion for a new trial ([Bennett v. Nazzaro](#), 144 Misc 450,

237 AD 866 [“The failure to object to incompetent evidence has been construed as a waiver, and, when, as here, the evidence admitted is competent, the failure to object is fatal”]). Moreover, since plaintiff introduced the e-mails to establish their effect upon plaintiff, as opposed to the truth of their content, the e-mails did not constitute inadmissible hearsay ([Arch-Bilt Corp. v. Interboro Mut. Indem. Ins. Co.](#), 119 AD2d 713). Finally, plaintiff testified that the e-mails were a compilation of the many he had received as a result of defendants' directions on their web sites; that he had received them and printed them out on his office computer; and that they were true and accurate copies of what he had received and printed. In sum, the court does not find that it erred in admitting the e-mails into evidence.

5. Damages

A. Compensatory

Defense counsel first argues that the jury erred in awarding compensatory damages based solely upon plaintiff's uncorroborated testimony of injury.

*17 The court rejects this argument. “It is settled that the amount of damages to be awarded in a defamation action is peculiarly within the jury's province and that the exercise of the discretion of a trial court over damages awards should be exercised sparingly” ([Calhoun v. Cooper](#), 206 AD2d 497; [Coutrier v. Haraden Motorcar Corp.](#), 237 AD2d 774). Moreover, “[i]n cases involving defamation per se, the law presumes that damages will result, and special damages need not be alleged or proven” ([Gatz v. Otis Ford, Inc.](#), 274 AD2d 449, 450). Here, despite the presumption of damages, the record reveals that plaintiff established that he suffered compensable financial and emotional injury and monetary loss in his professional capacity as a result of the statements posted about him and his parents on defendants' web sites.

In this regard, plaintiff testified that he was humiliated and frightened by the voluminous number of epithet-ridden e-mails he received as a result of defendants' statements, which threatened his life in graphic ways, the

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lives of his elderly parents-whose names and address were also published--and threatened to ransack and burglarize his home. Plaintiff further testified that he was upset about the statements made on the web sites about his parents, namely that his mother was a "prostitute" and that his father was a "mafioso," and that the web site statements negatively affected his relationships with his friends and destroyed a personal relationship he had with one particular woman. Notably, the woman to whom plaintiff referred testified that while she had originally contemplated a future with plaintiff, she was "horrified" when she saw defendants' web site statements about plaintiff, was frightened for herself and her young child, no longer *18 permitted her child to see plaintiff, and became more cautious and distanced herself emotionally from plaintiff. Plaintiff also testified that as a result of the e-mails, he altered the manner in which he had lived, namely, by living in an apartment without listing his name on the lease or on the telephone to prevent others from locating him, checking his car before entering it, and refraining from meeting anonymous clients unless he was able to verify their references. He also testified that he had tried to convince his parents to move from their home.

In addition, plaintiff testified that the statements on the web sites were meant to discourage people from hiring him as a private investigator, that is, to "run him out of business," for example, those asking whether anyone would hire "a private investigator whose partner is a candidate of the peace and freedom party;"? others describing him as a "psychopath" and "criminal;" those stating, in effect, that he fraudulently investigated missing children without result merely to run up large fees; and that "anyone who hires this gun-toting nut is crazy." To further damage him professionally, plaintiff testified that defendants' structured their web sites so that anyone researching him would be linked to defendants' web sites, which not only contained the defamatory material, but provided instructions to visitors to "e-mail bomb" plaintiff's business web site, which filled plaintiff's e-mail to capacity, cutting off his primary method of communication with his clients. Notably, defendant Weberman conceded directing web site visitors to plaintiff's web site in order to prevent people from

hiring plaintiff.

In addition, plaintiff testified that most people hired him from the internet, that he *19 had been losing business for three years because of the web sites, and that he had previously received \$100,000-\$200,000 per year in gross business from the internet from clients who told him that they could not hire him while the web site was up, including a client in the insurance industry which provided him with \$30,000 to \$40,000 of business; Ron Sofer, who provided him with \$200,000 in billings alone; and former client Prudential Insurance Company. Finally, plaintiff testified that he had incurred \$95,000 in attorneys' fees in his attempt to have the statements removed from the web sites.

Plaintiff's reliance upon *Angel v. Union Free School District* (171 AD2d 170), wherein the court reduced an award of compensatory damages on the grounds that the plaintiff therein had failed to present evidence other than his own to establish emotional injury, is misplaced. The jury's award was not dependent upon corroboration of plaintiff's testimony. In any event, although evidence of plaintiff's monetary losses were based solely upon his own testimony, the testimony here was extensive and more than sufficient, in light of all the evidence presented, to find that he suffered compensable damages in the amount awarded. In view of the foregoing, the award of compensatory damages was not "error."

B. Punitive Damages

Defense counsel argues that the court "abdicated [its] duty [of keeping punitive damages within reasonable bounds] by allowing the [j]ury to impose punitive damages ... in the hundreds of thousands of dollars, and with no inquiry into [d]efendant's ability to pay." The court rejects this argument.

*20 First, while it has been held that "a jury is entitled to consider [a defendant's financial] condition after an award has been made for compensatory damages" (*Micari v. Mann*, 126 Misc 2d 422, citing *inter alia* *Rupert v. Sellers*, 48 AD2d 265), defense counsel did not request that the jury make such inquiry, request that there

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be a special verdict on the question of liability, or take exception to the court's charge on punitive damages, and thus may not raise this argument as a basis for a new trial (*cf. Suffolk Sports Ctr. Inc. v. Belli Constr. Corp.*, 241 AD2d 546; *Suozzi v. Parente*, 161 AD2d 232; *Keen v. Keen*, 113 AD2d 964, 966, *app denied* 69 NY2d 609). In any event, review of the charge as a whole reveals that the jury was properly instructed on the assessment of punitive damages, namely that it could not award punitive damages unless it found by "clear and convincing evidence" that defendants' published the statements knowing they were false or that they did so with reckless disregard for the statements' truth or falsity.

Second, the court does not find that the award was excessive. "Punitive damages may be asserted in a defamation action and constitutional free speech protections are not a bar, provided that 'actual malice' is proven," as it was here (*Nellis v. Miller*, 101 AD2d 1002, 1003, *app dismissed* 63 NY2d 952). It is the court's duty " 'to keep the verdict for punitive damages within reasonable bounds considering the purpose to be achieved as well as the *mala fides* of the defendant in the particular case' " *quoting Faulk v. Aware, Inc.*, 19 AD2d 464, 470-471, *aff'd* 14 NY2d 899). In this regard, "punitive damages are awarded as a punishment to the defendant and as a warning and example to deter the defendant and others from committing like offenses in the future" (*21 *Dalbec v. Gentleman's Companion, Inc.*, 828 F2d 921, 928). "[A]lthough punitive damages may be awarded on proof of actual malice, the party who made the defamatory statement and/or publication may prove good faith and the absence of malice by establishing that he or she had a reasonable belief that his or her statements and/or publication was true" (*Gatz v. Otis Ford, Inc.*, 274 AD2d 449, 450). A finding that defendants acted with the requisite malice "requires a showing of personal spite or ill will, or culpable recklessness or negligence" (*Barrett v. Combined Life Ins. Co.*, 88 AD2d 630). However, "[w]hether to award punitive damages in a particular case, as well as the amount of such damages, if any, are primarily questions which reside in the sound discretion of the original trier of the facts, in this case the jury, and such an award is not

lightly to be disturbed" (*Nardelli v. Stamberg*, 44 NY2d 500, 503).

Here, there was ample evidence of defendants' personal spite or ill will toward plaintiff to support to jury's award of punitive damages. The three web sites at issue, one tellingly entitled "rambam-steve.com," are rife with statements found by the jury to be defamatory, including those regarding: (1) plaintiff's birth, childhood, religious background, and psychological make-up (plaintiff was adopted shortly after his birth, plaintiff tried to stab the woman who adopted him, plaintiff was confined to a mental institution from age 7 to 16, plaintiff is not a Jew, plaintiff grew up violent, mentally ill, and turned into a "Ted Bundy" psychopath); (2) his alleged criminal history (plaintiff bombed several Soviet Installations, "suckered" Hasidim into a credit card fraud, cut a deal with the Feds to be an informant so he could become a private eye, lectured on how *22 to commit fraud, committed burglary, is armed and dangerous, and kidnaped people without being charged); and 3) his career (plaintiff worked for the Nazi's, whom he secretly admires, plaintiff's partner is a candidate for a communist party, "anyone who hires [plaintiff] is a "a gun-totting crazy").

In addition, Weberman testified that he created all three web sites as a "public service" to warn the Jewish community and the cyber community at large about plaintiff's previous criminal history so they would not be deceived by him; that he published an article in the Jerusalem Post to show the negative side of plaintiff, to warn people in Israel that plaintiff was not a Jew and not to trust him, and that he created other web sites called mirror web sites upon which he placed these statements. Based upon this testimony, the jury could have reasonably concluded that the statements made by Weberman on the web sites in the name of religious commitment or zeal in fact constituted culpable recklessness, which evidenced actual malice.

Similarly, Levy testified that he had been indicted for the attempted murder of plaintiff; testimony from which the jury could have inferred that Levy harbored spite against plaintiff which served as his motivation to defame him.^{FN6} He also testified that he was affiliated

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with Weberman, who was a member of the JDO; that Weberman designed one of the subject web sites; that he was a member, director and founder of the JDO; and that he wrote five or six lines of material for Weberman to publish. Notably, the jury was *23 entitled to reject Levy's credibility in light of his testimony that he gave false information to the police when arrested. Further, there was little evidence from which the jury could infer that defendants had a reasonable belief that the statements they published were true. In this regard, Weberman testified that he did not have any documents to support many of the statements he published on the web sites about plaintiff, for example, that plaintiff had been charged with kidnaping and that plaintiff's mother was a prostitute. While he testified on cross-examination that he believed the statement he made about plaintiff's mother referred to plaintiff's birth mother, not plaintiff's "foster mother," the jury, having seen and heard him testify, was entitled to reject this explanation. In addition, Weberman testified that he based some of the statements regarding plaintiff's background and mental instability on his belief that plaintiff had informed on him, which ultimately led to his conviction for money laundering and marijuana dealing; that he based his statement about plaintiff's adoption upon Levy's statement that he saw plaintiff's birth certificate which did not contain the names of plaintiff's parents; and that he based his statement that plaintiff hated Jews and would go to any length to destroy them on the grounds that plaintiff hated him, and upon Levy's statements.

It is true that Weberman testified that he saw an article which referred to plaintiff as "strapping," and "gun-toting"; that plaintiff showed him a gun once; that plaintiff collected money from him for the Jewish activist alliance; that he received much of his information from Levy, whom he considered a trustworthy source because he gave the *24 government "good information" and government law enforcement "took him seriously"; and that he "checked out" the information he put in the web site before posting it. Similarly, Levy testified that plaintiff told him he was involved in the Jewish armed resistance; that the group operated in cells when they were going to do a bombing; that plaintiff explained how cells were operated; that plaintiff admit-

ted he was a terrorist; and that he never caused anything false to be published on the subject web sites. However, inasmuch as defendants based their belief in the statements they published largely upon the unverifiable statements made by each other and by plaintiff, the jury was entitled to reject this testimony, particularly in light of the totality of their testimony evidencing their personal animosity and ill-will toward plaintiff.

Finally, while the court recognizes that punitive damages awarded in other defamation actions have, with some exceptions, been lower than those awarded here,^{FN7} *25 those awards involved circumstances in which the dissemination of the defamatory statements were, for the most part, limited in their reach. Here, in contrast, the defamatory statements are published on internet web sites which are accessible to millions of people, all over the world, on a daily basis (*Stratton Oakmont, Inc. v. Prodigy Services Co.*, Supreme Court, Nassau County, Lexis 712 [December 15, 1995]). In this regard, Weberman testified that acidtrip.com, one of the subject web sites, received ten thousand "unique visits" a day in 1999 and 2000, namely visits from ten thousand different people using different computers, and that the ramdam-steve.com web site was "widely disseminated." Although Weberman also testified that the "Rombom" information did not receive nearly as many visits due to lack of interest, the jury was entitled to reject that testimony as self-serving.

In sum, the court does not find that the award was excessive, or that it should be set aside because the jury failed to consider defendants' financial condition prior to making its determination.

Cross Motion

As indicated above, plaintiffs cross-move, *inter alia*, for a permanent injunction: 1) prohibiting defendants from publishing future information about plaintiff or his family, and 2) directing defendants (a) to remove all information published about plaintiff and his *26 family from all web sites, including defendants' web sites and all mirror cites; (b) to serve a copy of the injunction upon all persons who copied the false statements, to

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serve upon those persons a written statement informing them that the statements are false, and to direct them to remove the statements; (c) to serve a copy of the injunction upon various web sites and free host mirror sites, and all web sites that have copied the false statements; (d) to publish a letter of apology; and (e) to appear at separate hearings to show compliance with the injunction and disclosure of assets.^{FN8}

Counsel maintains that an injunction is warranted since plaintiffs prevailed upon their claim that defendants intentionally made and published false statements about them with malice; that absent an injunction, plaintiffs will continue to lose business and suffer irreparable injury to their personal and business reputations; and that the equities balance in plaintiffs' favor since defendants would lose nothing if an injunction were granted, as opposed to plaintiffs' suffering harm to their reputations absent the injunction.

Defense counsel opposes, arguing that a permanent injunction compelling defendants to close down their web sites constitutes an impermissible prior restraint on speech; that but for the web site statements regarding plaintiff's institutionalization as a youth, his participation in violent crimes on behalf of the JDL, and the kidnappings for which he was not charged, the remaining web site statements constitute non-actionable opinion protected by the First Amendment; that plaintiffs are not entitled to an apology; *27 and that the relief requested is overly broad and burdensome.

Plaintiffs have made the requisite showing for a permanent injunction. In this regard, plaintiffs have obtained a judgment finding that the statements published by defendants on their web sites were libelous, establishing the merits of their claim (*State of New York v. Fine*, 72 NY2d 967, 968-969). Moreover, the continued presence of the defamatory statements on defendants' web sites will not only render much of the judgment academic, but will further injure plaintiff's personal and professional reputation and cause plaintiffs to lose potential clients, for which there will be no adequate remedy at law (*Bingham v. Struve*, 184 AD2d 85, 90). In addition, the degree of harm plaintiffs will suffer if the statements are permitted to remain on the web sites out-

weighs the hardship defendants will suffer by imposition of the injunction.

Despite this showing, the court finds that the relief requested is overly broad. In this regard, plaintiffs have not produced any authority establishing that they are entitled to an apology. Nor have they demonstrated their entitlement to supplementary compliance and disclosure proceedings. Further, those branches of the proposed injunction directing defendants to serve a copy of the injunction upon all persons who have copied the defamatory statements about plaintiff in defendants' web sites and/or mirror sites, to serve upon those persons a written statement informing them that the statements are false, and directing them to remove the statements, as well as that branch of the proposed injunction directing defendants to serve a copy of the injunction upon various web sites and free host mirror sites, and all web sites that have copied the false statements from *28 defendants' web sites, is overly burdensome.

On the other hand, the court grants the permanent injunction to the extent of directing defendants to remove any and all published statements about plaintiffs and plaintiff Rombom's family from their web sites (rambam-steve.com, JDO.org and acidtrip.com) found by the jury to have been libelous, and to the extent possible, from all mirror sites upon which defendants caused those statements to be published, and prohibiting defendants from publishing any statements about plaintiffs and plaintiff Rombom's family found by the jury to have been libelous.

While the granting of a mandatory injunction compelling a party to affirmatively act (i.e. directing removal of statements from the web sites) has been labeled an extraordinary and drastic remedy (*Times Square Stores Corp. v. Bernice Realty Co.*, 107 AD2d 677, 682), "in special cases where it is justified, [it] may be issued" particularly "where the invasion of the plaintiff's rights is deliberate and intentional, as well as where the defendant is engaging in unlawful conduct which is capable of repetition" (67A NY Jur 2d, Mandatory Injunctions, § 44). In this regard, "an injunction will lie to restrain libel when the publication is made as part and parcel of a course of conduct deliberately carried on to

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further a fraudulent or unlawful purpose” (*Trojan Elec. & Mach. Co., Inc. v. Heusinger*, 162 AD2d 859, 860; see also *Ansonia Assocs. Ltd. Pshp. v. Ansonia Tenants' Coalition, Inc.*, 253 AD2d 706, 707). Here, the statements made by defendants were calculated, in large part, to injure plaintiff's business, justifying the issuance of a mandatory injunction.

***29** Further, defendants' argument that an injunction compelling them to close down their web sites constitutes an impermissible prior restraint is misplaced. First, neither the proposed injunction nor the injunction the court has granted includes this relief. Second, prior restraint involves governmental action which serves to prevent expression from occurring before there has been an adjudication on the merits. Here, there has already been an adjudication finding that the statements made by defendants about plaintiffs are defamatory.

The court also rejects defendants' argument that the majority of the statements made about plaintiff purportedly constitute non-actionable opinion (plaintiff is an “informant,” a “secret admirer of the Nazi's”; is not Jewish, plaintiff's father was a “mafioso”) and rhetorical hyperbole (plaintiff is a “pathological liar,” “anyone who hires this gun-toting nut is crazy”); should not have been presented to the jury; and therefore may not serve as a basis for a permanent injunction. Defense counsel never alerted the court to this affirmative defense, nor pursued it in any way during trial, and thus did not give the court the opportunity to address the matter in a timely fashion (*cf. Arizmendi v. New York*, 56 NY2d 753, 754 [claim that defendants were deprived of six-person jury when polling revealed that one of the six jurors neither deliberated nor voted on issue of damages because he was sole dissenter waived since defendants first raised claim in post trial motion to set aside the verdict and failed to raise objection before the jury was discharged, depriving court of opportunity to correct claimed error]). In this regard, the record reveals that the issue was raised only after the verdict had been rendered. As such, ***30** it cannot be said that the court erred in submitting the purportedly non-actionable web site statements to the jury or in denying the affirmative defense. To the extent that defendants' move to reargue

the court's decision denying their affirmative defense, it is also denied. In sum, that branch of the cross motion for a permanent injunction is granted to the extent indicated.

Plaintiffs also cross-move for pre-verdict interest on their award of damages pursuant to CPLR 5001.^{FN9} This branch of the cross motion is denied. There is no allowance of interest from the time of injury to the date of verdict in a libel action (*Wilson v. City of Troy*, 135 NY 96, 105; *Rupert v. Sellers*, 65 AD2d 473, 489, 490, *aff'd* 50 NY2d 881, *cert denied* 449 US 901; *Wachs v. Winter*, 569 F Supp 1438 [E D N Y 1983]; *American Metal Finishers, Inc. v. Gale*, U.S. District Court, Lexis 13226 [S D N Y 1981]; 10 Weinstein-Korn-Miller, NY Civ Prac § 5001.07 [“CPLR 5001 does not authorize the award of interest from the time of injury until the time of verdict, report or decision in a personal injury action. This category includes not only physical injuries, but also violations of personal rights, such as libel.”]; see also *Brandt Corp. v. Warren Automatic Controls Corp.*, 37 AD2d 563 [interest on loss of profits can only be awarded as of the day of the verdict]).

***31** Further, “[s]ince punitive damages are intended only to impose punishment upon a defendant, interest on such damages for the period before verdict, report or decision is unnecessary to assure full compensation to an injured party” (10 Weinstein-Korn-Miller, NY Civ Prac § 5001.08; CPLR 5001; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 5001:2, at 357-358; *American Metal Finishers, Inc. v. Gale*, U.S. District Court, Lexis 13226 [S.D.N.Y. 1981]).

Lastly, plaintiffs cross-move to amend the caption to include defendant Levy's aliases. In this regard, counsel submits a page of Levy's criminal history indicating two of Levy's aliases (“Mordechai Zev Levy” and “Zev Levine”), and Levy testified at trial that he had a longer Hebrew name which was “Mordechai Benzeev Levey and/or Levy.”

The court grants this branch of the cross motion since Levy will not be prejudiced by this amendment, which will merely serve to aid enforcement of the judgment

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CPLR 3025[c] [“the court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms as may be just”]). Notably, defense counsel does not dispute Levy's use of these aliases, nor does he claim any prejudice with respect to the amendment. As such, the court directs the clerk of the court to make an entry on the docket of the judgment in this action amending the caption to state Levy's full name and aliases, to wit: Mordechai Levy a/k/a Mordechai Zev Levy, Zev M. Levine, ^{FN10} and Mordechai Benzeev Levey and/or Levy (CPLR 5019[b]).

*32 In sum, defendants' motion to set aside the verdict is denied. Plaintiffs' “cross motion” for a permanent injunction is granted to the extent of directing defendants to remove any and all published statements about plaintiffs and plaintiff Rombom's family from their web sites (rambam-steve.com, JDO.org and acidtrip.com) found by the jury to have been libelous, and to the extent possible, from all mirror cites upon which defendants caused those statements to be published, and prohibiting defendants from publishing any statements about plaintiffs and plaintiff Rombom's family found by the jury to have been libelous, and directing the clerk of the court to make an entry on the docket of the judgment in this action amending the caption to state Levy's full name and aliases, to wit: Mordechai Levy a/k/a Mordechai Zev Levy, Zev M. Levine, and Mordechai Benzeev Levey and/or Levy.

This constitutes the decision and order of this court.

FN1. By decision of this court dated April 11, 2001, defendants' application to adjourn all motions was granted based on defendants' agreement to “immediately take down all web sites[,] exclusive of mirror sites not in their control[,] which refer to plaintiffs.”

FN2. Nor did defense counsel at any time during trial request introduction of plaintiff's “criminal records.” In any event, there was no evidence at trial that any such records existed.

FN3. Defendants' reliance upon *Matter of Goo-*

hya v. Walsh-Tozer (728 NYS2d 373) is also distinguishable from this case, not only because it was an administrative proceeding, but because it involved circumstances in which the petitioner was not permitted to use the confidential medical records of patients who testified against him to challenge their credibility, a circumstance not presented here.

FN4. The court permitted defense counsel to quote that one statement, which defendants paraphrased on their web site, since it was relevant to the question of defendants' recklessness or lack of malice in reproducing the statement.

FN5. Defense counsel withdrew his request as to four of the articles because they did not refer to plaintiff.

FN6. Levy was acquitted of that crime, but served one to four years in prison for his conviction for reckless assault for shooting an innocent victim during that incident.

FN7.K. *Capolino Constr. Corp. v. White Plains Hous. Auth.*, 275 AD2d 347, *app denied* 95 NY2d 769 [in defamation action based upon statements that plaintiff construction company and owner were bankrupt and in default of contract obligations, and that owner had AIDS, new trial on punitive damages ordered unless parties stipulated to reduce them from \$250,000 for all four defendants to \$37,500, \$37,500, \$25,000, and \$25,000, respectively]; *Wolosin v. Campo*, 256 AD2d 332 [on counterclaim for defamation, where plaintiff disseminated a packet of libelous written materials to third parties, defendant awarded total of \$120,000 for compensatory and punitive damages]; *Angel v. Levittown Union Free Sch. Dist. No. 5*, 171 AD2d 770 [in action for, *inter alia*, libel and slander, new trial on damages ordered on libel and slander causes of action unless parties agreed to reduce compensatory and punitive damages from \$50,000 and \$15,000,

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respectively to \$5,000 and \$15,000]; *Nellis v. Miller*, 101 AD2d 1002, app dismissed 63 NY2d 952 [in libel action based upon issuance of news release regarding dismissal of plaintiff from his employment, new trial on damages ordered unless parties stipulated to reduce compensatory damages from \$150,000 to \$5000 and punitive damages from \$100,000 to \$15,000]; *Rossignol v. Silvernail*, 185 AD2d 497, app denied 80 NY2d 760 [new trial in damages granted unless parties agreed to reduce award of \$800,000 in compensatory damages and \$75,000 in punitive damages for slanderous statements that plaintiff sexually abused defendant's child to \$75,000 and \$15,000, respectively]; *but see O'Neil v. Peekskill Faculty Assn.*, 156 AD2d 514, app dismissed 76 NY2d 935 [in libel action regarding press release falsely accusing plaintiff of uttering racial slur during contract negotiations, new trial ordered unless parties agreed to reduce compensatory damages from \$200,000 to \$130,000 and punitive damages from \$600,000 to \$300,000].

FN8. As noted, by decision of this court dated April 11, 2001, defendants' application to adjourn all motions was granted based on defendants' agreement to "immediately take down all web sites[,] exclusive of mirror sites not in their control[,] which refer to plaintiffs."

FN9. CPLR 5001(a) provides that "[i]nterest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an action or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property, except that in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court's discretion."

FN10. At trial, Levy testified that when he was arrested, he falsely represented himself as "Zev M. Levine."

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