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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: [redacted] PERLMAN Justice

PART 12

Pu, R

INDEX NO. 100015/08

- v -

MOTION DATE

Burns, F

MOTION SEQ. NO. 01

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits 1 Cross Motion	2+3
Replying Affidavits Opp to Cross Motion; Reply to Opp to Cross Motion	4; 5&6

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

FILED

AUG 11 2009

COUNTY CLERK'S OFFICE

MOTION AND CROSS MOTION(S) ARE DECIDED IN ACCORDANCE WITH ANNEXED DECISION AND ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 8/10/09

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12
----------X
RICHARD PU,

Plaintiff,

against

FRANCESCO BRUNI and EVELYN BRUNI,
Defendants.
----------X

Index Number 100015/2008
Mot. Seq. No. 001

DECISION AND ORDER

For the Plaintiff:
Richard Pu, *pro se*
120 E 90th St., # 10C
New York NY 10118

For the Defendant:
Salamon, Gruber, Blaymore & Strenger, P.C.
By: Anthony F. Prisco, Esq.
97 Powerhouse Rd., Suite 102
Roslyn Heights NY 11577

Papers considered in review of this motion for summary judgment and cross-motion to compel, protect, and amend

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Notice of Cross-Motion and Opposing Brief	2, 3
Reply Affirmation in Support and Opposition	4
Reply Brief & Appendix	5, 6

PAUL G. FEINMAN, J.:

Defendants move for summary judgment and dismissal of the complaint pursuant to CPLR 3212 and request attorneys' fees. Plaintiff cross-moves to compel discovery, for a protective order, to amend his complaint to add two defendants, and for attorney's fees. For the reasons set forth below, defendants' motion is granted in part and denied in part. Plaintiff's motion is denied in its entirety.

Background

The litigants are residents in a condominium building. Defendants are the upstairs

neighbors of plaintiff, an attorney[1] who represents himself in this litigation. In about September 2006, plaintiff commenced an action against defendants seeking to compel them to comply with the condominium by-law rule requiring 80% of their apartment floors to be covered, and alleging diminution in the value of his apartment because of the noise.[2] He later amended his complaint to add two claims and additional allegations concerning events occurring after the commencement of the litigation (Cross-Mot. Appendix pp. 4-10 [amended complaint, April 10, 2007]). The amended complaint alleges that upon being notified by the condominium board that their apartment would be inspected in response to plaintiff's complaint, defendants put down temporary carpet tiles "to leave a false impression of compliance with the Carpeting Rule," and then removed the carpet tiles after the inspection; plaintiff believes this is a fact based both on the condominium's report issued on February 6, 2007, indicating that defendants' floors were partly covered with temporary carpet tiles,[3] and based on the "pattern of noises heard by Pu" which "reflects that little, if any, of the Brunis' apartment is carpeted." (amended complaint, ¶ 12 [a-b]). The two new causes of action allege damages based on defendants' breach of their agreement with the condominium to abide by the condominium rules, and damages based on

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[1] Mr. Pu is currently suspended from practice in the New York State courts.

[2] *Richard Pu v Francesco Bruni and Evelyn Bruni*, Index No. 113247/2006. The causes of action and claims that allege pain and mental suffering, including intentional infliction of emotional distress, were subsequently withdrawn (see, *Pu v Bruni*, Index 113247,2006, Dec. & Order, 9/2/08, unnumbered p. 2 [Stallman, J.]).

[3] A copy of the report is contained in the Cross-Motion. The report states the "[f]loor area covered is approximately 604 square feet or 86% of the total floor area" and that the covering is "carpet squares of approximately 2" square with a thickness of approximately 1/4" not permanently installed," and in addition, at three areas in the bedroom, one in front of the kitchen, and bathroom, and one in the living room, there are area rugs in different sizes, some of which cover the floor and some of which are on top of the carpet squares (Cross-Mot. stamped p. 3).

defendants' breach of Real Property Law sec. 339-j.

Plaintiff commenced this second litigation on January 2, 2008 by filing a summons and complaint (Mot. Ex. B [hereinafter Complaint]).[4] Issue was joined on January 25, 2008 (Mot. Ex. D, Answer with Affirmative Defenses). The Complaint alleges that defendants, along with their attorney Craig Gruber, Esq., "caused Pu to be filmed by a [Fox] television program Shame, Shame Shame . . . in an attempt to humiliate him." (Complaint ¶ 8). The Complaint describes the television program and its host, the reporter Arnold Diaz, and alleges that "at the request of defendants," Pu was filmed on December 5, 2007, by the television crew who waited outside the building "much of the day," having been given "information [by defendants] about comings and goings to minimize their wait" (Complaint ¶ 13). When plaintiff left his apartment to buy a newspaper, he was confronted by the television crew and Diaz who asked him "questions seeking to show that Pu's action against the Brunis lacked merit, and shoved documents in Pu's face" (Complaint ¶14). According to the Complaint, defendants and their lawyers transmitted court papers to and discussed the litigation with the television program staff but "fraudulently omitted" to provide the program with a court decision dated October 18, 2007 that would have shown that the court found merit in plaintiff's action; defendants also permitted the program's producer to inspect defendants' apartment (Complaint ¶ 16 [a], [c]). Following the events of December 5, 2007, plaintiff was informed that defendant Mrs. Bruni was "required" to resign from the condominium's board of directors, in a letter from the board which "concluded that Mrs. Bruni acted improperly and certainly without the express or implied approval, consent or even

[4] By decision dated September 2, 2008, the justice assigned to the first litigation denied plaintiff's motion to consolidate this instant proceeding with the earlier one. (Mot. Ex. A).

knowledge of the other members of the Board of Directors" (Complaint ¶ 17, emphasis in original).[5]

The Complaint contains two causes of action. The first is intentional infliction of emotional injury and prima facie tort, for which plaintiff seeks both compensatory and punitive damages. The second seeks compensatory and punitive damages for being required to spend monies due to the need to continue litigating the first claim after defendants perpetrated a fraud on the condominium consisting of the placement of temporary carpeting on their floors so as to cause the condominium to issue its February 2007 report finding in error that defendants were not in violation of the carpeting rule.

Defendants deny most of the allegations contained in the Complaint, and their Answer includes four affirmative defenses: failure to name a necessary party; failure to sufficiently allege fraud; prior action pending; and failure to state a cause of action (Mot. Ex. D, Answer with Affirmative Defenses).

Motion and Cross-Motion

Defendants move for summary judgment and dismissal of the complaint pursuant to CPLR 3212. They contend that plaintiff is pursuing litigation in order to harass them (Mot. Bruni Aff. ¶¶ 22, 27-29). They concede that they and their attorneys spoke with Fox TV about the matter and provided the television station with "publicly filed court documents," but argue that it was solely Fox TV's decision to interview plaintiff (Mot. Bruni Aff. ¶ 11). They contend that plaintiff's claim that they fraudulently placed temporary carpeting down to appear to be in

[5]The communication was in a letter dated December 12, 2007, from the condominium's counsel to plaintiff, in response to his correspondence (see Cross-Mot., stamped p. 22).

compliance with the condominium by-laws, and then removed the carpet tiles after the Board inspected their apartment, and that they "routinely" placed and took up the carpet squares and their rugs in order to deceive Fox TV, among others, is "absurd" (Mot. Bruni Aff. ¶¶ 12-13). They argue that plaintiff has not established his claim of intentional infliction of emotional distress, in particular because he has not proffered proof of seeking treatment from a doctor subsequent to the Fox TV incident, although he alleges he increased the dosage of an anti-anxiety medication already prescribed to him. They also argue that plaintiff may not bring a claim for attorney's fees resulting from the other litigation and that the second cause of action must be dismissed as well (Mot. Bruni Aff. ¶ 26). They request attorney's fees (Mot. Bruni Aff. ¶¶ 29-30).

Plaintiff opposes the motion, and cross-moves to compel discovery pursuant to CPLR 3124, for a protective order pursuant to CPLR 3203; for leave to amend the Complaint pursuant to CPLR 3025,[6] and for attorney fees pursuant to Local Rule 130-1.1.

Plaintiff also seeks to amend his complaint to add defendants' attorney, Craig Gruber, and his law firm Salamon, Gruber, Blaymore Strenger, P.C. as defendants, and to add a claim for defamation. The proposed amended Complaint alleges that defendants and their attorney and his law firm acted individually and in concert (Cross-Mot. Appendix, prop. amended Complaint at stamped p. 45). It states that they caused plaintiff to be filmed by Fox TV, and that the law firm "encouraged" the Brunis to work with Fox, and sent court documents to the station, but fraudulently omitted to provide one particular decision showing that the first action "had merit"

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[6]A proposed amended Complaint (although it is not denominated as such), is attached in the Appendix to the Cross-Motion, at stamped pp. 44-54).

(Cross-Mot. Appendix, prop. amended Complaint at stamped pp. 46, 48, 50).[7] As to the proposed additional claim of defamation, the proposed complaint sets forth four written statements, discussed below, made by Mrs. Bruni or the Brunis (Cross-Mot. Appendix, prop. amended Complaint at stamped p. 51). Plaintiff contends the statements are defamatory and libelous *per se* (Opposing Brief pp. 48, 49). Defendants oppose the cross-motion in its entirety.

Legal Analysis

Motion for Summary Judgment

Summary judgment is proper when there are no issues of triable fact (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Issue finding rather than issue determination is its function (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). The evidence will be construed in the light most favorable to the one moved against (*Corvino v Mount Pleasant Centr. Sch. Dist.*, 305 AD2d 364, 364 [2d Dept 2003]; *Bielat v Montrose*, 272 AD2d 251, 251 [1st Dept. 2000]). It is not the court's function to assess credibility (*Ferrante v American Lung Assn.*, 90 NY2d 623, 630 [1997], citing *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). To prevail on a summary judgment motion, the moving party must produce evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her

[7]The decision at issue denied defendants' cross-motion for leave to renew their motion to dismiss, because the basis of defendants' renewal was an unsworn document (the condominium report finding compliance with the by-laws), and the report was "irrelevant" to the grounds on which defendants made their original motion (*Pu v Bruni*, Index No. 113247/2006, Dec. & Ord. October 18, 2007 [DeGrasse J.]). An examination of the court documents contained in SCROLL, the online database containing New York County Supreme Court decisions, shows that according to the court, defendants originally argued that plaintiff lacked the capacity to enforce the condominium rules, a claim the court found unpersuasive (*Pu v Bruni*, Index. No. 113247/2006, Dec. & Ord. March 26, 2007 [DeGrasse J.]).

favor (*GTF Mtkg, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 967 [1985]). Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v Algaze*, 84 NY2d 1019 [1995]).

The first cause of action sounds in intentional infliction of emotional distress and prima facie tort. To establish a cause of action for intentional infliction of emotional distress, plaintiff must successfully demonstrate (1) extreme and outrageous conduct, (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress, (3) a causal connection between the conduct and injury, (4) and severe emotional distress (*Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). In New York, the conduct must be beyond all possible bounds of decency and intolerable in a civilized community (*Fischer v Maloney*, 43 NY2d 553, 557 [1978]). Here, giving plaintiff, the non-movant, the benefit of every favorable inference, his claim in essence is that defendants contacted Fox TV with their version of the ongoing litigation with plaintiff, including that plaintiff's license to practice law was then currently suspended, and provided documents to show that the condominium had found defendants in compliance with the rules and thus that there was no basis for the litigation; that Fox TV - which notably is not a defendant in this litigation - thought that the facts warranted a possible story on its "Shame, Shame, Shame" program; and that defendants helped the Fox reporter locate plaintiff so he could be confronted and asked questions about the litigation.[8] The interview left plaintiff "extremely agitated" as he had been readmitted to practice in the federal

[8]Plaintiff believes the episode aired, based at least in part in that "people have been standoffish with [him]." (Cross-Mot. Pu Aff. ¶ 15). Defendants submit an unauthenticated email purportedly from an employee of Fox TV, dated December 2, 2008, which states in answer to the question by defendants' attorney, that the segment never aired (Prisco Reply Aff. Ex. L).

courts and the question by Fox's Diaz about his suspension caused him to fear that any exposure on "Shame, Shame, Shame" would "destroy [his] ability to get work." (Cross-Mot. Pu Aff. ¶ 12). Subsequent to the filming, plaintiff suffered acute anxiety and "doubled or tripled [his] daily intake" of one of the medications prescribed for his "long standing sleep disorder" (Cross-Mot. Pu Aff. ¶ 13).[9]

Other than his statements alleging severe emotional distress, plaintiff offers nothing to establish his claim in opposition to this motion for summary judgment. In opposition to a motion for summary judgment, plaintiff is required to bare his or her proofs so that the matters raised in the pleadings are shown to be real and capable of being established upon trial (*W.W. Norton & Co. v Roslyn Targ Literary Agency, Inc.*, 81 AD2d 798 [1st Dept. 1981]). Bare conclusory allegations are insufficient to defeat a motion for summary judgment (see *Thanasoulis v National Assn. for the Specialty Foods Trade, Inc.*, 226 AD2d 227 [1st Dept 1996]; *Lee v Weinstein*, 116 AD2d 700 [2d Dept], *lv denied* 68 NY2d 601 [1986]). It is insufficient to offer suspicions, surmises, and accusations (*Zuckerman v City of New York*, 49 NY2d 557, 557 [1980]). Unsubstantiated allegations are also insufficient (*Id*). Here, leaving aside the fact that Fox TV made its own assessment as to the possible "newsworthiness" of the story, and that the interview was the source of plaintiff's increased anxiety, defendants' decision to approach the news station cannot, in itself, be held to be so outrageous as to support a claim for intentional infliction of emotional distress (see *Sermidi v Battistotti*, 273 AD2d 66, 67 [1st Dept. 2000], citing *Howell v*

[9]Plaintiff attaches unauthenticated copies of pages downloaded from the internet, which are not in admissible form, including abstracts of published reports concerning the particular medication for which he claims taking an increased dosage following the encounter with Fox (Cross-Mot. at stamped pp. 63-92).

New York Post Co., 81 NY2d 115, 122 [1993]). To the extent that defendants may have contacted other media in an attempt to publicize their issues, plaintiff does not establish that these actions were inherently outrageous. Moreover, a plaintiff's claim of severe emotional distress must be supported by medical evidence, not the mere recitation of speculative claims (*Walentas v Johnes*, 257 AD2d 352, 354 [1st Dept.], *lv denied* 93 NY2d 958 [1999], citing *Leone v Leewood Serv. Sta.*, 212 AD2d 669, 672 [2d Dept.], *lv denied* 86 NY2d 709 [1995]; see *Edelstein v Farber*, 27 AD3d 202, 203 [1st Dept. [2006] [must provide evidentiary support]; see also *Feinberg v Poznek*, 2006 NY Slip Op 51456U [Sup. Ct. NY County 2006] [holding that where defendants allegedly sent letters which included derogatory comments and information regarding medical procedures allegedly undergone by the plaintiff, to over 30 friends, family, and acquaintances, it was sufficient for a claim of intentional infliction of emotional distress to set forth allegations of anxiety, mental distress, migraine headache, and exacerbation of physical harm as well as damage to reputation, but in order to establish a claim, the plaintiff must supply medical evidence]). Plaintiff suggests that a trier of fact could conclude that he suffered severe emotional trauma. However, his mere statements that he has suffered emotional damage, with his proof being that he allegedly increased the intake of one of his medications prescribed for his sleep disorder, are simply insufficient to maintain a cause of action upon summary judgment. Accordingly, the branch of defendants' motion seeking to dismiss the cause of action sounding in intentional infliction of emotional distress is granted pursuant to CPLR 3212.

The first cause of action alternatively claims prima facie tort. This cause of action is "designed to provide a remedy for intentional and malicious actions that cause harm and for which no traditional tort provides a remedy." (*Curiano v Suozzi*, 63 NY2d 113, 118 [1984]). To

be sufficient, a claim of prima facie tort must allege that an individual acted without justification and solely to harm another person by doing an intentional act that would otherwise be lawful, and the act caused a financial loss (2 NY PJI2d 3:7). An action sounding in prima facie tort "may not be maintained in the absence of an allegation of special damages" (*Wehringer v Helmsley-Spear, Inc.*, 91 AD2d 585, 586 [1st Dept. 1982], *aff'd* 59 NY2d 688 [1983]; see *ATI, Inc. v Ruder & Finn, Inc.*, 42 NY2d 454, 458 [1977]). The injury is "ordinarily to trade, occupation, professional reputation or property, and generally comprehends interference with some form of contractual relation" (*Brandt v Winchell*, 283 App Div 338, 342 [1st Dept. 1954], *aff'd* 3 NY2d 628 [1958]). The loss must be "specific and measurable" (*Freihofer v Hearst Corp.*, 65 NY2d 135, 143 [1985]).

Here, plaintiff does not allege specific, measurable damages, but only that he suffered great anxiety and feared a loss to his professional reputation. He makes no allegations nor offers evidence to show that his reputation was in fact damaged, or that he lost business, but only that he feared he would. Accordingly, as plaintiff fails to establish a viable cause of action sounding in prima facie tort, defendants' motion for summary judgment and dismissal of the entirety of the first cause of action is granted.

The second cause of action alleges that plaintiff has been forced to expend time and money to litigate the earlier litigation because defendants deceived the condominium board into believing that they were in compliance with the by-laws, requiring him to undertake further litigation to prosecute his claims. He alleges he has expended more than $15,0000 in time and disbursements (Complaint ¶ 28), and seeks not less than that amount, plus interest from February 6, 2007, as well as $250,000 in punitive damages.

Defendants seek summary judgment and dismissal of this cause of action based on the rule in New York that a recovery of legal fees may not generally be had in an affirmative action brought by an assured to settle its rights (see *Mighty Midgets, Inc. v Centennial Ins. Co.*, 47 NY2d 12, 21-22 [1979]). Similarly, the rule is that a plaintiff ordinarily is not entitled to recover in a separate, subsequent action for the costs and expenses incurred in the prior action, even where the necessity for bringing the prior action was caused by the wrongful act of the defendant (*Cooper v Weissblatt*, 154 Misc. 522, 528 [App. Term 2d Dept. 1935], citing *Marvin v Prentice*, 94 N.Y. 295 [1884]; *Lurman v Jarvie*, 82 AD 37 [1st Dept. 1903], *aff'd* 178 N.Y. 559 [1904]). An exception is where the earlier litigation arises out of defendant's acts of malice (*Rosenzweig Trading Co., Inc. v Feinstein*, 103 NYS2d 515 [App. Term 2d Dept. 1951]), in particular, actions involving malicious prosecution and false arrest, as well as those in which the recovery of attorney's fees and expenses are permitted by statute or contract (*Gorman v Kings Mercantile Co.*, 36 Misc. 2d 38, 39 [Sup. Ct., Kings County 1962]; *aff'd* 21 AD2d 753 [2d Dept. 1964]). Plaintiff argues that the cause of action is appropriate, pointing to the discussion and holding in *Weissblatt*, that where the defendants' actions were willful and malicious, recovery by the plaintiff of expenses should not be limited to actions for false arrest or malicious prosecution (154 Misc. at 528-529). (*See*, Opp. Brief, p. 38.) He also argues that a victim of fraud may recover attorney fees, citing *Hynes v Patterson*, 95 NY 1 (1884); *Abounader v Strohmeyer & Arpe Co.*, 217 AD 43, 48 (4th Dept. 1926), *aff'd* 243 N.Y. 458 (1926); *Cooper v Weisblatt*, *supra*.

Plaintiff states that this second cause of action is a "fraud claim" (Opp. Brief p. 38). CPLR 3016 (b) requires that in asserting a claim of fraud, the "circumstances constituting the wrong shall be stated in detail." The fraud that is being alleged, according to plaintiff, consists of

the "post-inspection removal of carpeting," which led to continued noise from defendants' apartment (Reply Brief p. 15). However, the amended complaint in the first action states only that there is a "pattern of noises heard by Pu [which] reflects that little, if any, of the Brunis' apartment is carpeted." (Cross-Mot., at 7 [first amended complaint ¶ 12 [b]). The amended complaint contains no description of the date or time when the noise occurs, over which area of plaintiff's apartment the noise occurred, or the type of noise. In his affidavit contained as part of his cross-motion, plaintiff avers that he heard objects striking the bare floor which had been "carpeted during the carpeting" (Cross-Mot. Pu Aff. ¶ 5 [b]). This simply is insufficient to detail a claim of fraud.[10] Without a sufficient claim of fraud, there can be no claim made for recovery of attorney's fees accrued in the prior action. Accordingly, defendants' motion for summary judgment and dismissal of the second cause of action is granted.

Defendants request attorney's fees based on what they characterize as defendants' harassment. Under § 130-1.1 of the New York Rules of Court, sanctions can be awarded, in the form of reimbursement for actual expenses incurred and attorneys' fees, resulting from "frivolous conduct." Conduct is frivolous when it is "completely without merit in law or fact and cannot be supported by a reasonable extension, modification or reversal of existing law," or "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another," or "asserts material factual statements that are false." Here, the parties have an acrimonious history with both sides claiming harassment and emotional distress. Although summary judgment is appropriate, the court cannot find that plaintiff's behavior, while

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[10]Moreover, whether defendants replaced and removed the carpeting as plaintiff alleges, has not yet been determined by the court assigned to the first litigation.

questionable, has risen to the level of frivolous conduct required by the statute. Accordingly, defendants' request is denied.

Cross-Motion to Amend and for Discovery Related Relief

Inasmuch as the court has granted defendants summary judgment and dismissal of both causes of action of the complaint, the cross-motion has been rendered academic.

Were the court to entertain the cross-motion, it would be denied in its entirety. The branch of the cross-motion seeking to add defendants' attorney, Craig Gruber, and his law firm Salamon, Gruber, Blaymore Strenger, P.C. as defendants, is untimely, given that it is evident that plaintiff knew at the time he commenced this action, and included in his Complaint's allegations, allegations concerning the lawyers' contacts with Fox TV, and it is unclear why plaintiff waited this length of time to seek to add them. In addition, given that the claim of intentional infliction of emotional distress has been dismissed, there is no claim asserted against Gruber or his firm, and this branch of the cross-motion is now academic.

Similarly, the branch of the cross-motion seeking to add a claim for defamation against the Brunis based on four written statements, would be denied for insufficiency. Under New York State law, there are different types of defamatory statements based on the status of the plaintiff, the defendant, and the content of the alleged statement. Here, where there is no media defendant, plaintiff is found to seek to add a claim of defamation of a private person and matter of private concern (see 2 NY PJI2d 3:23B, at 234-235 [2009]). Thus, he is required to plead and ultimately establish by a fair preponderance of the evidence that the statements were defamatory, meaning they tended to expose him to public hatred, contempt, ridicule, or disgrace; that the statements referred to him; that they were published to a third party; and that they were a

"substantial factor" in causing plaintiff to suffer financial loss. Although he sufficiently sets forth the statements at issue (see Cross-Mot. at stamped pp. 51-52 [prop. amended Compl. ¶ 25]), neither in his Complaint or in his proposed amended Complaint are there specific allegations that plaintiff suffered financial loss of any kind. On this basis alone, without further analysis, plaintiff fails to state a cause of action such that the branch of the cross-motion to amend the complaint would be denied.

The remainder of the cross-motion relates to discovery, including depositions; document discovery, or a protective order concerning plaintiff's medical records. However, dismissal of the complaint renders a decision on those branches of the cross-motion unnecessary. The branch of the cross-motion seeking sanctions pursuant to Local Rule 130-1.1 is denied.

For the foregoing reasons, it is

ORDERED that defendants' motion for summary judgment is granted and the Clerk of the Court shall enter judgment in defendants' favor dismissing the complaint, together with costs and disbursements to defendants as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the branch of the defendants' motion which seeks an award of attorney's fees is denied; and it is

ORDERED that the cross-motion is denied in its entirety.

This constitutes the decision and order of the court.

Dated: August 10, 2009
New York, New York

J.S.C.