IN THE CIRCUIT COURT FOR BALTIMORE CITY

MAXIM A. STEPANOV and MIDLAND CONSULT (CYPRUS) LTD, **Plaintiffs,** **vs.** **JOURNALISM DEVELOPMENT NETWORK, INC.,** **Defendant.**	**No. 24C12006399**

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant Journalism Development Network, Inc., through undersigned counsel, hereby moves pursuant to Maryland Rule 2-322(b)(2) for an Order dismissing the Complaint with prejudice because the Complaint, which purports to state a single claim for defamation, fails to state a claim upon which relief can be granted. The grounds for the motion are as follows:

1. None of the alleged defamatory statements are "of and concerning" plaintiff Maxim Stepanov, the founder and principal of plaintiff Midland Consult (Cyprus) Ltd;
2. None of the statements about Midland Consult are capable of conveying the defamatory meaning this plaintiff seeks to attribute to them; and
3. The alleged defamatory statements are privileged under Maryland law as a fair and accurate report of an official proceeding.

Each of these grounds is more fully set forth in the accompanying memorandum of law. Copies of portions of the allegedly defamatory articles are attached as exhibits to the

Complaint. For the convenience of the Court, defendant has attached as exhibits to the accompanying Affidavit of Jay Ward Brown more legible and more complete copies of the articles in question, including the relevant public record documents embedded within the articles when they were published.

REQUEST FOR HEARING

Pursuant to Md. Rule 2-311(f), defendant respectfully requests a hearing before this Honorable Court on the instant motion to dismiss.

Dated: February 27, 2013

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

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THE CIRCUIT COURT FOR BALTIMORE CITY

MAXIM A. STEPANOV and MIDLAND CONSULT (CYPRUS) LTD, **Plaintiffs,** **vs.** **JOURNALISM DEVELOPMENT NETWORK, INC.,** **Defendant.**	**No. 24C12006399**

[PROPOSED] ORDER

Upon consideration of defendant Journalism Development Network, Inc.'s motion to dismiss, it is hereby

ORDERED that the motion be and is GRANTED, and it is further

ORDERED that the Complaint be and is DISMISSED with prejudice.

_____

Judge, Circuit Court

IN THE CIRCUIT COURT FOR BALTIMORE CITY

MAXIM A. STEPANOV and MIDLAND CONSULT (CYPRUS) LTD, **Plaintiffs,** **vs.** **JOURNALISM DEVELOPMENT NETWORK, INC.,** **Defendant.**	**No. 24C12006399**

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of February 2013, I directed that a true and correct copy of the foregoing motion to dismiss and accompanying papers be served by First-Class mail, postage pre-paid, and by electronic mail, to:

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

MAXIM A. STEPANOV and MIDLAND CONSULT (CYPRUS) LTD, **Plaintiffs,** **vs.** **JOURNALISM DEVELOPMENT NETWORK, INC.,** **Defendant.**	**No. 24C12006399**

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

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Defendant Journalism Development Network, Inc. ("JDN") respectfully submits this memorandum in support of its motion pursuant to Maryland Rule 2-322(b) to dismiss the Complaint with prejudice for failure to state a claim upon which relief can be granted.

INTRODUCTION

This is one of several lawsuits recently filed in jurisdictions around the world by these plaintiffs, and related persons and entities, arising out of reports by multiple news organizations concerning events to which the plaintiffs and their business associates are connected.

This particular case arises out of a series of articles published by the Organized Crime and Corruption Reporting Project ("OCCRP"), a program of JDN, which reported on a system of international money laundering used by organized crime. The four articles put at issue in the Complaint were published over two days, and they examine, among other things, the ways in which the services of lawful businesses, as well as often unwitting individuals, are utilized by criminal organizations for this purpose. Plaintiff Midland Consult (Cyprus) LTD ("Midland Consult") was identified in three of the challenged articles as a business whose services or products had been used by suspected money launderers. Significantly, plaintiffs do *not* challenge the accuracy of this statement.

Indeed, nowhere in their Complaint, which purports to allege a single count of defamation, do plaintiffs point to any statements actually contained in the challenged articles that they contend are false and defamatory of them. To the contrary, plaintiffs merely quote in their pleading the passages from the articles in which their names appear.

Plaintiffs then offer the conclusory assertion that, by mentioning them in articles that discuss the alleged wrongdoing of others, the articles defame them by "associating" them with wrongdoing. Yet they do *not* deny that they have in fact been associated with certain of the third parties reported upon in the articles. Plaintiffs concede (both in their Complaint here and in a sworn statement submitted in a related lawsuit) the accuracy of the facts actually stated in the articles, all of which are in any event independently established through public records—records that were provided by OCCRP to its readers in conjunction with its publication of the articles.

The straightforward application of well-settled principles of defamation law to the articles readily demonstrates that the Complaint should be dismissed. First, none of the allegedly defamatory statements are "of and concerning" plaintiff Maxim Stepanov, the founder and principal of Midland Consult; rather, the statements in question are about *Midland Consult*, and it is hornbook law that executives of a company have no personal claim for defamation arising from statements about *the company*. Second, as a matter of law, none of the statements about Midland Consult are capable of conveying the defamatory meaning it seeks to attribute to them. Third, dismissal is warranted for the independent reason that the challenged statements are privileged under Maryland law as fair and accurate reports of an official proceeding.

BACKGROUND

A. The Parties

Midland Consult is a part of an international holding company called Midland Group, with offices in jurisdictions around the world. *See* Midland Consult, About Us,

http://www.midlandconsult.com.cy/en/about/ (last visited 2/25/2013). Organized under the laws of the Republic of Cyprus, "Midland and its affiliates incorporate and administer business corporations in various jurisdictions to assist clients in asset protection, efficient tax structures, and international banking transactions." Compl. ¶¶ 2, 30. According to the Complaint, Midland Consult creates corporations to be "put on a 'shelf' until" they are "ready to be purchased by Midland's clients." *Id.* ¶ 32. Midland Consult alleges that its relationship to "these 'shelf' companies" ends after it sells the companies to its clients, *id.* ¶ 33, but Midland acknowledges that its employees or associates are "often" appointed as directors or nominees of the companies Midland Consult creates, *id.* ¶ 34. Maxim Stepanov is a citizen of the Russian Federation and served as Russia's Consular Secretary and Embassy Attaché in the Republic of Panama before leaving government and founding Midland Consult "and certain affiliated entities." *Id.* ¶¶ 1, 29-30.

JDN is a Maryland not-for-profit organization that administers the OCCRP, an online investigative news reporting organization supported by a network of independent correspondents and media organizations "stretching from Eastern Europe to Central Asia." *See id.* Ex. A; *accord id.* ¶¶ 9, 36. OCCRP's mission is to help the people of Eastern Europe and Central Asia "better understand how organized crime and corruption affect their lives." *Id.* Ex. A. It produces in-depth news reports and, by hyperlinking within those reports to the official documents on which its correspondents rely, maintains an online resource center of public records related to organized crime. *See id.* ¶ 10 & Ex. A. The OCCRP, which is supported by the National Endowment for Democracy and the United States Agency for International Development ("USAID"), among others, is

the recipient of numerous prizes for international journalism, including the 2011 Daniel Pearl Award. *Id.*[1]

B. The Articles

Consistent with its mission, OCCRP has published on its website a series of articles under the overall title *The Proxy Platform*, which examines the constituents—including banks, registration agents and those who serves as directors and officers of shell companies—that, unwittingly or otherwise, form a platform or network used for money laundering by organized crime. *See id.* Ex. B. As OCCRP explained in one of the four articles from the series challenged in this lawsuit:

> The Proxy Platform, a network of intertwined companies fronted by proxies and used for international money laundering, is made of a constantly changing set of shell companies that are channeling huge volumes of money to one another in an effort to hide the ultimate beneficiaries. While the operators who run these phantom companies are important, so are the people who make such systems possible. They are the criminal services industry: the bankers, lawyers, proxies, company registration agents and offshore officials who profit from making it easy to launder money.

Compl. Ex. D & Affidavit of Jay Ward Brown ("Brown Aff.") Ex. D, at 1.[2]

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[1] The JDN/OCCRP board of directors includes PBS Frontline reporter Lowell Bergman, *Seattle Times* executive editor David Boardman and Columbia University's Sheila Coronel, to name a few. *See* Compl. Ex. A at 1-2.

[2] Because copies of the four challenged articles are attached as exhibits to the Complaint and expressly incorporated within it, *see* Compl. ¶¶ 13, 16, 19, 22 & Exs. C-F, the articles therefore are not "matters outside the pleading" under Rule 2-322(c) and thus may be considered by the Court in adjudicating this motion to dismiss. *See* Md. Rule 2-303(d) ("an exhibit to a pleading is a part thereof for all purposes"); *Samuels v. Tschechtelin*, 135 Md. App. 483, 521, 763 A.2d 209, 229-30 (Md. Ct. Spec. App. 2000) (courts consider "the content and adequacy of [the] complaint, including the exhibits appended to it," on motion to dismiss). Because the copies appended to the Complaint are difficult to read, more legible copies are provided as exhibits to the Brown Affidavit and, for the convenience of the Court, each article has the same exhibit number in both.

The four challenged articles were published over two consecutive days and were principally reported by Roman Anin, a correspondent from the Russian newspaper *Novaya Gazeta*. These four articles are primarily concerned with the methods by which organized crime utilizes the unsuspecting and the indifferent to launder money throughout the world and thereby further criminal schemes. While the articles speak for themselves and the Court therefore need not rely on either plaintiffs' or defendant's characterization of them, the articles may be briefly summarized as follows:

1. The first article: "Opening the Door"

The first of the challenged articles, "Opening the Door: Proxy Platform Revealed" ("Opening the Door"), reports on court proceedings in the Republic of Moldova that provide "insight into the people who were using the services of the Proxy Platform, a phantom set of interlocking companies used to launder money and hide ownership." Compl. Ex. C & Brown Aff. Ex. C; *see also* Compl. ¶¶ 13-15. Published on November 21, 2011, "Opening the Door" describes an allegedly fraudulent transnational business deal and a set of criminal investigations, all matters of public record. The article contains no mention of Midland Consult or Stepanov—indeed, not even plaintiffs contend that it does.

The other three challenged articles were published by OCCRP the following day, November 22, 2011. *See id.* ¶¶ 16, 19, 22 & Compl. Exs. D-F, Brown Aff. Exs. D-F.

2. The second article: "The Invisible Empire"

In "The Invisible Empire of the Diplomat" ("The Invisible Empire"), OCCRP reports on the system of legal commercial entities through which international money

laundering is made possible, including the role of registration agents who create shelf companies. *See* Compl. Ex. D & Brown Aff. Ex. D; *see also* Compl. ¶¶ 17-18. After a general introduction to the subject, this article goes on to describe some of the prominent registration agents:

> GT Group and the Taylor Network were one infamous group who registered Tormex and other key companies in the laundering network. GT Group registered firms that were *later* associated with corrupt governments, a Mexican drug cartel, a terrorist group and organized crime groups. It has since been shut down by the New Zealand authorities.
>
> Another is Midland Consult, a London-based registration agent that registered companies that figure prominently in the Proxy network. Midland Consult was founded by Maxim Stepanov, a former Russian official. Companies registered by GT Group and Midland Consult were often cross owned.

Compl. Ex. D & Brown Aff. Ex. D, at 1 (emphasis added). The article then quotes from Midland's own description of itself on its website, including that it "specializes 'in the incorporation and management of companies including the provision of nominee directors/secretaries and shareholders,'" as well as "'the opening and maintaining of bank accounts.'" *Id.* Based primarily on government and other public records, the article then describes several alleged money laundering schemes. The first involved Sirena Commerce, a company that was "registered by Midland Consult." *Id.* The article describes the allegations against Sirena Commerce's principal, a man named Serghei Harghel. *Id.* at 1-2. The article contains no suggestion that Midland Consult had any involvement in the alleged money laundering by Harghel; rather, it simply describes the process by which Midland Consult set up the company that later was alleged to be involved in laundering.

The second scheme described in the article involves the role of a company called Bristoll Export Limited in the theft of funds from the Russian Government. *Id.* at 2. The article reports that Bristoll Export "was owned by Midland New Zealand Limited, which was set up by Stepanov's Midland Consult company." *Id.* The article also notes that two of the proxy directors supplied to Midland New Zealand Limited by Midland Consult, Jaime Augusto Cedeno Villarreal and Olga Demosthenous, "show up on the paperwork for Bristoll Export Limited." *Id.* The article continues:

> Edward Aslanyan, director at Midland Consult, said while his company originally registered Bristoll Exp[o]rt, they soon handed it off to GT Group. "We don't know by whom it was used and in what way."
>
> Like many registration agents, Aslanyan said you can't blame the agents for what their clients do. "Imagine that we are a plant which produces bricks. Somebody buys bricks to build a house. But another bought the brick, wrapped it in the paper and hit somebody's head. Who is guilty? The producer of the bricks, or the one who hit the head? The same with us: our bricks are companies which we sell," says Aslanyan.

Id. The article then goes on to describe several other controversies and the companies in the midst of them, three of which were registered by Midland Consult or an affiliate. *Id.* at 2-3.

Significantly, plaintiffs do not allege that *any* of the statements actually contained in "The Invisible Empire" about them or their named associates are false.[3]

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[3] Inexplicably, plaintiffs allege that JDN falsely stated in "The Invisible Empire" that "Bristoll Export or its subsidiaries had directors who 'work at Midland Consult.'" Compl. ¶ 42. But the quoted language does not appear anywhere in any of JDN's articles. Rather, plaintiffs appear to have block-copied this allegation from their Complaint in New York litigation pending against Dow Jones & Co., which involves a magazine article that *does* contain the quoted language. *See* Brown Aff. Ex. L ¶ 27 (Complaint in *Stepanov v. Dow Jones & Co.*, No. 150534/2012 (N.Y.

3. The third article: "Russian Laundering Machine"

In "Russian Laundering Machine," OCCRP first reports in more detail on the alleged theft by Russian tax officials of $230 million from their own government, money which was "taken in [the] name" of Hermitage Capital Management Limited, and then routed through phantom companies, including Bristoll Export, into Swiss bank accounts. *See* Compl. Ex. E & Brown Aff. Ex. E; *see also* Compl. ¶¶ 20-21. The article goes on to describe an Asian-Romanian money laundering scheme, and reports on several of the shell companies alleged to have been involved in these and other large transfers of funds, as well as the various proxies who have appeared on their registration papers and those of scores of other shell companies. Compl. Ex. E & Brown Aff. Ex. E, at 2-4.

In this regard, the article describes a Portland, Oregon company named Ziteron, Ltd., the president of which is Oscar Augusto Cedeno, who is, the article notes, "a partner with Maxim Stepanov, head of Midland Consult." *Id.* at 5. OCCRP quotes (and provides, via hyperlink, a copy of) a letter from Cedeno denying any knowledge of money transfers through Ziteron. *Id.* at 4. Cedeno referred OCCRP to an Oleg Wol for more information about Ziteron and, as reported in the article, Wol said that a man named "Maxim," whose surname he did not know, had asked him to assist in establishing Ziteron, but that he, too, had no knowledge regarding money transfers. *Id.* at 4-5.

After discussing the possible involvement of a Moscow-based bank in the money transfers related to Ziteron, the article repeats briefly the description from "The Invisible

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Supreme Ct. filed Mar. 6, 2012). Since the pleadings in *this* case demonstrate that JDN did not make the statement attributed to it in paragraph 42 of this Complaint, this portion of plaintiffs' claim should be dismissed on this basis alone.

Empire" of the formation of Bristoll Export and the comments of Midland Consult's director, Edward Aslanyan, that, like makers of bricks when bricks are used to commit crimes, registration agents cannot be held responsible for what use later owners make of companies agents have registered. *Id.* at 5.

Once again, plaintiffs do not allege that *any* of the statements in "Russian Laundering Machine" about them or their named associates are false.

4. The fourth article: "The Proxy Platform"

Finally, in "The Proxy Platform," OCCRP provides an overview of the global reach and scale of the system of "phantom companies" used for money laundering, reporting that, in Eastern Europe alone, in the midst of the continent's recent financial crisis, "billions of euros circulated in the region in an illegal, parallel system that enriched organized crime figures and corrupt politicians." Compl. Ex. F & Brown Aff. Ex. F, at 1. The article observes that many are unwittingly drawn into this system, which they may not know supports illegal activity:

> The system is built on hundreds, maybe thousands, of ever-morphing phantom companies. They exist on paper only and appear to be run by scores of common people, who are, in fact, simply proxies. Many are unaware that their names appear in official documents as the human face of a company. Others are naïve or don't care.

Id. There is one, and only one, reference to either of the plaintiffs in this article: In summarizing the findings of the reporters who worked on this series, the article notes that "many of the companies involved" in the system "were registered by GT Group in New Zealand and Midland Consult in London"—two companies that, the article adds, have registered many of the companies used by organized crime. *Id.* at 2.

Once again, plaintiffs do *not* allege that the statement in "The Proxy Platform" about Midland Consult is itself false.

C. The Complaint

Almost one year after the articles were published, plaintiffs filed this lawsuit against JDN. As noted, plaintiffs do *not* allege that *any* particular statement about them actually contained in the articles is false.[4] Rather, plaintiffs appear primarily to object to being mentioned in articles that describe the wrongdoing of others—that is, plaintiffs repeatedly allege a theory that may best be described as "defamation by association." Specifically, plaintiffs allege:

- that the "Russian Laundering Machine" article "describes a scheme utilized for laundering financial assets derived from criminal activities. JDN implicates a number of banks, offshore companies, and natural persons as the alleged money launderers. [The article] *mentions* Plaintiffs, among others, thus intentionally creating the impression that Plaintiffs were also engaged in the money-laundering scheme"; Compl. ¶ 21 (emphasis added);

- that they "have nothing to do with any of the corruption, scandal, or other illegal activities allegedly committed by the individuals or entities mentioned. Nevertheless, the aforementioned articles *name* the Plaintiffs . . ."; *id.* ¶ 25 (emphasis added);

- that it was defamatory to state or imply that Midland Consult "was *in any way* involved with companies that were 'associated with corrupt governments, a Mexican drug cartel, a terrorist group, and organized crime groups,'" *id.* ¶ 41.

- that it was defamatory to state or imply that Midland Consult "was doing *any* business with GT Group, when GT Group allegedly sold shell corporations to

[4] To be sure, plaintiffs repeatedly incant the conclusory allegation that the articles contain "false and defamatory statements" about them, *e.g.*, Compl. ¶¶ 12, 25, but they never identify a single allegedly false statement in these articles. *See Gladhill v. Chevy Chase Bank*, 2001 WL 894267, at *14 (Md. Ct. Spec. App. 2001) (dismissing complaint where "defamation counts are replete with conclusory words" and do "not contain specific factual assertions"); *Phillips v. Washington Magazine, Inc.*, 58 Md. App. 30, 40, 472 A.2d 98, 103 (Md. Ct. Spec. App. 1984) (same).

persons involved in illegal activity," *id.* ¶ 40; *see also id.* ¶ 45 (same); *id.* ¶ 46 (alleging that failure to provide "timeframes" for Midland Consult's involvement with GT Group and Bristoll Export is defamatory);

- that the "Proxy Platform" article, by stating that Midland Consult registered companies used by organized crime, "impute[s] blatantly Plaintiffs['] involvement with any illegal activity or corruption"), *id.* ¶ 48; and

- that the series as a whole "describes a massive tax fraud scheme, the highly suspicious and potentially illegal activities that followed the scheme, and described the death of a whistleblower lawyer attempting to expose the scheme. It is only fair to draw the conclusion *that any person or company* (such as Midland) *mentioned* within the articles would have *some* connection to the aforementioned corruption and various alleged illegal activities"; *id.* ¶ 60 (emphasis added).

Based on these allegations, plaintiffs jointly seek in excess of $10 million in compensatory and punitive damages and other relief. Compl. at 10.

ARGUMENT

In adjudicating a motion to dismiss under Rule 2-322(b)(2), the Court assumes that the factual allegations in the Complaint are true. *E.g.*, *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531, 667 A.2d 624, 630 (1995). The Court is not similarly constrained with respect to the Complaint's legal conclusions, however, given that a motion to dismiss is the mechanism for testing the legal sufficiency of the Complaint. *See id.* (dismissal is warranted where "the alleged facts and permissible inferences, even if later proven true, would fail to afford relief to the plaintiff"). "'[A]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader.'" *Faya v. Almaraz*, 329 Md. 435, 444, 620 A.2d 327, 331 (1993) (quoting *Figueiredo–Torres v. Nickel*, 321 Md. 642, 647, 584 A.2d 69 (1991)).

Recognizing the values reflected in the First Amendment guarantees of free speech and a free press, and the significant risk that even a non-meritorious lawsuit may stifle important public debate, courts have observed that in cases such as this one, the early sifting of groundless allegations from meritorious claims made possible by a motion to dismiss is particularly appropriate. *See Phillips v. Washington Magazine, Inc.*, 58 Md. App. 30, 35, 472 A.2d 98, 101 (Md. Ct. Spec. App. 1984) (affirming trial court's grant of magazine publisher's motion to dismiss complaint where challenged article not reasonably capable of defamatory meaning advanced by plaintiff, and observing that "founding fathers of this nation, in adopting the First Amendment to the Constitution, made a commitment to robust and open debate protected by the right of freedom of speech"); *see also, e.g.*, *Telnikoff v. Matusevitch*, 347 Md. 561, 590, 702 A.2d 230, 244-45 (1997) (noting "the very strong public policy in Maryland regarding freedom of the press"); *Fornshill v. Ruddy*, 891 F. Supp. 1062, 1074 (D. Md. 1995) (granting summary judgment and emphasizing that courts, which are to be vigilant throughout stages of litigation, "must carefully scrutinize the pleadings" "[w]here the cost of defending a protracted lawsuit threatens to chill First Amendment rights"), *aff'd*, 89 F.3d 828 (4th Cir. 1996). To be clear, JDN does not contend that a different *standard* applies to this motion to dismiss because it involves news reports on matters of public concern; rather, the point is simply that Maryland courts take care to give full consideration to motions to dismiss in this context so as to promptly terminate suits that in fact are non-meritorious.

I. STEPANOV'S CLAIM FAILS AS A MATTER OF LAW BECAUSE NONE OF THE CHALLENGED STATEMENTS ARE ABOUT HIM

It is clear at the outset that Stepanov's own claim for defamation fails as a matter of hornbook law. To prevail on a defamation claim, a plaintiff must show that the allegedly defamatory statement was "of and concerning" him. *See, e.g.*, *Prucha v. Weiss*, 233 Md. 479, 485, 197 A.2d 253, 257 (1964) ("it is necessary to show that the words used ... were concerned with and injurious to the character and integrity *of the one complaining*") (emphasis added); *Norman v. Borison*, 192 Md. App. 405, 421-22, 994 A.2d 1019, 1028-29 (Md. Ct. Spec. App. 2010) (dismissing complaint where plaintiff failed to identify "any defamatory statements made about him individually"); *see also, e.g.*, *AIDS Counseling & Testing Ctrs. v. Grp. W Television, Inc.*, 903 F.2d 1000, 1005 (4th Cir. 1990) ("'circumstances of the publication [must] reasonably give rise to the conclusion that there is a particular reference' to [this plaintiff]") (citation omitted); 1 Robert D. Sack, *Sack on Defamation* § 2:9.1 (4th ed. 2006) (of and concerning "requirement has constitutional ramifications") (citing *New York Times v. Sullivan,* 376 U.S. 254 (1964)).

It is for this Court to determine, as a matter of law in the first instance, whether the Complaint alleges facts sufficient to demonstrate that the allegedly defamatory statements are "of and concerning" each of the plaintiffs. *See, e.g.*, *AIDS Counseling & Testing Ctrs.*, 903 F.2d at 1005 (affirming dismissal of claims by owners not individually defamed as "clearly proper" in light of "[c]ommon sense, as well as the law of defamation") (citation omitted); *Prucha*, 233 Md. at 485, 197 A.2d 256-57 (resolving issue on demurrer); *Norman*, 192 Md. App. at 409-11, 994 A.2d at 1021-22 (resolving

issue on motion to dismiss); *Church of Scientology Int'l v. Behar*, 238 F.3d 168, 173 (2d Cir. 2001) (whether a challenged statement is "of and concerning" the plaintiff "should ordinarily be resolved at the pleading stage").

Here, the Complaint contains no allegation specific to Stepanov, nor could it, given that the challenged articles do not contain a single statement about Stepanov that could even conceivably be actionable. To begin with, two of the articles do not name Stepanov at all, nor do they refer to him even indirectly. Compl. Ex. C & Brown Aff. Ex. C ("Opening the Door"); Compl. Ex. F & Brown Aff. Ex. F ("The Proxy Platform"). With respect to the remaining articles, "The Invisible Empire" identifies Stepanov as the founder of Midland Consult and director of Midland Group, two non-defamatory facts that are matters of public record and which Stepanov does not deny. *Compare* Compl. Ex. D & Brown Aff. Ex. D, at 1-3 (statements in article), *with* Compl. ¶ 30 ("Stepanov founded Plaintiff Midland and certain affiliated entities"). Nor could the accurate description of Stepanov as "a former Russian official" be in any respect actionable. *Compare* Compl. Ex. D & Brown Aff. Ex. D, at 1, *with* Compl. ¶¶ 29-30. "Russian Laundering Machine" similarly states that Stepanov is the head of Midland Consult and notes that he is a partner with Oscar Augusto Cedeno, a former lawyer for the Ministry of Foreign Affairs in Panama quoted in the article, the accuracy of which Stepanov again does not challenge. *See* Compl. Ex. E & Brown Aff. Ex. E, at 4-5. Simply put, the Complaint fails to allege any fact that would support a claim by *Stepanov* for defamation.

In this regard, any attempt by Stepanov to argue that he has a personal cause of action based on statements in the articles about Midland Consult would be meritless, even

assuming, *arguendo*, that statements about Midland Consult were otherwise actionable. (They are not, as JDN explains below.) It is well-settled that a company's officers and owners cannot state a claim for defamation based on defamatory statements about the *company's* misconduct or affairs. *E.g.*, *Norman*, 192 Md. App. at 422, 994 A.2d at 1029 ("defamation of a company does not create a cause of action for its shareholders or owners"); *AIDS Counseling & Testing Ctrs.*, 903 F.2d at 1005 (dismissing defamation claims brought by corporation's individual owners and observing that, to be actionable by individual under Maryland defamation law, "a publication must contain some 'special application of the defamatory matter' to the individual") (citation omitted).

As a court in the District of Columbia, in a widely-cited opinion, has put it, "[d]efamation is personal . . . . Allegations of defamation by an organization and its members are not interchangeable. Statements which refer to individual members of an organization do not implicate the organization. By the same reasoning, statements which refer to an organization do not implicate its members." *Provisional Gov't of Republic of New Afrika v. ABC, Inc.*, 609 F. Supp. 104, 108 (D.D.C. 1985) (citations omitted). This rule has been applied consistently. *See, e.g., Jankovic v. Int'l Crisis Grp.*, 494 F.3d 1080, 1089 (D.C. Cir. 2007) ("'statements which refer to an organization do not implicate its members'") (citations omitted); *McBride v. Crowell-Collier Publ'g Co.*, 196 F.2d 187, 189 (5th Cir. 1952) (plaintiff cannot state defamation claim based on defamatory article about company that notes plaintiff is sole owner of company, because "nothing in th[e] reference makes any accusation or charge of any kind against him" personally); *Volomino v. Messenger Publ'g Co.*, 410 Pa. 611, 612 n.1, 189 A.2d 873, 874 n.1 (1963) ("Words

criticizing a corporation, without more, are not defamatory of a person connected with it.").

Because it is evident from their face that the challenged portions of the articles at issue here are not of and concerning Stepanov, his claim fails as a matter of law and should be dismissed with prejudice for this reason.

II. THE ARTICLES ARE NOT REASONABLY CAPABLE OF CONVEYING THE DEFAMATORY MEANING ALLEGED IN THE COMPLAINT

The Complaint fails as a matter of law because the articles are not reasonably capable of conveying the defamatory meaning that Midland Consult alleges. Just as the Court decides in the first instance whether a challenged statement is of and concerning the plaintiff, it is for the Court to determine, as a threshold matter, whether the challenged statements are "'reasonably capable of [the] defamatory interpretation'" advanced by plaintiffs. *E.g.*, *Peroutka v. Streng*, 116 Md. App. 301, 311, 695 A.2d 1287, 1293 (Md. Ct. Spec. App. 1997) (citation omitted); *accord, e.g.*, *Agora, Inc. v. Axxess, Inc.*, 90 F. Supp. 2d 697, 702 (D. Md. 2000) ("the determination of whether a statement is capable of a defamatory meaning is a question of law to be determined by the court") (Maryland law), *aff'd*, 11 F. App'x 99 (4th Cir. 2001).[5]

[5] It bears emphasis in this regard that the threshold question for the Court is *not* whether Midland Consult's interpretation of the articles is possible or plausible; rather, the question is whether the articles as a whole *reasonably* convey the defamatory meaning ascribed to it in the Complaint. *E.g.*, *Batson v. Shiflett*, 325 Md. 684, 723, 602 A.2d 1191 (1992) ("a meaning not warranted by the whole publication should not be imputed"); *Crowley v. Fox Broad. Co.*, 851 F. Supp. 700, 704 (D. Md. 1994) ("'courts must be vigilant not to allow an implied defamatory meaning to be manufactured from words not reasonably capable of sustaining such meaning'") (citation omitted). In context, not every meaning of which a publication is capable is a *reasonable* one. *See White v. Fraternal Order of Police*, 707 F. Supp. 579, 589 n.12 (D.D.C. 1989), *aff'd*, 909 F.2d 512 (D.C. Cir. 1990).

The standard for assessing the meaning of the articles is well-settled in Maryland as elsewhere: The Court is to apply the plain and natural meaning of the statements, reading the challenged publications as a whole and taking into account the context in which the statements were made. *See, e.g.*, *Chesapeake Publ'g Corp. v. Williams,* 339 Md. 285, 295, 661 A.2d 1169, 1174 (1995) ("In determining the defamatory quality of a publication, which is a question of law for the court, the article must be read as a whole."); *Phillips*, 58 Md. App. at 36, 472 A.2d at 101 ("In determining whether the article [is] defamatory, the courts must consider the article as a whole to arrive at the true meaning of the specific words and phrases."); *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) ("a defamatory implication must be present in the plain and natural meaning of the words used"); *see also, e.g.*, *Telnikoff*, 347 Md. at 599-600, 702 A.2d at 249 (declining to recognize foreign libel judgment in part because "contrary to the decisions of the Supreme Court and this Court" the challenged statements were "not examined in context but in isolation," which is "contrary to Maryland defamation law, and to the policy of freedom of the press underlying Maryland law").

Consistent with these established principles, the concededly accurate statements about Midland Consult's associations with certain third parties are not actionable as a matter of law, precisely because they are not reasonably understood to convey the meaning plaintiff discerns in them.

The thrust of Midland Consult's claim appears to be that JDN defamed it merely by accurately reporting its undisputed associations with certain unsavory companies and persons—associations that are matters of public record. Compl. ¶¶ 21, 25, 40-41, 45-48.

Indeed, Midland Consult goes so far as to argue "that *any* person or company (such as Midland) mentioned *within* the articles" would have a cause of action for defamation because a reader would reasonably assume that *everyone* named was involved in the "alleged illegal activities." *Id.* ¶ 60 (emphasis added). Put simply, this argument proves too much.

Indeed, the courts have firmly and repeatedly rejected similar arguments by other would-be libel plaintiffs who have come to regret the company they have kept. *See, e.g.*, *Norman*, 192 Md. App. at 422, 994 A.2d at 1029 (dismissing company owner's defamation claim over statements concerning allegedly fraudulent business practices of fellow owners because plaintiff "cannot lump the allegedly defamatory comments made about other individuals into a 'common pot'"); *Willis v. United Family Life Ins.*, 487 S.E.2d 376, 379 (Ga. Ct. App. 1997) ("Even express mention of one's name with another accused of misconduct . . . does not constitute defamation, and such a complaint is subject to dismissal."). As the author of one of the leading treatises on defamation has put it bluntly, "there can be no vicarious defamation, or defamation through guilt by association." *See* 1 Rodney A. Smolla, *Law Of Defamation* § 4:74 (2d ed. 2004).

And the courts have rigorously applied this principle even where—as here, *see* Compl. ¶¶ 54-55 & Exs. G-H—the would-be plaintiff has alleged that he or she has actually been injured by derogatory statements made about a business associate or other related party. The courts have rejected this theory precisely because the allegedly defamatory statement is not "of and concerning" the complaining party. For example, where the U.S.-based affiliate of a European company suffered financial losses following

publication of allegedly defamatory statements about the European company it represented, the court had little trouble dismissing the U.S. affiliate's claim. As the federal appellate court explained, "[a] false disparaging statement about IBM, for example, would not, we think, ordinarily be a defamatory statement 'of and concerning' all of IBM's suppliers, employees and dealers, however much they may be injured as a result." *Kirch v. Liberty Media Corp.*, 449 F.3d 388, 398 (2d Cir. 2006); *see also, e.g., Emerito Estrada Rivera-Isuzu de P.R., Inc. v. Consumers Union of U.S., Inc.*, 233 F.3d 24, 29 (1st Cir. 2000) (where allegedly defamatory statements were made about vehicle and distributor of vehicle suffered losses as result, affirming dismissal of distributor's defamation claim because to do otherwise would afford claims to *all* of vehicle manufacturer's "employees, to the dealers to whom it sells, to their employees, to companies that supply other goods or services . . . , to garages that specialize in repair of foreign vehicles, *and* to all current owners of similar [] vehicles whose resale value may be depressed by unfavorable stories") (emphasis in original); *CACI Premier Tech., Inc. v. Rhodes*, 536 F.3d 280, 302 (4th Cir. 2008) (rejecting contractor's defamation claim because challenged statements "were not stating actual facts about [contractor] itself" but rather referring to employees and associates of contractor).

Although Midland Consult may prefer not to be mentioned in an article that truthfully reports on allegations of criminal activity by companies with which it has done business, that preference cannot form the basis of a sustainable cause of action. In this respect, this case is analogous to one in which the court dismissed with prejudice a defamation claim arising from a news article that "pointed out that much of the

international gold trade was legitimate, but that much of it was not, and detailed schemes that drug traffickers used to launder their money by trading in gold." *Rubin v. U.S. News & World Report, Inc.*, 271 F.3d 1305, 1306 (11th Cir. 2001). The court held that the article was not capable of the same type of defamatory meaning alleged by Midland Consult here because, although the article "takes care to detail the process by which smugglers commit tax fraud, no description of this process states that American gold refiners in general, or [plaintiff] specifically, knowingly processed smuggled gold." *Id.* at 1308; *see also RE/MAX Int'l, Inc. v. Smythe, Cramer Co.*, 265 F. Supp. 2d 882, 894-95 (N.D. Ohio 2003) (dismissing defamation claim by RE/MAX *franchisor* where challenged statements were about RE/MAX *franchisees* and rejecting argument that their business relationship would convey that franchisees' improper business practices were "'endorsed and propagated by RE/MAX'"); *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1257 (S.D. Miss. 1988) (dismissing claim because statement that plaintiff was one of few people present at coerced marriage of eleven-year-old child to forty-five year-old groom, the plaintiff's brother, does not reasonably imply that plaintiff "participated in and cooperated with" child's mistreatment), *aff'd*, 865 F.2d 664 (5th Cir. 1989).[6]

[6] Importantly, even if the articles reasonably could be read as raising the *question* whether Midland Consult knowingly cooperates with organized crime, or even if a reader reasonably might draw the conclusion after reading the articles that the answer to that question is "yes," this would not make the articles actionable in defamation: Neither raising questions nor accurately reporting facts from which readers may draw their own conclusions can give rise to liability on the part of a publisher. Thus, in *Chapin v. Knight-Ridder, Inc.*, the Fourth Circuit dismissed a defamation action based on a newspaper article that "pointedly questioned the finances" of a non-profit organization that had "sponsored a program to send 'Gift Pacs' to American soldiers in Saudi Arabia," and the "apparent 'hefty mark-up' between the wholesale cost of the items in the Gift Pac and the price charged the public." 993 F.2d at 1091. The court, rejecting plaintiff's

Even if Midland Consult were to persuade the Court that some language somewhere in the articles could cause a reasonable reader to draw the inference that it had itself engaged in money laundering, its claim would still fail: Where, as here, the plaintiff alleges it was defamed through *implication*, the Court must determine not only whether the language used is reasonably capable of conveying the meaning alleged by plaintiff, but also whether the language used affirmatively suggests that the author *intended or endorsed* the defamatory meaning alleged. *See Crowley v. Fox Broad. Co.*, 851 F. Supp. 700, 702 (D. Md. 1994) ("'The usual test applied to determine the meaning of a defamatory utterance is whether it was reasonably understood by the recipient of the communication *to have been intended* in the defamatory sense . . . .'") (quoting *White v. Fraternal Order of Police*, 909 F.2d 512, 519 (D.C. Cir. 1990) (quoting F. Harper, et al., The Law of Torts § 5.4 (1986))) (Maryland law); *accord Chesapeake Publ'g Corp.*, 339 Md. at 300-01, 661 A.2d at 1177 (no defamatory meaning where news report, read as whole, could not reasonably be construed as having been "intended to suggest"

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contention that the article communicated the defamatory implication that he had defrauded the public, observed that "[f]undamentally," the article "raises questions about the Gift Pac project" but explained that "the mere raising of questions is, without more, insufficient to sustain a defamation suit in these circumstances." *Id.* at 1098 (quoting district court); *see also id.* ("Questions are not necessarily accusations or affronts. Nor do they necessarily insinuate derogatory answers."). Acknowledging that the "answer" that "Chapin is a dishonest man . . . was certainly within the wide range of possibilities" flowing from the defendant's article, the court held that this is "precisely why we need and must permit a free press to ask the question." *Id.* at 1096; *see also id.* (journalism which "invite[s] the public to ask" questions about matters of public concern is the "paradigm of a properly functioning press"); *accord Chesapeake Publ'g Corp.*, 339 Md. at 304, 661 A.2d at 1178 (rejecting contention that reporter acted improperly in writing article that "presented other sides of [a] complicated story," observing that reporter "simply did her job; she looked into what [plaintiff] told her and gave a full account of what she uncovered"). To the extent, therefore, that the articles could be said to introduce an ambiguity that the readers are permitted to resolve for themselves, Midland Consult would still fail to state a claim.

defamatory meaning alleged by plaintiff); *Chapin*, 993 F.2d at 1110 ("The language must not only be reasonably read to impart the false innuendo, but it must also affirmatively suggest that the author intends or endorses the inference."). Where review of the article as a whole does not give rise to the conclusion that the author "intended to suggest" the defamatory implication attributed by the plaintiff, the plaintiff's claim for defamation cannot be sustained. *E.g.*, *Chesapeake Publ'g Corp.*, 339 Md. at 300-01, 661 A.2d at 1177 ("[W]e cannot conclude that the article intended to suggest that Williams confessed to abusing his child."); *accord, e.g.*, *White*, 909 F.2d at 520 (holding report not defamatory because "the particular manner or language" of the report at issue did not "suppl[y] *additional*, *affirmative* evidence suggesting that the defendant *intend*[ed] or *endorse*[d] the defamatory inference"). In light of, among other things, the ample public documents on which JDN relies in *The Proxy Platform* and its inclusion of Midland Consult's position on the public controversies, the articles are devoid of "affirmative evidence" of an intent to accuse Midland Consult of money laundering.

At bottom, OCCRP never states in its articles that registration agents generally, or Midland Consult specifically, knowingly commit crimes. Nor does it state in its articles that the criminal actions of the shelf companies were "endorsed or propagated" by Midland Consult. To the contrary, OCCRP's articles report on the ways in which *lawful* businesses (including banks, registration agents and proxies) are used, unwittingly or otherwise, by criminals to launder their money, and OCCRP includes the explanation by Midland Consult's own director of why, in the company's view, it does not bear responsibility for what happens "downstream" from it. Midland Consult does not deny

that OCCRP has accurately reported its associations with various "downstream" entities accused of wrongdoing—nor could it, given that these associations are documented in government records, copies of which were provided by OCCRP to its readers via hyperlinks within the articles. *See infra* at 26-29 & n.7. Because Midland Consult's claim therefore amounts to no more than the argument that it was defamed by association, its defamation claim should be dismissed as a matter of law.

III. THE CHALLENGED STATEMENTS ARE IN ANY EVENT PRIVILEGED UNDER MARYLAND LAW

Even assuming, *arguendo*, that any of the challenged statements are capable of a meaning defamatory of plaintiffs, the statements nevertheless are privileged under Maryland law as fair and accurate reports of documents from a judicial or other public proceeding. Simply put, this privilege immunizes the publication of fair and accurate reports regarding the record of official proceedings, even if the record itself contains false and defamatory statements and the publication repeats them in the course of summarizing or otherwise reporting on the proceeding. *See Chesapeake Publ'g Corp.*, 339 Md. at 296, 661 A.2d at 1174 ("In Maryland, there exists a qualified privilege to report on legal proceedings, even if the story contains defamatory material, as long as the account is fair and substantially accurate."); *Piscatelli v. Van Smith*, 424 Md. 294, 309-10, 35 A.3d 1140, 1149 (2012) ("The fair reporting privilege is a qualified privilege to report legal and official proceedings that are, in and of themselves defamatory, so long as the account is 'fair and substantially accurate.'") (citation omitted); *see also Gohari v. Darvish*, 363 Md. 42, 767 A.2d 321 (2001) (qualified privileges "'afford[] those who publish such communications immunity from liability'") (citation omitted). The privilege is abused

and thereby lost "*only* if the report fails the test of fairness and accuracy." *Chesapeake Publ'g Corp.*, 339 Md. at 296, 661 A.2d at 1174 (citation omitted) (emphasis added) (rejecting former view that privilege could be forfeited upon showing of actual malice, and applying privilege where publication "taken as a whole, is a fair and substantially accurate account of" proceedings).

The existence of a qualified privilege "is a question of law for the court." *E.g. Gladhill v. Chevy Chase Bank*, 2001 WL 894267, at *10 (Md. Ct. Spec. App. Aug. 1, 2001) (citing *Gohari*, 363 Md. at 63); *Steer v. Lexleon, Inc.*, 58 Md. App. 199, 203-04, 472 A.2d 1021, 1023-24 (Md. Ct. Spec. App. 1984) ("Maryland law is also well settled that 'the question of whether a defamatory communication enjoys a conditional privilege is one of law for the court.'") (citations omitted). Dismissal on the basis of a qualified privilege "is appropriate . . . when the complaint fails to allege facts that would support an abuse of that privilege." *Gladhill*, 2001 WL 894267, at *10 (citing *Woodruff v. Trepel*, 125 Md. App. 381, 403, 725 A.2d 612 (Md. Ct. Spec. App. 1999)). The fair report privilege is "'broader in its scope'" than other conditional privileges, *e.g.*, *Piscatelli v. Van Smith*, 424 Md. at 309-10 & n.3 (quoting *Rosenberg v. Helinski*, 328 Md. 664, 677-78, 616 A.2d 866, 872-73 (1992)), and also unique in that its applicability can be readily determined by comparison of the challenged publication to its source material, *see, e.g.*, *Chesapeake Publ'g Corp.*, 339 Md. at 300-02, 661 A.2d at 1177-78 (comparing challenged article with criminal file on which it was based and finding that privilege protected article as fair and substantially accurate report on contents of file).

Moreover, the fair report privilege in this state "reaches not only comprehensive accounts of judicial proceedings, but [also] accounts focusing more narrowly on important parts of such proceedings." *E.g.*, 339 Md. at 297, 661 A.2d at 1175 (citation omitted) (extending privilege to various court documents related to custody case, including child psychologist reports, letters, and documents concerning charges from other cases); *accord, e.g.*, *Piscatelli*, 424 Md. at 311, 35 A.3d at 1150, *affirming* 197 Md. App. 23, 12 A.3d 164 (Md. Ct. Spec. App. 2011) (privilege applied to supplemental discovery memorandum in criminal case file containing witness' statement to prosecutor, despite it not being offered into evidence at trial); *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 712 (4th Cir. 1991) (reprimand letter by private research firm under contract with government agency was "official document" entitled to protection of privilege); *Steer*, 58 Md. App. at 205, 472 A.2d at 1024 ("'Even if the underlying arrest or the underlying criminal charges turn out to be ill-founded, it is well settled that in Maryland a newspaper enjoys a qualified privilege to publish reports of arrests and charges on which arrests are made, as well as other matters involving violation of the law.'") (citation omitted); 2 Rodney A. Smolla, *Law of Defamation* § 8:69 (2d ed. 2004) (fair report privilege applies "not only to in-court proceedings before a judge but to any exercise of judicial power").

In this case, facts in the articles that Midland Consult contends carry a defamatory implication were taken directly from what is popularly known in English as the "Hermitage Complaint," a formal report of suspected crimes filed pursuant to law with the Attorney General of Switzerland regarding suspicious activity in accounts at the bank

Credit Suisse. Brown Aff. Ex. G at 1.[7] The Hermitage Complaint also was directed to the Swiss Federal Banking Commission, Switzerland's Federal Office of Police, and the Swiss Financial Market Supervisory Authority, all instrumentalities of that country's federal government. *Id.* Consisting of the complaint letter itself and pages of bank records and government records, the Hermitage Complaint alerts authorities to a $230 million fraud allegedly perpetrated by a Russian government official and her husband. The Hermitage Complaint initiated the investigation that Swiss authorities have since confirmed they are undertaking. *See, e.g.*, Henry Meyer & Carolyn Bandel, *Swiss Probe Browder's Money-Laundering Allegations Linked to Russian Fraud*, Bloomberg, Apr. 21, 2011, 4:39 AM, http://www.bloomberg.com/news/2011-04-20/swiss-probe-browder-s-money-laundering-allegations-linked-to-russian-fraud.html (spokesperson confirming that "The Office of the Attorney General of Switzerland confirms having officially launched a criminal investigation in respect of suspected money laundering").[8]

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[7] Because the Hermitage Complaint was embedded as a single-click hyperlink within "Russian Laundering Machine," the Hermitage Complaint is a part of the article itself, and therefore properly before the Court. *See, e.g.*, *Agora, Inc. v. Axxess, Inc.*, 90 F. Supp. 2d 697, 704-05 (D. Md. 2000) (dismissing claim because "factual basis for the [challenged] statement" was "confirmable . . . by activating the hyperlink" in the article), *aff'd*, 11 F. App'x 99 (4th Cir. 2001). Alternatively, the Court may take judicial notice of it as an official document. *See Evans v. Cnty. Council of Prince George's*, 185 Md. App. 251, 255-56, 969 A.2d 1024, 1027 (Md. Ct. Spec. App. 2009) (taking judicial notice of public record documents on motion to dismiss). Although plaintiffs failed to attach this portion of the OCCRP publication at issue to their Complaint, JDN has attached a copy to the accompanying Brown Affidavit as Exhibit G.

[8] Although Maryland courts apparently have not had occasion to reach this issue, courts in other jurisdictions have applied the fair report privilege to foreign documents comparable to the Hermitage Complaint here. *See, e.g.*, *Friedman v. Israel Labor Party*, 957 F. Supp. 701, 712-13 (E.D. Pa. 1997) (Pennsylvania law) (applying privilege to news report of Israeli press release); *Wynn v. Smith*, 117 Nev. 6, 15-16, 16 P.3d 424, 430 (Nev. 2001) (assuming without deciding that Scotland Yard reports could fall within privilege); *Daniel Goldreyer, Ltd. v. Van de Wetering*, 630 N.Y.S.2d 18, 22 (App. Div. 1st Dept. 1995) (applying privilege to Dutch Ministry of Justice

Although the underlying fraud was complex, the documents relevant to application of the privilege are straightforward and uncontroversial, and the sole question for the Court is whether the articles represent a fair and substantially accurate recounting of them. The Hermitage Complaint alleges that the illicit proceeds from the fraud were first transferred "from a company incorporated in New Zealand, Bristoll Export Limited Level 5 ("Bristoll"). Bristoll's registered address is C/-GT Group Limited . . . in New Zealand and it was incorporated by Michael Taylor, one of the partners and executives of GT Group Limited." Brown Aff. Ex. G at 4. Along with numerous other government records attached as exhibits, the Hermitage Complaint includes Bristoll's official incorporation papers printed from the New Zealand government's website. *Id.* at 71-76. Those government documents show that Bristoll is wholly owned by Midland New Zealand Limited, which lists Midland Consult's website in the incorporation records. *Id.* at 72. The directors of Midland New Zealand Limited identified in these government records are Jaime Augusto Cedeno Villarreal and Midland Consult's administrative assistant, Olga Demosthenous. *Id.* at 75-77.

These allegations contained in the Hermitage Complaint, and the facts in the official New Zealand records accompanying it, align precisely with what OCCRP reported in the challenged articles: In "Russian Laundering Machine," while linking to

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report regarding tests on restored painting); *Saenz v. New York Tribune, Inc.*, 290 N.Y.S. 316, 319-24 (N.Y. Sup. Ct. 1936) (applying privilege to Cuban criminal proceedings). Although the Fourth Circuit, applying Virginia law 25 years ago when no other federal court had addressed the question, held that it would not extend the privilege to a press release issued by a South Korean intelligence agency, it acknowledged that certain foreign documents, including as one court had noted, documents from a Swiss judicial proceeding, have "far more reliability than the press release of an intelligence agency" and might properly support the privilege in an appropriate case. *Lee v. Dong-A Ilbo*, 849 F.2d 876, 877-78 & n.2 (4th Cir. 1988).

the full Hermitage Complaint, OCCRP accurately reported the allegations from that document that "the money taken in [Hermitage Capital Management Limited's] name by Russian authorities flowed to Swiss accounts through a chain of phantom companies, including Nomirex from UK and Bristoll Export from New Zealand." *Compare* Compl. Ex. E & Brown Aff. Ex. E, at 1, *with* Brown Aff. Ex. G at 4-6 The article also accurately reports that "New Zealand company Bristoll Export," which various public records and plaintiffs' own admissions confirm was established by "Midland Consult together with GT Group Limited," was "mentioned in Hermitage Capital's money laundering suspicious activity report to Swiss authorities as a company involved in money flow of US$230 million stolen from the Russian budget." *Compare* Compl. Ex. E & Brown Aff. Ex. E, at 5, *with* Brown Aff. Ex. G at 4-5. Finally, the article notes that "[a]ccording to the New Zealand company registry," which was a public record included within the Hermitage Complaint, "Bristoll Export's registered office was listed as the offices of the GT Group Limited, and Michael Taylor was the one who filed the reports to the New Zealand corporate regulator. Sole shareholder of Bristoll Export was Midland New Zealand Limited, whose director from 2008 till 2010 was Olga Demosthenous from Cyprus, banking advisor in Midland Consult. In 2010 Olga Demosthenous was replaced by Jaime Augusto Cedeno from Panama." *Compare* Compl. Ex. E & Brown Aff. Ex. E, at 5, *with* Brown Aff. Ex. G at 4, 71-76. In "The Invisible Empire," OCCRP adverts to the same facts and also references the imprisonment and death of a Russian anti-corruption lawyer, who was investigating the fraud that gave rise to the Hermitage

Complaint and is mentioned within the document itself. *Compare* Compl. Ex. D & Brown Aff. Ex. D, at 2, *with* Brown Aff. Ex. G at 2.

Accordingly, to the extent the articles concern Midland Consult at all, they fairly and accurately summarize or describe statements about Midland Consult contained in the Hermitage Complaint. This is all that JDN need show to be entitled to dismissal of Midland Consult's defamation claim as a matter of law, and this is so even if Midland Consult could demonstrate that the allegations about it in the Hermitage Complaint are themselves false.[9]

[9] It is, however, unlikely that Midland Consult will argue that the statements about it in the Hermitage Complaint are false in any material respect: In an affidavit submitted in the New York defamation lawsuit against Dow Jones & Co. arising out of news reporting similar to that at issue here (and in which the defendant's motion to dismiss is currently pending), Stepanov himself testified that Midland Consult began working with GT Group in 2005 and "in that connection, Midland New Zealand was formed and its officers and directors were persons associated with GT Group." *See* Brown Aff. Ex. K ¶ 5. He further testified that the Credit Suisse deposits by Bristoll took place in January 2008 when he was not involved with that company, but then added that the "first time Midland Consult became involved with Midland New Zealand was in November 2008" when Cedeno and Demosthenous became its directors. *Id.* The Court may consider the Stepanov affidavit on this motion, both because it represents an adjudicative fact and because it constitutes a party admission. *See* Md. Rule 5-201; *Castiglione v. Johns Hopkins Hosp.*, 69 Md. App. 325, 336, 517 A.2d 786, 791 (Md. Ct. Spec. App. 1986*); Dashiell v. Meeks*, 396 Md. 149, 174-76, 913 A.2d 10, 24-26 (2006). Clearly, Stepanov's sworn statements do not contradict but rather further support the accuracy of the statements in the Hermitage Complaint about Midland Consult, although, as noted, the privilege applies to the challenged *articles* regardless of whether the underlying official document is itself accurate.

CONCLUSION

For each of the foregoing reasons, the Complaint fails to state a claim on behalf of either plaintiff as a matter of law, and JDN respectfully requests that the Court grant its motion to dismiss the Complaint with prejudice.

February 27, 2013

Respectfully submitted,

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