

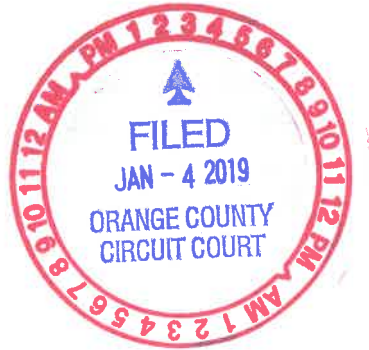
VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ORANGE

The Miller Firm, LLC, )  
)  
Plaintiff, Counterclaim Defendant, )  
v. )  
)  
Timothy Litzenburg, )  
)  
Defendant, Counterclaim, and )  
Crossclaim Plaintiff, )  
)  
Roundup Cancer Firm, LLC, )  
)  
Defendant, )  
)  
Taejin Cristina Pendleton, )  
)  
Defendant, )  
)  
Christina Pendleton & Associates, P.C., )  
)  
Defendant, )  
v. )  
)  
Michael Miller, )  
)  
Crossclaim Defendant. )  
\_\_\_\_\_ )

Case No. CL 18001118

COPY



**VERIFIED COUNTERCLAIM AND CROSS-CLAIM  
FOR DAMAGES, DECLARATORY, AND INJUNCTIVE RELIEF**

**I. Introductory Statement**

1. This Counterclaim and Cross-Claim for Defamation Per Se, Defamation Per Quod, Tortious Interference with Contract or Business Expectancy, and Statutory Business Conspiracy, is brought by the Defendant / Counter-Claimant / Cross-Claimant Timothy Litzenburg (“Mr. Litzenburg”) against the Plaintiff / Counter-Defendant The Miller Firm LLC, (the “Miller Firm”) and against one of its principal individual attorneys, Michael Miller (“Mr.

Miller”), who is sued individually. Because Mr. Miller was not a formal Plaintiff in the original action filed in this Court, the action against him is properly styled as a Cross-Claim. The Counterclaim and Cross-Claim raise identical issues of law and fact, and so for simplicity and economy are not further differentiated in this pleading, but are treated as identically applicable in all respect to both the Miller Law Firm and Mr. Miller individually, jointly and severally, as Co-Defendants.

2. Mr. Litzenburg seeks money damages against the Miller Firm and Mr. Miller for Defamation per se, Defamation per quod, and Tortious Interference with Contract or Business Expectancy. Mr. Litzenburg seeks treble damages, attorneys’ fees, and costs, in his Statutory Business Conspiracy claim. Mr. Litzenburg seeks declaratory, preliminary and permanent injunctive relief against the future tortious and unethical conduct of the Miller Firm and Mr. Miller.

3. This Court has jurisdiction over the Counterclaims and the Cross-Claims because they all arise directly from the same transactions and occurrences of the Miller Firm’s original action against Mr. Litzenburg. The Counterclaims and Cross-Claims are effectively the flip side to the Miller Firm’s lawsuit, alleging that the Miller Firm and Mr. Miller are the wrongdoers in this conflict, by acting unethically, unprofessionally, and tortiously to destroy the professional and community standing of Mr. Litzenburg, unethically interfering with the right of clients to choose between Mr. Litzenburg and the Miller Firm or Mr. Miller to represent them.

4. This dispute arises from the separation of Mr. Litzenburg from the Miller Firm following a monumental \$289 million verdict in favor of Dewayne Lee Johnson in San Francisco against the Monsanto Corporation arising from allegations that Monsanto’s popular weed-killer, “Roundup” was a carcinogen. Mr. Johnson considered Mr. Litzenburg to be his principal and

lead attorney responsible for his Roundup case against Monsanto, as well as his personal attorney. Other plaintiffs among the other some 2000 plaintiffs then represented by Mr. Litzenburg and the Miller Firm also considered Mr. Litzenburg to be their attorney principally responsible for their Roundup litigation. As discussed below, the Miller Firm held out to clients that Mr. Litzenburg was the primary attorney at the Miller Firm responsible for their Roundup claims. Mr. Litzenburg is an attorney who has and had primary responsibility for Roundup clients at the Mille Firm as contemplated by Rule 5:8 of the Virginia Rules of Professional Conduct.

5. In the aftermath of the separation between Mr. Litzenburg and the Miller Firm, the parties met and conferred, as required by the Rule 5.8 of the Virginia Rules of Professional Responsibility, during which Mr. Litzenburg sought a joint letter to be sent to their Roundup clients, providing clients with the choice as to which lawyers they opted to have represent them going forward. That meeting ended in discord with the Miller Firm refusing to send a joint letter as requested by Mr. Litzenburg. Mr. Litzenburg, after consulting with the Virginia State Bar, and following the guidance of the Virginia State Bar, appropriately sent a letter to clients offering them the option of opting to retain Mr. Litzenburg as their lawyer, or the Miller Firm, or deferring a decision.

6. In response, the Miller Firm and Mr. Miller sent an incendiary letter to clients, cynically calculated to destroy the professional reputation of Mr. Litzenburg, and steer all clients to the Miller firm.

7. This litigation raises issues of enormous importance, with consequences that extend far beyond the immediate parties to this litigation. In the final analysis, the “real parties in interest” are not the litigants—Mr. Litzenburg, the Miller Firm, or Mr. Miller. The real parties

in interest are the clients who have claims against Monsanto in the Roundup litigation. So too, the principles at stake extend beyond this litigation, ranging more generally to encompass the interests of all clients represented by members of the Virginia Bar, and the expectations of ethical and professional behavior that the Virginia Bar rightly expects and demands of its members.

8. The Rules of Professional Conduct impose on lawyers the obligation to “play it straight” with clients when lawyers depart from a law firm, presenting clients with an even playing field in which they exercise the ultimate sovereignty to choose for themselves whether to retain the departing attorney to represent them, or to retain the firm from which that attorney departed, or neither.

9. Whatever internecine rivalry or bitterness may exist among the lawyers who are separating, ethical rules and principles of professionalism mandate that these squabbles not become the burden of the client.

10. The Miller Firm and Mr. Miller violated these principles in ways almost too numerous to count. The Miller Firm and Mr. Miller crossed important ethical and professional lines, and simultaneously crossed lines demarcated by the law of torts. The conduct of the Miller Firm and Mr. Miller included defamation, tortious interference with and contract or prospective economic advantage, and business conspiracy.

11. The norms of ethical and professional practice of law in Virginia contemplate that the issues of client selection of lawyers *not* descend to the adversarial contests of tort litigation. Lawyers are expected to work it out and avoid that. When lawyers on one side go nuclear, however, openly attacking lawyers on the other, they cross both bounds of professionalism and bounds enforced by the law of torts.

12. To redress the harm he has suffered, and to enforce the client protection that animate Virginia's ethical and professional norms, Mr. Litzenburg brings these claims.

## II. Factual Background

13. On October 15, 2018, the Miller Firm and Mr. Miller sent to clients involved in the Roundup litigation the following "Miller Letter":

It has come to our attention that a young attorney who was fired from our firm for erratic behavior is now unlawfully attempting to lure our roundup clients away from our firm. We sincerely apologize for any confusion his letter might have caused. As you know the roundup litigation was initiated by our 12 lawyer firm several years ago and we have had tremendous success moving your case and other cases forward. Mr. Litzenburg claims in his letter to have taken the first lymphoma case to trial; it is simply false. Mr. Litzenburg was not allowed to sit at counsel's table because of his erratic behavior. The case was prepared for trial by Michael Miller, Nancy Miller, David Dickens, Jeff Travers and many other attorneys here at the Miller Firm. The case in question was tried by David Dickens and Jeff Travers at our firm in conjunction with local California counsel.

As your attorneys, we are extraordinarily proud to represent you and will continue to do so vigorously. I am proud to be named as the co-lead of the Plaintiffs steering committee in charge of the Federal Roundup litigation and proud to be preparing the next Roundup case for trial in California.

I sincerely regret that a young rouge [sic] attorney would send this letter in a hope to take clients away from our nationally known and respected law firm. This will be the last time you will have to hear of this terminated attorney and we will now go back to the vigorous pursuit of your claims. If you have any question about your case, feel free to call any of the attorney [sic] at The Miller Firm, we are all working on the Roundup litigation.

With every best wish to you and your family, we remain

Very truly yours,  
THE MILLER FIRM, LLC

Michael J. Miller

14. The Miller Letter, a copy of which is attached as Exhibit A, is incorporated in its entirety in this Pleading, and in ¶ 13 above is pled in *haec verba*, or in the exact words, as required in defamation actions in Virginia.

15. To understand the background that led to the Miller Letter, it is necessary to understand the background of the relationship of the parties, and the evolution of the Monsanto litigation arising from its popular Roundup herbicide.

16. Mr. Litzenburg graduated from the University of Richmond Law School in 2008. He worked as a summer associate at the Williams Mullen law firm in Richmond, and after graduation worked in Richmond in a personal injury practice with attorney Jonathan Petty, and the Hancock Daniel law firm. Mr. Litzenburg joined the Miller Firm in June of 2012.

17. Mr. Litzenburg's work at the Miller Firm began with his participation in Actos bladder cancer lawsuits. In the Actos litigation, Mr. Litzenburg's work included the preliminary work-up of six major lawsuits in five states, the taking of numerous depositions, sitting as second chair in trials, and participating in the global settlement negotiations.

18. In 2015, Mr. Litzenburg began researching other possible mass tort litigation endeavors. On March 20, 2015, the World Health Organization announced that the chemical glyphosate was a probable human carcinogen. Glyphosate is the principal ingredient in Roundup, the popular weed-killer product produced by the Monsanto Corporation.

19. Two days after the World Health Organization announcement, Mr. Litzenburg phoned Mr. Miller, telling Mr. Miller that Roundup was used in 80% of the row crops in the United States. Mr. Miller asked Mr. Litzenburg to investigate more deeply. Mr. Litzenburg consulted with an epidemiologist, who was supportive of M. Litzenburg's inquiry regarding the danger of Roundup and either Miller or his wife congratulated Mr. Litzenburg via email that he

had “found the next mass tort”. Mr. Litzenburg and other members of the Miller Firm proceeded to establish a website to advertise and began to take intakes of Roundup clients for potential litigation against Monsanto. Mr. Litzenburg was the sole attorney in the Miller Firm taking client intakes for the Roundup litigation for approximately the first 200 clients. The Miller Firm ultimately moved to a referral-based system for accepting Roundup clients, and ultimately signed approximately 2000 Roundup clients.

20. From the beginning of the Miller Firm’s involvement in the nationwide Roundup litigation, Mr. Litzenburg spent more time on the Roundup litigation than any other lawyer at the Miller Law Firm. Work on the Roundup litigation quickly came to occupy approximately 90% of his time at the Miller Law Firm. His work included constant travel across the United States. Mr. Litzenburg had substantial autonomy in the intake and signing of clients, in strategic filings, in interviewing and retention of experts, and personal interaction with clients. Mr. Litzenburg was the principal attorney handling the case management system, “Trialworks”, used for each of the Roundup cases handled by the Miller Law Firm.

21. In many of the Roundup cases that were filed across the United States, a preliminary procedural battle involved remand motions, to determine whether the action would be litigated in state courts or federal district courts. Mr. Litzenburg became the lead expert and attorney for the Miller Firm in handling remand proceedings, where he had a 100% success rate on behalf of the Roundup clients. Mr. Litzenburg did not consult with Mr. Miller on strategy or present him with draft pleadings or motions. To the extent Mr. Litzenburg wanted to discuss litigation strategy, he spoke with David Dickens, an able litigator, or Jeff Travers, generally not a litigator but an excellent litigation strategist.

22. Mr. Litzenburg took a substantial role in the massive research and discovery efforts naturally attendant to mass tort cases such as the Roundup litigation. He created the search terms that generated millions of documents produced in discovery, and he found and prepared the most salient documents into trial exhibits to be used on behalf of the Roundup clients.

23. Mr. Litzenburg took depositions of Monsanto executives. Mr. Litzenburg sat as “first chair” in taking two of the six key depositions of Monsanto executives. In 2016, Mr. Litzenburg took at least three Rule 4:5(b)(6) depositions of key witnesses designated as corporate representatives for the Monsanto defendants.

24. Mr. Litzenburg emerged as the “public relations face” of the legal team working on the Roundup litigation for the Miller Firm. He was invited to speak at an international event on the Roundup litigation at The Hague. In assigning Mr. Litzenburg to make this important presentation at The Hague, Mrs. Miller described Mr. Litzenburg as the Miller Firm’s “lead Roundup attorney.”

25. Mr. Litzenburg’s role during this period as the Miller Firm’s “lead Roundup attorney” was not simply Mr. Litzenburg’s subjective perception. It was the view of innumerable Roundup clients, and the view held by other lawyers and staff members at the Miller Firm. When there were inquiries from national or international Press or others regarding any aspect of the Roundup story, science or procedural posture, such inquiries were routinely referred to Mr. Litzenburg.

26. Mr. Litzenburg played a particularly pivotal and consequential role in the Roundup trial brought in California on behalf of Mr. Dewayne Lee Johnson. Mr. Johnson regarded Mr. Litzenburg as the lawyer Mr. Johnson retained to represent him. (*See Affidavit of*



*Dewayne Lee Johnson, attached as Exhibit B.*) While preparing for a routine status hearing in Mr. Johnson's case in San Francisco, Mr. Litzenburg found that Mr. Johnson's health was deteriorating rapidly. Mr. Johnson developed a form of cancer known as non-Hodgkin lymphoma. Mr. Johnson had used Roundup regularly in his job as a groundskeeper at a California public school. Under California law, a litigant is guaranteed an expedited right to trial if there is substantial medical doubt of a litigant's survival within six months. Mr. Litzenburg obtained a medical opinion from a physician certifying that medical doubt, and was successful in bringing a motion to expeditiously advance Mr. Johnson's case to trial. Mr. Litzenburg personally prepared Mr. Johnson for four difficult days of deposition testimony. *See Exhibit B.*

27. Prior to the Dewayne Johnson trial, Mr. Johnson had never even met Mr. Miller. Mr. Johnson regarded Mr. Litzenburg as his lawyer. Mr. Johnson spent many hours communicating with Mr. Litzenburg in trial preparation. Mr. Litzenburg visited Mr. Johnson's home a number of times. Mr. Litzenburg alone defended all of Mr. Johnson's arduous depositions. From Mr. Johnson's perspective, Mr. Litzenburg handled his case from the beginning and was the lead attorney on his case. Legal issues aside, Mr. Johnson was impressed that Mr. Litzenburg consistently showed genuine concern about Mr. Johnson's health and well-being. *See Exhibit B.*

28. As the Johnson case was approaching trial in San Francisco, the relationship between Mr. Miller and Mr. Litzenburg began to show strain. Mr. Litzenburg came to believe at this time that Mr. Miller was resentful of the increasingly high profile of Mr. Litzenburg in the Roundup litigation, and sought to diminish Mr. Litzenburg's role, including his role in the Dewayne Lee Johnson trial.

29. Shortly before Mr. Johnson's case went to trial, Mr. Litzenburg informed Mr. Johnson that Michael Miller had been in an accident. Mr. Johnson remarked that he did not know who Mr. Miller was and that Mr. Litzenburg was his lawyer. *See Exhibit B.*

30. As the trial in Mr. Johnson's case approached, Mr. Litzenburg explained to Mr. Johnson that lawyers Brent Wisner and David Dickens should be a part of the trial team. Mr. Johnson, who trusted Mr. Litzenburg, was pleased to accept that advice. *See Exhibit B.*

31. When it became known to Mr. Johnson that Mr. Miller attempted to limit the role Mr. Litzenburg played at the trial, Mr. Johnson was "deeply concerned", "confused" and "somewhat amazed" since Mr. Litzenburg had worked on his case from the beginning with great success and had worked extensively to prepare for the trial. At Mr. Litzenburg's suggestion, Mr. Johnson accepted the other members of the legal team, Brent Wisner and David Dickens, assisting in the case. Mr. Johnson is of the view that Brent Wisner, David Dickens, and Timothy Litzenburg are all excellent attorneys and that they each played important parts of the trial team. *See Exhibit B.*

32. The Johnson trial was a tremendous success. Mr. Johnson received a \$289 million jury verdict against Monsanto.

33. Mr. Johnson later found out that Mr. Miller had suggested that Mr. Litzenburg had not done significant or important work on Mr. Johnson's case or in the other Roundup litigation. From Mr. Johnson's perspective, that is simply false. Mr. Johnson continues to consider Mr. Litzenburg the primary attorney who worked on his case. Indeed, after Mr. Litzenburg left the Miller Firm, Mr. Litzenburg remained Johnson's personal attorney who he can still rely upon for future legal matters. *See Exhibit B* ("Timothy Litzenberg [sic] did a significant amount of work on my trial against Monsanto. I consider him to be my lead attorney

and feel I can go to him for legal matters in the future and I still consider him to be apart [sic] of my legal affairs”.)

34. Other clients similarly regarded Mr. Litzenburg, and not Mr. Miller, or The Miller Firm, as their attorney in the Roundup litigation. As an exemplar, Christine Sheppard was a client who received the October 15 Miller Letter from the Miller Law Firm and Mr. Miller. (*See Declaration of Christine Sheppard, Attached as Exhibit C.*) Ms. Sheppard was taken aback by the Miller Letter, because she had never met Mr. Miller. In 2015, Ms. Sheppard “retained Timothy Litzenburg of The Miller Firm to pursue a lawsuit against Monsanto for non-Hodgkin’s lymphoma that [she] developed as a result of her Roundup use and exposure”. Ms. Sheppard always considered Mr. Litzenburg as her primary attorney in the Roundup litigation. On Mr. Litzenburg’s recommendation, Ms. Sheppard authorized Mr. Litzenburg to file suit on her behalf against Monsanto in Hawaii. In 2016, Ms. Sheppard traveled to Virginia to consult on her case. She visited the Miller Firm in Orange, Virginia. The only person she met at the Miller Firm during this visit, apart from the receptionist, was Mr. Litzenburg. *See Exhibit C.*

35. In 2016, Ms. Sheppard traveled to The Hague to participate in the events transpiring in The Hague tribunal regarding Roundup. Mr. Litzenburg accompanied Ms. Sheppard to The Hague as her attorney in that high-visibility proceeding, in which both Ms. Sheppard and Mr. Litzenburg testified. Throughout the pendency of Ms. Sheppard’s case, Mr. Litzenburg kept in constant phone contact with her to apprise her of developments in the case, and visited Ms. Sheppard at her home in Oceanside, California. *See Exhibit C.*

36. To this this day, Ms. Sheppard *has never met* Mr. Miller. Her *first* encounter with Mr. Miller was her receipt of the offending Miller Letter of October 15, 2018. Since receipt of

that letter Ms. Sheppard has received three additional letters, and in her own words, what she describes as “one somewhat bullying phone call” from Mr. Miller. *See Exhibit C.*

37. Ms. Sheppard understands that Mr. Miller has claimed that Mr. Litzenburg did minimal work in the Roundup litigation, and, in her words, was described by Mr. Miller as a “rogue young attorney who was now unlawfully trying to lure Roundup clients from his firm.” *See Exhibit C.* Ms. Sheppard understood Mr. Miller to be asserting that Mr. Litzenburg did not have “primary responsibility for Roundup cases at the Miller Firm”. In Ms. Sheppard’s own words: “As a Roundup client, that allegation by Mr. Miller is completely false”. *See Exhibit C.* Ms. Sheppard states, “The Miller Firm held Mr. Litzenburg out as the primary Roundup attorney at the firm, and he was excellent at his job prior to his termination. I considered Mr. Litzenburg my primary attorney in my Roundup litigation.” *See Exhibit C.*

38. On October 15, 2018, Mr. Miller contacted Mr. Litzenburg’s ex-wife, Katherine. Mr. Litzenburg and his ex-wife were at this time still embroiled in difficult interpersonal conflicts arising from divorce and child-custody proceedings. Mr. Miller initiated the phone call to gather dirt on Mr. Litzenburg, and to elicit his ex-wife’s assistance in his campaign to ruin Mr. Litzenburg. Following the phone conversation, Mr. Miller sent an email message to Mr. Litzenburg stating: “Stay away from my experts you [sic] just making your day of reckoning worse. I had a nice chat with Katherine this morning. At least your [sic] consistent: a scum bag in both your personal and professional life.” *See Email from Michael Miller, Attached as Exhibit D.*

## COUNT I; DEFAMATION PER SE

### **A. Defamatory Meaning**

39. Mr. Litzenburg is legally entitled to predicate his defamation claims both on false defamatory statements that are literally stated in the Miller Letter, as well as defamatory meanings that are conveyed by implication in the letter. In this defamation action Mr. Litzenburg bases his claim both on passages in the Miller Letter that are explicitly defamatory, and on defamatory meanings conveyed by the Miller Letter that are implied.

40. Mr. Litzenburg is also entitled to predicate his defamation claims both on specific identified passages contained in the Miller Letter, as well as in defamatory meanings conveyed, explicitly or by implication, through the overall impression created by the letter. In this defamation action Mr. Litzenburg relies both on specific defamatory statements contained in the Miller Letter, as set forth below in ¶¶ 41-50, and on the overall gist and sting of the defamatory meanings conveyed by the letter, as set forth below ¶¶ 51-54.

41. The defamatory statements contained in the Miller Letter constitute defamation per se under Virginia law. The statements fall well within the compass of three of the recognized categories of defamation per se in Virginia. First, the gist or sting of the defamatory statements conveyed are defamatory per se because they impute to Mr. Litzenburg unfitness to perform the duties of his employment as a lawyer, or want of integrity in the discharge of the duties of his employment as a lawyer. Second, the gist or sting of the defamatory statements conveyed are defamatory per se because they prejudice Mr. Litzenburg in the profession of being a lawyer. Third, the gist or sting of the defamatory statements conveyed are defamatory per se because they impute to Mr. Litzenburg a criminal offense involving moral turpitude.

42. The first sentence of the Miller Letter reads: “It has come to our attention that a young attorney who was fired from our firm for erratic behavior is now unlawfully attempting to lure our roundup clients away from our firm.” This sentence conveys the defamatory imputation that Mr. Litzenburg is unfit for and lacks integrity in his performance as a lawyer. The average reader would understand this sentence as conveying the meaning that Mr. Litzenburg was engaged in “erratic behavior” that caused him to be “fired” and that led to Mr. Litzenburg engaging in the behavior of “unlawfully attempting” to lure clients from the Miller Firm. This is a damning sentence condemning both Mr. Litzenburg’s fitness to practice law and his integrity in the practice of law. These passages fit squarely within the Virginia definition of communications that are defamatory per se because they impute unfitness of the crossclaim and counterclaim plaintiff’s practice of his or her profession, or a lack of integrity in that practice.

43. The first sentence of the Miller Letter also falls squarely within the Virginia defamation per se category involving imputations that prejudice a person in the practice of his or her profession. The manifest meaning and intent of the first sentence of the Miller Letter is to wreak ruin on Mr. Litzenburg as a lawyer, disparaging him as a lawyer “fired” for “erratic behavior” who subsequently resorted to “unlawfully” luring clients from the Miller Firm. The first sentence of the Miller letter is as damning to the professional reputation of Mr. Litzenburg as a lawyer as any sentence could be.

44. The first sentence of the Miller letter is also reasonably susceptible of conveying the meaning that Mr. Litzenburg is guilty of a crime involving moral turpitude. The word “unlawfully” as used in the first sentence of the Miller Letter does not stand alone. The first sentence is capable of carrying the defamatory meaning that Mr. Litzenburg engaged in illegal criminal activity involving moral turpitude, by “unlawfully” and unethically engaging in

practices to lure Roundup clients away from the Miller firm, thereby imputing fraudulent, unethical, and criminal action to Mr. Litzenburg.

45. Like all words used in human language, the word “unlawfully” gathers its import from the overall circumstances and context of the communication, including the words and phrases that surround it. As elegantly expressed by Justice Oliver Wendell Holmes, “A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” *Towne v. Eisner*, 245 U.S. 418, 425 (1918). To sufficiently plead that the word “unlawfully” carries a meaning of criminal behavior imbued with moral turpitude, all Mr. Litzenburg must allege is that *one* reasonable meaning of “unlawfully,” as the Miller Letter used it, was that Mr. Litzenburg sought to fraudulently and falsely mislead Roundup clients into thinking that he was a bona fide lawyer who had played a substantial role as an active lawyer and leader in the Roundup litigation, when in fact he was not. If this is at least *one* permissible meaning of what “unlawfully” would have been understood by average readers to convey, given the entire context of the Miller Letter, then the Miller Letter plainly imputed to Mr. Litzenburg the commission of a crime of moral turpitude. If Mr. Litzenburg had falsely passed himself off as a significant lawyer in the Roundup litigation in order to lure clients from the Miller firm, when in fact he was never anything other than a gofer or bit player in the Roundup litigation, his fraudulent representations would be a profound and egregious act of moral turpitude, fraudulent and contrary to all the moral and ethical values of the legal profession in Virginia. In context, this is the *only* meaning the Miller Firm could have been understood to have intended to convey in this first sentence. Yet Mr. Litzenburg’s burden is far more modest. He must only plead, as he does here, that this is at least *one* reasonable construction of the sentence.

46. In sum, the first sentence of the Miller Letter carries three defamatory meanings that constitute defamation per se. All three defamatory meanings are manifest on their face. As long as at least *one* reasonably permissible meaning of *any one* of the three meanings alleged is defamatory per se, Mr. Litzenburg's defamation per se case is viable, based on the first sentence of the Miller letter alone.

47. The remainder of the first paragraph of the Miller Letter is all of a piece, and must be considered in its entirety to understand the defamatory meaning it conveys. The remainder of the first paragraph of the Miller Letter reads:

As you know the roundup litigation was initiated by our 12 lawyer firm several years ago and we have had tremendous success moving your case and other cases forward. Mr. Litzenburg claims in his letter to have taken the first lymphoma case to trial; it is simply false. Mr. Litzenburg was not allowed to sit at counsel's table because of his erratic behavior. The case was prepared for trial by Michael Miller, Nancy Miller, David Dickens, Jeff Travers and many other attorneys here at the Miller Firm. The case in question was tried by David Dickens and Jeff Travers at our firm in conjunction with local California counsel.

48. This passage contains numerous specific falsities. Most importantly, however, is the overall defamatory meaning and manifest intent of the passage. Mr. Miller and the Miller Firm intended to convey, and in fact did convey, to average readers that the Roundup litigation was exclusively the work of the Miller Firm, lock, stock and barrel, from beginning to end, in which Mr. Litzenburg never played, or was *allowed to play, because of his erratic behavior*, any meaningful substantive role, thereby rendering Mr. Litzenburg's communication to clients offering them a choice between Litzenburg and Miller a farce and a fraud. The passage thus touts the Miller Firm as initiating the Roundup litigation, as if Mr. Litzenburg played no role in the initiation of the litigation. The passage asserts that it is "simply false" that Mr. Litzenburg took the first lymphoma case to trial. It then names all the other lawyers who participated in the litigation, cynically and deliberately conveying the impression that Mr. Litzenburg was not a



significant player, or even a player *at all*, in that litigation team. This passage is defamation per se. Mr. Litzenburg claimed to be a significant lawyer in the Roundup litigation, significant enough to send a letter to clients offering them the choice of choosing him or the Miller Firm. For the Miller Letter to dismiss and belittle Mr. Litzenburg's participation in the Roundup litigation as if he was a non-entity, or as playing no meaningful role, is plainly to imply that Mr. Litzenburg was a scoundrel and cheat, lying to prospective clients. These imputations naturally impute to Mr. Litzenburg unfitness to perform the duties of his employment as a lawyer, or want of integrity in the discharge of the duties of his employment as a lawyer. For what fit and ethical lawyer acting with integrity would pose as an imposter who played a significant role in representing a client when in fact that lawyer was nothing but a bit-role errand boy? Similarly, the gist or sting of the defamatory statements conveyed by the remainder of the first paragraph of the Miller Letter are defamatory per se because they prejudice Mr. Litzenburg in the profession of being a lawyer. The Miller Letter deliberately and brazenly made Mr. Litzenburg out to be an erratic lawyer unfit to sit at a counsel table who then misrepresented himself as a legitimate lawyer in the Roundup litigation. The passage in the Miller Letter is shot through and through with defamatory disparagement of Mr. Litzenburg's qualities as a lawyer.

49. The final paragraph of the Miller Letter operated as a reinforcing reprise of all the defamatory imputations that came before it. That paragraph read:

I sincerely regret that a young rouge [sic] attorney would send this letter in a hope to take clients away from our nationally known and respected law firm. This will be the last time you will have to hear of this terminated attorney and we will now go back to the vigorous pursuit of your claims. If you have any question about your case, feel free to call any of the attorney [sic] at The Miller Firm, we are all working on the Roundup litigation.

50. The phrase "rouge attorney" was plainly a misspelling. All average readers understood the Miller Letter to mean "rogue" young attorney. What matters is not the poor

spelling or inartful grammar of the Miller Letter, but the impression the Miller Letter quite plainly set out to communicate. That message was that the Miller Firm was the real force behind the Roundup litigation and that Mr. Litzenburg was a young rogue attorney who has been terminated, and from whom the clients will never hear again. The passage is defamatory per se. First, in conveying that Mr. Litzenburg was a terminated young rogue attorney from whom the clients will never hear again, the passage imputed to Mr. Litzenburg unfitness for and a lack of integrity in the practice of law. Second, the passage was clearly calculated to prejudice Mr. Litzenburg in his profession as an attorney.

51. Mr. Litzenburg is also entitled to predicate his defamation claims on the entire impression conveyed by the Miller Letter, express and implied, as long as that entire impression conveys false defamatory statements of fact.

52. In addition to the individual passages from the Miller Letter highlighted above, Mr. Litzenburg alleges that the overall import of the Miller Letter, considered in its entirety, was defamatory per se. The Court is both permitted and required to consider the communication as a whole, including the possibility that the whole may be greater than the sum of its parts.

53. The gist or sting of the defamatory statements conveyed considered as a whole are defamatory per se because they impute to Mr. Litzenburg unfitness to perform the duties of his employment as a lawyer, or want of integrity in the discharge of the duties of his employment as a lawyer. The gist or sting of the defamatory statements conveyed are defamatory per se because they prejudice Mr. Litzenburg in the profession of being a lawyer.

54. The impression created by the Miller Letter as a whole is that Mr. Litzenburg, never played any substantive role in the Roundup litigation, but was simply an erratic rogue

attorney on an illegal frolic and detour, out to steal clients from the real lawyers, the Miller Firm, a scheme perpetrated by Mr. Litzenburg which was fraudulent and unlawful.

### **B. Falsity**

55. The individual defamatory statements highlighted above, as well as the overall defamatory impression conveyed by the Miller Letter as a whole, expressed and implied, were false. The false defamatory statements in the Miller Letter are revealed in detail in the “Factual Background” paragraphs of this pleading, ¶¶ 13-38 of this pleading. Those detailed facts are incorporated by reference, in this section on “Falsity,” but not repeated here. In summary, the Miller Letter is false as summarized in ¶¶ 56-59 below.

56. The defamatory statements conveyed, expressed and implied, were false in conveying the meaning that Mr. Litzenburg did not play any substantive role in the Roundup litigation.

57. The defamatory statements conveyed, expressed and implied, were false in conveying the meaning that Mr. Litzenburg was not a lawyer who represented clients in the Roundup litigation, thereby triggering the processes by which clients could choose to have either Mr. Litzenburg or the Miller Firm represent them going forward.

58. The defamatory statements conveyed, expressed and implied, were false in conveying the meaning that Mr. Litzenburg was a rogue lawyer who was acting unlawfully or unethically in attempting to lure clients from the Miller firm.

59. The defamatory statements conveyed, expressed and implied, were false in conveying the meaning that Mr. Litzenburg was a rogue lawyer who was unethical and incompetent, out to steal clients from the “real lawyers” at the Miller firm.

### C. Fault

60. The false defamatory statements of the Miller Firm and Mr. Miller were published with negligence, with common-law “ill will” malice, and with constitutional “actual malice,” defined as knowledge of falsity or reckless disregard for truth or falsity.

61. The defamatory statements of the Miller Firm and Mr. Miller were published both with common-law malice, defined as spite or ill-will, and constitutional malice, defined as knowledge of falsity or reckless disregard for truth or falsity. The spite or ill-will with which the statements were published is evidenced, among other things, by the pejorative email from Mr. Miller to Mr. Litzenburg referring to Mr. Litzenburg as a “scum-bag.” *See Exhibit D.* The actual malice of the publications is also evidenced, among other things, by the facts and knowledge in the Miller Firm’s possession which directly and unequivocally contradicted the false and over-the-top statements it made regarding Mr. Litzenburg in the October 15 Miller Letter.

62. The Miller Firm and Mr. Miller knew that Timothy Litzenburg had played a major role in the Roundup litigation, and was regarded as a principal lawyer at the Miller Firm representing its Roundup clients. Yet notwithstanding this knowledge, The Miller Firm and Mr. Miller cynically and intentionally set out to convey in the Miller Letter the exact opposite of the truth. Actual malice, in a case such as this, is largely indistinguishable from the underlying issue of falsity. In cases in which a third party publishes the defamation—such as a newspaper reporting on a dispute—the third party, such as a reporter, may at times plausibly deny actual malice because that party may plausibly claim that it believed its source. In a case such as this one, however, in which the Miller Firm and Mr. Miller are directly accused of lying to clients in the October 15 Miller Letter, the issues of falsity and the issues of fault are indissolubly linked. Mr. Litzenburg either played a significant substantive role as an actual lawyer for Roundup

clients, or he did not. If he did, and the Miller Firm and Mr. Miller asserted otherwise, then they published the letter with actual malice—knowledge of falsity or reckless disregard for truth or falsity. In short, in a case such as this, if there are allegations sufficient to go to a jury on falsity, those allegations are also automatically sufficient to go to a jury on actual malice.

63. The allegations of the Miller Firm in its underlying suit, and the affidavit of Mr. Miller, are probative of the meaning, falsity, and fault underlying the Miller Letter. The Miller Letter speaks for itself, and has no ambiguity. Lest there be any doubt, however, Mr. Miller's affidavit serves as a vivid reenforcer. Mr. Miller's affidavit makes clear that what was *in fact* conveyed by the Miller Letter was exactly what Michael Miller *intended* to convey. Mr. Miller's affidavit shoots Mr. Miller and The Miller firm in the foot, a walking talking exhibition of what the October 15 Miller Letter was intended to convey, and the actual malice with which it was conveyed. The Miller Affidavit sworn to under penalty of perjury includes factual allegations that are blatantly untrue and after any reasonable inquiry the Miller Firm and Mr. Miller would know that these allegations had no factual support, such as the allegation that Mr. Litzenburg did conduct any corporate depositions or make any serious decisions about case strategy in the Roundup litigation as set out in ¶2 of the Miller Affidavit.

#### **D. Damages**

64. Mr. Litzenburg seeks presumed, special, actual, and punitive damages for his defamation claim.

65. In pleading actual malice, Mr. Litzenburg is entitled to seek presumed damages, as damages to his general reputation, under his defamation claim. If the defamatory statements are defamation per se, as Mr. Litzenburg alleges, and if they were published with actual malice, as Mr. Litzenburg alleges, then he is entitled to compensation for the damage to his reputation

without any specific proof of actual damage. A jury may instead award damages based on what the jury presumes is appropriate to redress his reputational injury.

66. Mr. Litzenburg has suffered “actual damages” or “general damages” or “compensatory damages,” as variously and synonymously described under Virginia common law and First Amendment law principles, for the actual harm caused to his reputation as well as the internal personal anguish and humiliation he has suffered as a proximate result of the defamatory statements of the Miller Firm and Mr. Miller. Mr. Litzenburg has suffered tremendous damage to his general reputation, as an ordinary member of the community, and as a lawyer, for having been portrayed as an incompetent and erratic lawyer who unlawfully engaged in activity calculated to wrongfully lure clients from the Miller Firm. His reputation has been further damaged by the portrayal of Mr. Litzenburg as a lawyer who actually did no genuine substantive work of real significance on the Roundup litigation, and had no authentic attorney-client relationships with clients, when in fact, the opposite was true. This portrayal has been devastating to Mr. Litzenburg’s general and professional reputation.

67. Mr. Litzenburg has suffered “special damages” in the form of actual pecuniary loss arising from the lost legal fees he would otherwise have been eligible to receive for his representation of clients in the Roundup litigation. In this pleading Mr. Litzenburg is not required to plead or prove the exact number of clients who defected from his representation as a result of the defamatory communications from the Miller Firm and Mr. Miller. Nor is he required to plead and prove the exact monetary value of those lost fees. He is merely required to allege, as he here alleges, that the defamatory statements of the Miller Firm and Michael Miller caused this specific pecuniary loss, the exact valuation of which must await further development at discovery and trial.

## **COUNT II: DEFAMATION PER QUOD**

68. Mr. Litzenburg also brings an action for defamation per quod. His defamation per quod claim is an alternative claim, not an attempt at double-recovery. The defamation per quod claim here rests on all the same pleaded defamatory statements, falsehoods, and allegations of fault set forth in the count for defamation. Therefore Mr. Litzenburg repleads all of ¶¶ 1-67, and incorporates them in this defamation per quod count.

69. The libel per quod claim is only activated if the court finds, as a matter of law, that the defamatory statements contained in the Miller Letter do not fall within any of the Virginia categories for defamation per se, namely unfitness or lack of integrity in the counterclaim/crossclaim plaintiff's profession or trade, prejudice to the counterclaim/crossclaim plaintiff's position within his profession, or imputation of a crime of moral turpitude. As long as the Court finds that the Miller Letter falls within any one of the three proffered defamation per se categories, the libel per quod claim is superfluous.

70. A defamation per quod claim may be brought for statements that are generally defamatory, though they do not fall within any defamation per se category, provided special damages are pleaded. Mr. Litzenburg has pleaded special damages with specificity in ¶ 67. This is sufficient to support his defamation per quod claim. Although the defamation per quod claim is obviated if Mr. Litzenburg's defamation per se claim is valid, Mr. Litzenburg properly pleads defamation per quod, supported by his allegations of proximately caused special damages, as "insurance" pled in the alternative to guarantee the viability of his defamation claims.

## **III. COUNT THREE: TORTIOUS INTERFERENCE WITH CONTRACT OR BUSINESS EXPECTANCY**

71. To state a viable claim for Tortious Interference with Contract or Business Expectancy Mr. Litzenburg must allege: (1) the existence of a valid contractual relationship or

business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted. In Virginia, malice is not an element of such a claim.

72. Mr. Litzenburg had a valid “business expectancy” in the continued representation of clients for whom he was a primary counsel as set out in Rule 5:8 of the Virginia Rules of Professional Conduct, and for whom he had conducted a great bulk of the legal services prior to his exit from the Miller firm.

73. To place these issues in context, it is important to consider the precautions undertaken by Mr. Litzenburg once the split between Mr. Litzenburg and the Miller Firm appeared inexorable.

74. On September 17, 2018, Mr. Litzenburg properly and prudently sought advice from the Virginia State Bar Legal Ethics Department regarding the circumstances of his separation from the Miller Firm. Mr. Litzenburg’s email to the Virginia State Bar read:

I am leaving my Law Firm at the moment, which is a plaintiff’s personal injury firm. Before I take any actions I would like to have some clarifications on ethical rules about contacting clients and their right to decide which firm to continue with. I have a number of telephonic meetings set up today, but this question is time sensitive and it is crucial that I can get some feedback before tomorrow, if at all possible.

75. In response to Mr. Litzenburg’s inquiry the Virginia State Bar referred to and quoted from the following statements from its existing rules and policies.

76. Rule 5.8 of the Virginia Rules of Professional Conduct recites:

(a) Absent a specific agreement otherwise:

(1) Neither a lawyer who is leaving a law firm nor other lawyers in the firm shall unilaterally contact clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the



lawyer and an authorized representative of the law firm have conferred or attempted to confer and have been unable to agree on a joint communication to the clients concerning the lawyer leaving the law firm; and

(2) A lawyer in a dissolving law firm shall not unilaterally contact clients of the law firm unless authorized members of the law firm have conferred or attempted to confer and have been unable to agree on a method to provide notice to clients.

(b) When no procedure for contacting clients has been agreed upon:

(1) Unilateral contact by a lawyer who is leaving a law firm or the law firm shall not contain false or misleading statements, and shall give notice to the clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms; and

(2) Unilateral contact by members of a dissolving law firm shall not contain false or misleading statements, and shall give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

77. The accompanying Comment makes clear that it is the client who is sovereign:

[1] Although there may also be significant business and legal issues involved when a lawyer leaves a law firm or a law firm dissolves, this rule addresses the rights of the clients to be fully informed and able to make decisions about their representation. Accordingly, the rule emphasizes both the timing and the content of the required notice to clients. Upon the departure of a lawyer or the dissolution of the law firm, the client is entitled to notice that clearly provides the contact information for the departing lawyer and information about the ability and willingness of the lawyer and/or firm to continue the representation, subject to Rule 1.16. Either the departing lawyer or the law firm shall take appropriate steps in accordance with Rule 1.16 regarding the client's file, and any other property, including advanced legal fees. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to a client as provided elsewhere in these rules. Any client notification agreement, whether pursuant to this rule or otherwise, must also comport with Rule 5.6(a). Lawyers may also have fiduciary, contract, or other obligations to their firms that are outside the scope of these rules.

[2] While this rule requires the departing lawyer and the law firm to confer in order to make a joint communication to the departing lawyer's clients, the duty to communicate with clients and to avoid prejudicing the clients during the course of representation requires prompt communication when the lawyer primarily responsible for those clients is leaving the firm. See, e.g., Rules 1.3(c), 1.16(d)

and 1.16(e). If continued representation by the departing lawyer and/or by the law firm is not possible, the communication shall clearly state that fact and advise the client of the remaining options for continued representation, including the client's right to choose other lawyers or law firms.

[3] For purposes of the notification required by this rule, "client" refers to clients for whose active matters the departing lawyer has primary responsibility.

78. As the drama between Mr. Litzenburg, the Miller Firm, and Mr. Miller progressed, Mr. Litzenburg sought more pointed guidance from the Virginia State Bar, sending to the State Bar the letter Mr. Litzenburg proposed to send to clients, given the Miller Firm's and Mr. Miller's refusal to send a joint letter as sought by Mr. Litzenburg. Upon proffering his proposed letter to the Virginia State Bar for guidance, Mr. Litzenburg received the following response from Seth Guggenheim, Counsel at the Virginia State Bar:

Dear Mr. Litzenburg,

I am aware of your well-publicized success in the claims against Monsanto, and see no reason why you can't draw further attention to such as you do in the proposed letter. You mention having obtained substantial compensation for a particular client. If that has in fact occurred, you may of course mention it. If there has not yet been an actual recovery, you need to adjust that language. I am assuming, as well, that every client to whom you intend to direct this letter qualifies as one for whom you have had "primary responsibility" under Comment [3] to Rule 5.8. I recognize that many of these clients' matters are possibly in their incipient stages, and that perhaps the bulk of the work for them has yet to be done. That does not cut against your having had primary responsibility in my opinion. Subject to the foregoing observations, and assuming the balance of the letter is factually accurate and not in any regard misleading, I think you can go ahead with it.

Best,

Seth Guggenheim

79. Mr. Litzenburg then proceeded to send his letter to approximately 400 clients. Mr. Litzenburg's letter bore the imprimatur of the Virginia State Bar Counsel, who approved truthful communications to clients offering them the choice of who should represent them moving forward.

80. The Miller Firm and Mr. Miller impetuously retaliated against Mr. Litzenburg, with the October 15 Miller Letter upon which the claims in this Pleading is based.

81. The Miller Firm and Mr. Miller have acted throughout this dispute as if the Roundup clients are *their* property or chattel. This claim is fundamentally at odds with the ethical principles governing Virginia lawyers in the practice of law. It is fundamental axiom that lawyers do not "own" clients. When there is a departure by a lawyer from a firm, the firm does not have "first dibs," or in any other sense "own" the clients of the departing lawyer. Both the departing lawyer and the law firm have a "business expectancy." But this expectancy is limited to the rights and obligations provided for in Rule 5.8, which give clients the ultimate sovereignty over their own destiny. Clients may choose the departing lawyer, the law firm from which the lawyer departed, or neither. As the guidance provided on the website of the Virginia State Bar plainly states, the notion advanced by the Miller Firm and Mr. Miller that the Roundup clients were somehow their exclusive property, as if this were copyright law and they were the authors, is absolutely unsound. That guidance reads:

#### 6. Clients of Departing Attorneys

When a lawyer leaves a law firm, who "owns" the clients for which that lawyer had been working?

No one. Clients in no way "belong" to a particular attorney or to the firm. Clients retain the right at all times to fire and/or replace their attorney. This common misconception frequently arises when a lawyer's departure from a firm, or a firm dissolution, is less than amicable. Arguments arise file-by-file regarding which attorney or firm gets to keep which clients. The clients always get to

choose who will represent them in the future. As recommended in LEO 1332, the preferred way to handle this issue is for the departing attorney and the firm to send a joint letter to each client that the attorney served. That letter should, in a neutral tone, recommend that the client needs to select one of the following options: stay with the firm, go with the new attorney or hire new counsel altogether. The client should be encouraged to make that selection as quickly as possible to ensure a smooth transition. The physical (or electronic) file should follow that choice. As discussed in Question 5 regarding file retention, no attorney or firm should hold the file "hostage." A seemingly obvious, but at times disregarded, point is that the remaining firm must always provide the contact information for the new attorney whenever asked. A firm must not refuse to provide that new address and phone number to clients, potential clients and other attorneys who contact the firm seeking the departed attorney.

82. The Virginia Rules of Professional Conduct do not contemplate that a lawyer competing for a client will disparage another lawyer as a "rogue" (whether spelled correctly or not), or "erratic," or engaged in conduct "unlawfully" seeking to lure clients away. Nor do they contemplate bullying clients or sending a letter that does not inform clients of their lawful options. When the Miller Firm and Mr. Miller went nuclear, launching the Miller Letter with its bombing attack on Mr. Litzenburg, and failing to inform clients of their options, Mr. Miller and the Miller Firm acted at their peril.

83. Mr. Miller and the Miller Firm clearly engaged in tortious interference with contract or business expectancy when sending the October 15 Miller Letter, and in follow-up communications, such as the phone call with Christine Sheppard, which she described Mr. Miller as engaging in a "somewhat bullying" phone call. *See Exhibit C.* The Miller Firm and Mr. Miller plainly had knowledge of Mr. Litzenburg's client relationships, of Mr. Litzenburg's expectancy that they would continue, yet worked intentionally to interfere with and end those relationships, proximately causing Mr. Litzenburg specific and objectively provable damage to the economic value of those business expectancies.

#### **COUNT IV. BUSINESS CONSPIRACY**

84. Virginia Code Ann. § 18.2-499 makes it illegal to engage in conduct willfully and maliciously injuring another in his reputation, trade, business or profession by any means.

85. In turn, Va. Code Ann. § 18.2-500 provides that an injured party “may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff’s counsel, and without limiting the generality of the term, ‘damages’ shall include loss of profits.”

86. Mr. Litzenburg alleges that the Miller Firm and Mr. Miller conspired with each other, and with outsiders to the Miller Firm, to engage in conduct willfully and maliciously calculated to injure Mr. Litzenburg in his profession in the practice of law.

87. The persons with whom the Miller Firm and Mr. Miller conspired included other attorneys, and the ex-wife of Mr. Litzenburg, whom Mr. Miller called for the manifest purpose of procuring dirt and assistance in destroying Mr. Litzenburg’s reputation, as memorialized in his “scum bag” email. *See Exhibit D.*

#### **RELIEF SOUGHT FOR ALL COUNTS**

88. For his defamation per se and defamation per quod claims, Mr. Litzenburg seeks proximately caused presumed, actual, special, and punitive damages of \$30 million dollars.

89. For his tortious interference with contract or prospective economic advantage claims, Mr. Litzenburg seeks \$30 million dollars in proximately caused actual, special, and punitive damages.

90. For his business conspiracy claim, Mr. Litzenburg seeks three times the proximately caused damages he may be awarded for his defamation or tortious interference with

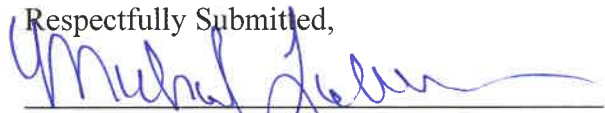
contract or prospective economic advantage claims, plus attorneys' fees, and costs, as provided by Va. Code Ann. § 18.2-500.

91. Mr. Litzenburg seeks declaratory relief declaring that he may continue to notify prospective clients of their rights to retain him as counsel as set forth in Rule 5.8 of the Virginia Rules of Professional Conduct.

92. Mr. Litzenburg seeks preliminary injunctive and permanent injunctive relief enjoining the Miller Firm or Michael Miller from interfering with the rights of Mr. Litzenburg's clients and Mr. Litzenburg under rule 5.8 of the Virginia Rules of Professional Conduct.

January 4, 2019

Respectfully Submitted,



Bernard J. DiMuro (VSB #18784)  
Michael S. Lieberman (VSB #20035)  
DiMuroGinsberg, P.C.  
1101 King Street, Suite 610  
Alexandria, VA 22314  
(703) 684-4333  
(703) 548-3181 (Facsimile)  
[bdimuro@dimuro.com](mailto:bdimuro@dimuro.com)  
[mlieberman@dimuro.com](mailto:mlieberman@dimuro.com)

Rodney Smolla  
4601 Concord Pike  
Wilmington, Delaware 19803  
(864) 373-3882  
(302) 477-2287 (Facsimile)  
[rodsmolla@gmail.com](mailto:rodsmolla@gmail.com)  
*Counsel for Defendant Timothy Litzenburg*

**CERTIFICATE OF SERVICE**


I hereby certify that on January 4, 2019 a true and correct copy of the foregoing was emailed, mailed, U.S. Mail, first-class, postage pre-paid, (and hand delivered to David Greenspan, counsel for Plaintiff):

Michael J. Miller, Esq  
David J. Dickens, Esq  
Jeffrey Travers, Esq  
Jeff T. Seldomridge, Esq  
THE MILLER LAW FIRM, LLC  
108 Railroad Avenue  
Orange, VA 22960  
(540) 672-3055 (fax)

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804-775-4343  
[Cmichalik@mcguirewoods.com](mailto:Cmichalik@mcguirewoods.com)

*Counsel for Plaintiff, The Miller Firm*

  
\_\_\_\_\_  
Michael S. Lieberman, Esq.

**VERIFICATION**

I, Timothy Litzenburg, solemnly declare under the penalty of perjury of the laws of the United States of America that the factual allegations contained in the foregoing Counterclaim and Cross-Claim are true to the best of my knowledge, information and belief.

January 4, 2019



---

Timothy Litzenburg



**THE MILLER FIRM  
TRIAL LAWYERS**

Michael J. Miller - VA, MD, DC, PA  
Nancy Gay Miller - MS  
Bruce D. Bartoff, M.D., J.D. - VA, DC, FL, MS  
David J. Dickens - VA  
Jeffrey Travers - VA  
Tayjes Shah - PA, NJ  
Curtis G. Hebe - CA  
Jeff T. Seldenridge - VA  
Shayao K. Hodge - NJ, VA  
Brian K. Brake - VA  
Edward J. Maggio - NY

**The Sherman Bull  
108 Railroad Av  
Orange, Virginia 2**

Nancy Leftwich  
Ellen A Dickson, RN, B.  
Website: Millerfirm  
Telephone: (540) 6  
(966) 5  
Facsimile: (540) 6

October 15, 2018

Christine Sheppard  
[REDACTED]  
[REDACTED]

Dear Christine Sheppard:

It has come to our attention that a young attorney who was fired from our firm for erratic behavior is now unlawfully attempting to lure our roundup clients away from our firm. We sincerely apologize for any confusion his letter might have caused. As you know the roundup litigation was initiated by our 12 lawyer firm several years ago and we have had tremendous success moving your case and other cases forward. Mr. Litzenburg claims in his letter to have taken the first lymphoma case to trial, it is simply false. Mr. Litzenburg was not allowed to sit at counsel's table because of his erratic behavior. The case was prepared for trial by Michael Miller, Nancy Miller, David Dickens, Jeff Travers and many other attorneys here at the Miller Firm. The case in question was tried by David Dickens and Jeff Travers at our firm in conjunction with local California counsel.

As your attorneys, we are extraordinarily proud to represent you and will continue to do so vigorously. I am proud to be named at the co-lead of the Plaintiffs steering committee in charge of the Federal Roundup litigation and proud to be preparing the next Roundup case for trial in California.

I sincerely regret that a young rouge attorney would send you this letter in a hope to take clients away from our nationally known and respected law firm. This will be the last time you will have to hear of this terminated attorney and we will now go back to the vigorous pursuit of your claim. If you have any question about your case, feel free to call any of the attorney at The Miller Firm, we are all working on the Roundup litigation.

With every best wish to you and your family, we remain

Very truly yours,  
THE MILLER FIRM, LLC

  
Michael J. Miller

MJM:trm

EXHIBIT

A

tabbles

TL000118

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~

## affidavit

From: lee johnson (antbeats2015@yahoo.com)

To: timothy@litzenbergcancerlaw.com

Date: Tuesday, December 18, 2018, 8:08 AM PST

1. My name is Dewayne Anthony Lee Johnson
2. I am over 18 (eighteen) years old of sound mind and a resident of California
3. I retained Timothy Litzenberg a representative of the Miller firm to pursue a lawsuit against Monsanto for non-Hodgkin Lymphoma as a result of my exposure to the formulation in Ranger Pro
4. I spent numerous hours communicating with Mr. Litzenberg and he has visited my home several times. Mr. Litzenberg defended all of my depositions four (4) in total. It was my understanding Mr. Litzenberg was my lead attorney from the beginning of my case in fact he was my only contact to the Miller firm up until weeks before the trial started.
5. In addition to his extensive work on my trial he has shown genuine concern for my overall health and well being
6. Shortly before my case went to trial Mr. Litzenberg informed me that the owner of his firm Mike Miller had been hurt in an accident although I had never met Mr. Miller of course I was deeply concerned but felt like that wouldn't have any significant effects on my case.
7. Although I felt as if Mr. Litzenberg was doing a great job as my attorney he informed me about the legal team that was working in parallel with himself and he suggested that the assistance of Mr. Brent Wisner and David Dickens and a host of others was an insurance of legal defense in my favor.
8. I was somewhat amazed at the role Mr. Litzenberg played leading up to the trial and during trial because he was the only attorney I dealt with and the deeper into trial the more he faded away. Although I was confused of course I am satisfied with the work of my whole legal team from both firms for they all worked very hard to win the trial.
9. Timothy Litzenberg did a significant amount of work on my trial against Monsanto I considered him to be my lead attorney and feel I can go to him for legal matters in the future and I still consider him to be a part of my legal affairs.

Dewayne Anthony Lee Johnson  
Dec, 15 2018



1. My name is Christine Sheppard.
2. I am over eighteen years of age, of sound mind, and a resident of California.
3. In 2015, I retained Timothy Litzenburg of The Miller Firm to pursue a lawsuit against Monsanto for Non-Hodgkin's lymphoma that I developed as a result of my Roundup use and exposure.
4. I have always considered Timothy Litzenburg to be my primary attorney in my Roundup litigation. On Mr. Litzenburg's recommendation, he filed my case in Hawaii, consistent with my preference. I visited The Miller Firm's offices in 2016 where the only person I met, apart from the receptionist, was Mr. Litzenburg. Mr. Litzenburg accompanied me to The Hague in 2016, where we both testified publicly before a tribunal related to Monsanto and Roundup causing my cancer.
5. Mr. Litzenburg has visited me at my home in Oceanside California. We have spoken numerous times on the telephone, and he has kept me completely apprised of developments in the entire Roundup litigation.
6. I have never met Michael Miller. The first contact with The Miller Firm that was not from Mr. Litzenburg came in a letter dated September 28<sup>th</sup> 2018 from a Jeff Travers. The letter asked me to complete a 44 page questionnaire which duplicated, for the most part, the questionnaire that I had filled in in 2015. I phoned to ask why they did not have the information from 2015 and a legal assistant told me she would send out the questionnaire again with the information filled in so that I only had to fill in some blanks and sign. This new one arrived, but the information in it was not mine. It included Information Release Requests from hospitals I had never been to, and other numerous mistakes. I phoned to talk to Mr. Travers, and was put through to a Shane Hodges, who obviously knew nothing about my case either as he was unaware that I was harmed in Hawaii and my case had originally been filed in Hawaii.
7. My first contact with Mr. Miller was an inflammatory letter he sent on October 15<sup>th</sup> saying that he had fired a rogue young attorney who was now unlawfully trying to lure RoundUp clients from his firm. Since that time, I have had three further letters from Mr. Miller, and one somewhat bullying telephone call.
8. I understand Mr. Miller has stated that Mr. Litzenburg did minimal work in Roundup litigation, and that Mr. Litzenburg did not have primary responsibility for Roundup cases at The Miller Firm. As a Roundup client, that allegation by Mr. Miller is completely false. The Miller Firm held Mr. Litzenburg out as the primary Roundup attorney at the firm, and he was excellent at his job prior to his termination. At all times, I considered Mr. Litzenburg my primary attorney in my Roundup litigation.

Signed by Christine Sheppard CSheppard on December 10, 2018

Witnessed by Kenneth Sheppard Kenneth Sheppard on December 10, 2018



TL000117

10/30/2018

Gmail - (no subject)



Timothy L <tltitzenburg@gmail.com>

---

**(no subject)**

1 message

---

**Michael Miller** <MMiller@millerfirmllc.com>  
To: "tltitzenburg@gmail.com" <tltitzenburg@gmail.com>

Mon, Oct 15, 2018 at 4:34 PM

Stay away from my experts you just making your day of reckoning worse. I had a nice chat with Katherine this morning.  
At least your consistent: a scum bag in both your personal and professional life.

Sent from my iPhone



<https://mail.google.com/mail/u/1?ik=cf0f9f71c9&view=pt&search=all&permthid=thread-f%3A1614425008788586442&simpl=msg-f%3A161442500878...> 1/1

TL000121

COVER SHEET FOR FILING CIVIL ACTIONS  
COMMONWEALTH OF VIRGINIA

Case No. \_\_\_\_\_  
(CLERK'S OFFICE USE ONLY)

Orange County

Circuit Court

The Miller Firm, LLC

v./In re:

Timothy Litzenburg, et al.

PLAINTIFF(S)

DEPENDANT(S)

v. Michael Miller (cross-claim Defendant)

I, the undersigned [ ] plaintiff [ ] defendant [ ] attorney for [ ] plaintiff [x] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- [ ] Claim Impleading Third Party Defendant
[ ] Monetary Damages
[ ] No Monetary Damages
[x] Counterclaim
[x] Monetary Damages
[ ] No Monetary Damages
[x] Cross Claim
[ ] Interpleader
[ ] Reinstatement (other than divorce or driving privileges)
[ ] Removal of Case to Federal Court

Business & Contract

- [ ] Attachment
[ ] Confessed Judgment
[ ] Contract Action
[ ] Contract Specific Performance
[ ] Detinue
[ ] Garnishment

Property

- [ ] Annexation
[ ] Condemnation
[ ] Ejectment
[ ] Encumber/Sell Real Estate
[ ] Enforce Vendor's Lien
[ ] Escheatment
[ ] Establish Boundaries
[ ] Landlord/Tenant
[ ] Unlawful Detainer
[ ] Mechanics Lien
[ ] Partition
[ ] Quiet Title
[ ] Termination of Mineral Rights

Tort

- [ ] Asbestos Litigation
[ ] Compromise Settlement
[ ] Intentional Tort
[ ] Medical Malpractice
[ ] Motor Vehicle Tort
[ ] Product Liability
[ ] Wrongful Death
[ ] Other General Tort Liability

ADMINISTRATIVE LAW

- [ ] Appeal/Judicial Review of Decision of (select one)
[ ] ABC Board
[ ] Board of Zoning
[ ] Compensation Board
[ ] DMV License Suspension
[ ] Employee Grievance Decision
[ ] Employment Commission
[ ] Local Government
[ ] Marine Resources Commission
[ ] School Board
[ ] Voter Registration
[ ] Other Administrative Appeal

DOMESTIC/FAMILY

- [ ] Adoption
[ ] Adoption - Foreign
[ ] Adult Protection
[ ] Annulment
[ ] Annulment - Counterclaim/Responsive Pleading
[ ] Child Abuse and Neglect - Unfounded Complaint
[ ] Civil Contempt
[ ] Divorce (select one)
[ ] Complaint - Contested\*
[ ] Complaint - Uncontested\*
[ ] Counterclaim/Responsive Pleading
[ ] Reinstatement - Custody/Visitation/Support/Equitable Distribution
[ ] Separate Maintenance
[ ] Separate Maintenance Counterclaim

WRITS

- [ ] Certiorari
[ ] Habeas Corpus
[ ] Mandamus
[ ] Prohibition
[ ] Quo Warranto

PROBATE/WILLS AND TRUSTS

- [ ] Accounting
[ ] Aid and Guidance
[ ] Appointment (select one)
[ ] Guardian/Conservator
[ ] Standby Guardian/Conservator
[ ] Custodian/Successor Custodian (UTMA)
[ ] Trust (select one)
[ ] Impress/Declare/Create
[ ] Reformation
[ ] Will (select one)
[ ] Construe
[ ] Contested

MISCELLANEOUS

- [ ] Amend Death Certificate
[ ] Appointment (select one)
[ ] Church Trustee
[ ] Conservator of Peace
[ ] Marriage Celebrant
[ ] Approval of Transfer of Structured Settlement
[ ] Bond Forfeiture Appeal
[ ] Declaratory Judgment
[ ] Declare Death
[ ] Driving Privileges (select one)
[ ] Reinstatement pursuant to § 46.2-427
[ ] Restoration - Habitual Offender or 3rd Offense
[ ] Expungement
[ ] Firearms Rights - Restoration
[ ] Forfeiture of Property or Money
[ ] Freedom of Information
[ ] Injunction
[ ] Interdiction
[ ] Interrogatory
[ ] Judgment Lien-Bill to Enforce
[ ] Law Enforcement/Public Official Petition
[ ] Name Change
[ ] Referendum Elections
[ ] Sever Order
[ ] Taxes (select one)
[ ] Correct Erroneous State/Local
[ ] Delinquent
[ ] Vehicle Confiscation
[ ] Voting Rights - Restoration
[ ] Other (please specify)

[x] Damages in the amount of \$ 30,000,000.00 are claimed.

01/04/2019

DATE

[Handwritten signature]

[ ] PLAINTIFF

[ ] DEFENDANT

[ ] ATTORNEY FOR

[ ] PLAINTIFF

[x] DEFENDANT

and counterclaim, cross-claim plaintiff

PRINT NAME

DiMuroGinsberg, PC, 1101 King Street, Suite 610

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

Alexandria, VA 22314 703-684-4333

mliberman@dimuro.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.