

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK**

CIVIL ACTION NO.: 19 CV 9784 (KPF) (SDA)

**CANDICE LUE, an individual,
Plaintiff,**

v.

JPMORGAN CHASE & CO. a Delaware Corporation; ALEX KHAVIN, an individual; FIDELIA SHILLINGFORD, an individual; KIMBERLY DAUBER, an individual; BARUCH HOROWITZ, an individual; CHRIS LIASIS, an individual; MICHELLE SULLIVAN, an individual; inclusive,

Defendants.

PLAINTIFF'S EXHIBITS

**IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS
(DOCKET #s 28 & 29)**

EXHIBIT 11

**(New York Law Journal article – “Should the Absolute Privilege Apply to
Defamation Per Se?”)**

Analysis (/newyorklawjournal/analysis/)

Should the Absolute Privilege Apply to Defamation Per Se?

Under New York law, the concepts of absolute (or litigation) privilege and defamation per se seem directly contradictory—if a statement is defamatory per se, then how can it be privileged? Certain statements are so heinous that the litigation privilege should not insulate the speaker from liability, particularly where the statements are not directly relevant to the litigation in which they were made.

By **Danielle Marlow** | December 03, 2019 at 11:45 AM

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Under New York law, statements made in the context of court proceedings are typically protected and entitled to an “absolute privilege,” also known as “litigation privilege,” meaning they may not be the basis of liability, no matter how vile and outrageous the content and no matter how malicious the motive, provided they are material and pertinent to the litigation. New York likewise recognizes that certain statements are so derogatory that they are deemed “defamation per se,” meaning that a plaintiff need not even prove he/she was damaged by such statements to secure relief therefrom; rather, they are so disparaging that damages are presumed. These concepts seem directly contradictory—if a statement is defamatory per se, then how can it be privileged? Certain statements are so heinous that the absolute

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litigation privilege should not insulate the speaker from liability, particularly where the statements are not directly relevant to the litigation in which they were made. To address this issue, there arguably should be exceptions to the absolute privilege, including for statements that are defamatory per se.

In order to assert a claim for defamation, a plaintiff must prove he/she suffered actual damages as a result of the offensive statements at issue to recover, meaning the plaintiff must demonstrate a financial or economic loss. But, in the case of defamation per se, the standards are not as stringent and such damages are presumed. There are four categories of statements considered to be defamatory per se:

- Statements charging a plaintiff with a serious crime,
- Statements that tend to injure another in his or her trade, business, or profession,
- Statements imputing a loathsome disease on a plaintiff, and
- Statements imputing unchastity on a woman.

Despite the clear recognition under New York law of the seriousness of baseless accusations and the damage they cause, such statements are absolutely privileged when made in the context of judicial proceedings. This absolute privilege applies to statements made in connection with litigation (or in good-faith anticipation of litigation) when the comments and descriptions are considered to be relevant to the issues involved in the case. The underlying purpose of the privilege is to ensure that attorneys are able to speak freely in the course of litigation without a fear of harassment or potential financial punishment.

The recent case of *Deaton v. Napoli*, No. 17-CV-4592, 2019 WL 4736722 (E.D.N.Y. Sept. 27, 2019) highlights how the absolute privilege can unwittingly (and unjustifiably) protect defamatory statements and overlook the undeserving harm they may cause. In *Deaton*, plaintiffs, John Deaton (head of the Deaton law firm) and Marie Deaton (John Deaton's wife), alleged that defendants made statements in court filings that John had an affair with one of his associate attorneys, that the affair caused John and Marie to get divorced, and that John subsequently harassed the associate when she went to work at the Shrader law firm. As a result of these defamatory statements, plaintiffs claimed that their personal and professional reputations were tarnished, that they lost significant business relationships—including a referral relationship with the Shrader law firm, and sought millions of dollars in damages. Notwithstanding the severity of the allegations, the U.S. District Court for the Eastern District of New York dismissed the action outright, holding that the statements at issue were absolutely privileged because they were made in the context of judicial proceedings.

4 **Meet Cynthia Rufe, Who Leads the Group of Federal Judges Holding an 'Emergency Meeting' on Roger Stone**
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This case highlights the potential abuse of judicial process, and the question of whether there should be exceptions to the absolute privilege applicable to statements made in judicial proceedings—no matter how scandalous, humiliating, and damaging. For example, what if an employer brings a restrictive covenant action against a former employee, and in that action, impugns the employee's business practices and character—for example by claiming the employee stole from the employer, or was sexually promiscuous—when neither allegation is true, or directly relevant? Regardless of whether the employer wins or loses the litigation, the employer arguably has already won, as judicial proceedings are publicly available, can be disseminated to the press, and readily appear when performing Internet searches—thus enabling the employer to publish these false and defamatory allegations to all in the industry and make the employee a pariah.

The question thus arises as to whether there should be an exception to the absolute privilege applicable to statements made in the context of judicial proceedings? For example, where statements are blatantly and demonstrably false, where they are defamatory per se, and/or where they are made maliciously to harm the subject of the statements, should they be privileged? If the privilege continues to apply, parties can and will continue to be able to abuse the litigation process to harm others, to gain an unwarranted competitive advantage, and/or for other illegitimate ends. Consideration, therefore, should be given to circumscribe the breadth of the absolute privilege.

The Second Circuit insinuated as much in *Brown v. Maxell*, when expressly recognizing the potential abuse of affording absolute privilege to statements made in connection with litigation proceedings and noting as follows:

Court filings are, in some respects, particularly susceptible to fraud. *For while the threat of defamation actions may deter malicious falsehoods in standard publications, this threat is non-existent with respect to certain court filings.* This is so because, under New York law (which governs the underlying defamation claim here), “absolute immunity from liability for defamation exists for oral or written statements made ... in connection with a proceeding before a court.” Thus, although the act of filing a document with a court might be thought to lend that document additional credibility, in fact, allegations appearing in such documents might be less credible than those published elsewhere.

Brown v. Maxell, 929 F.3d 41, 53 (2d Cir. 2019) (emphasis added). In a footnote, the Second Circuit proposed a potential means to address this indisputable potential for abuse by noting the exception that a statement must be “material and pertinent to the questions involved” for the litigation privilege to apply. *Id.* at note 47 (citing *Front*, 24 N.Y.3d at 718). Therefore, immaterial and impertinent statements are actionable, particularly when they are “so needlessly defamatory as to warrant the inference of express malice.” *Id.*; see also *Gugliotta v. Wilson*, 168 A.D.3d 817, 819 (2d Dept. 2019) (declining to apply absolute privilege where there was “not one scintilla of evidence present upon which to base the possible pertinency of [the] defendant’s statement[s]”).

This infrequently used exception could potentially be expanded to prevent abuse of the judicial privilege—especially where court filings are transparently used to lodge patently irrelevant allegations for the malicious purpose of damaging a party's

reputation, gaining a competitive advantage against that party, causing that party to suffer harm, or other nefarious purposes that should not be tolerated. There is simply no reason that such statements should be protected by an absolute privilege—particularly where they are defamatory per se and not relevant to the claim at issue. Likewise, statements should not be protected where a plaintiff can prove that a statement was made without basis and with the malicious intent to harm.

Put simply, the need for a judicial privilege is obvious. But, like most rules, the judicial privilege must be subject to exceptions where the privilege is patently and maliciously abused—particularly in the present day and age when judicial proceedings are publicly available on the Internet for all to see. The exception to the privilege noted in *Brown v. Maxwell* for statements not “material and pertinent to the questions involved” in the litigation should be expanded, and additional exceptions, for example for statements that are defamatory per se and statements made for demonstrably malicious purposes, should be considered.

Danielle Marlow is a partner at Moritt Hock & Hamroff.

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(<https://www.law.com/newyorklawjournal/2020/02/05/how-to-domesticate-a-sister-state-judgment-in-new-york-when-the-judgment-was-entered-on-default-in-the-underlying-proceeding>)

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EXHIBIT 12

(Baruch Horowitz's Declaration – Statement #s 2, 6 & 7)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CANDICE LUE,

Plaintiff,

- against -

JPMORGAN CHASE & CO., ALEX KHAVIN,
FIDELIA SHILLINGFORD, JOHN VEGA,
HELEN DUBOWY, PHILIPPE QUIX, THOMAS
POZ, CHRIS LIASIS, MICHELLE SULLIVAN,
and DOES 1 - 10, inclusive,

Defendants.
----- X

No. 16 Civ. 03207 (AJN)(GWG)

**DECLARATION OF
BARUCH HOROWITZ**

BARUCH HOROWITZ, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. I was employed by JPMorgan Chase Bank, N.A. ("Chase"), a subsidiary of JPMorgan Chase & Co., a Defendant in the above-captioned action. I know the facts testified to in this Declaration to be true based upon my own personal knowledge.
2. I am a Caucasian male.
3. I worked for Chase from approximately November 2005 to August 2014. From approximately December 2011 to August 2014, I was employed as an Associate in the Counterparty Risk Group ("CRG") of JPMorgan Asset Management, a business unit of Chase.
4. While employed as an Analyst in CRG, I had two supervisors: Jim Sexton ("Sexton") and, later, Alex Khavin ("Khavin"). Khavin joined the CRG at some point after I did.
5. Prior to Khavin joining the team, I was periodically directed by Jim Sexton to take minutes at the group's monthly CRG meeting and other meetings, and I did so. Once Khavin joined CRG, she also periodically directed me to take minutes at the group's monthly

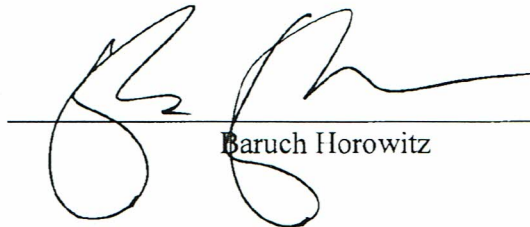
CRG meeting and other meetings. I did so. Subsequently, Khavin asked me to take the minutes on a "going-forward basis," and I did so for a period of time.

6. Additionally, Sexton and then Khavin directed me to prepare the materials for the monthly CRG meeting, including printing, organizing, sorting, collating, and stapling. I did so. Once I had completed these tasks, I typically e-mailed copies of the materials to everyone on the invite list of the monthly CRG meeting, including those attending remotely, and brought hard copies to the meeting to distribute to those attending in person. I am not aware that anyone else was assigned these tasks.

7. During my employment with Chase, I periodically worked from home. Prior to doing so, however, I contacted my group supervisor at the time for permission.

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

Dated: March 28, 2017
Los Angeles, California



Baruch Horowitz

EXHIBIT 13



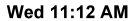
(Docket sheet showing the eight (8) Affidavits, almost 500 pages of evidence in the form of exhibits and my Subpoena request that Judge Alison J. Nathan struck without a valid explanation from the District Court's docket with the proofs showing that JPMorgan Chase & Co., et al committed pre-meditated fraud against me, Plaintiff, Candice Lue and upon the Court)

Plaintiff



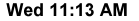
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Wednesday, August 02, 2017




  

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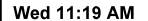
  

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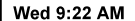
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118   



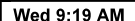
AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF BARUCH HOROWITZ IN SUPPORT RE: 89 Motion for Summary Judgment- (Docket #99)", re:99 Declaration in Support of Motion. Document filed by Candice Lue. (sc)

117   

AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF ALEX KHAVIN IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT - (DOCKET#92)", re:92 Declaration in Support of Motion. Document filed by Candice Lue. (sc)

116   




AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF JOHN VEGA IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT - (DOCKET #98)", re:98 Declaration in Support of Motion. Document filed by Candice Lue. (sc)

115   



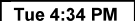
AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF KIMBERLY DAUBER IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT - (DOCKET #97)", re:97 Declaration in Support of Motion. Document filed by Candice Lue. (sc)

114   


EXHIBITS(IN OPPOSITION/RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DOCKET ##s 89-100. Document filed by Candice Lue. (Attachments: #1 Exhibit, #2 Exhibit, #3 Exhibit, #4 Exhibit, #5 Exhibit, #6 Exhibit, #7 Exhibit, #8 Exhibit)(sc)


113   


FIRST LETTER MOTION for Conference addressed to Judge Alison J. Nathan from Anshel Joel Kaplan dated 8/1/17. Document filed by Does 1-10, Helen Dubowy, JPMorgan Chase & Co., Alex Khavin, Chris Liasis, Thomas Poz, Philippe Quix, Fidelia Shillingford, Michelle Sullivan, John Vega.(Kaplan, Anshel)


112   

AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF CHRIS LIASIS IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT - (DKT #94)", re:94 Declaration in Support of Motion. Document filed by Candice Lue. (sc)

111  **respoth** **Affidavit in Opposition (non-motion)** **Tue 4:32 PM**
 AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF MICHELLE SULLIVAN IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT - (DKT#95)", re:95 Declaration in Support of Motion. Document filed by Candice Lue. (sc)


110  **respoth** **Affidavit in Opposition (non-motion)** **Tue 4:29 PM**
 AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF HELEN DUBOWY IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT-(DKT#96)"; re:96 Declaration in Support of Motion. Document filed by Candice Lue. (sc)

109  **respoth** **Affidavit in Opposition (non-motion)** **Tue 4:26 PM**
 AFFIDAVIT of Candice Lue IN OPPOSITION/RESPONSE TO "DECLARATION OF FIDELIA SHILLINGFORD IN SUPPORT RE: 89 MOTION FOR SUMMARY JUDGMENT"; re:93 Declaration in Support of Motion. Document filed by Candice Lue. (sc)


108  **respm** **Memorandum of Law in Opposition to Motion** **Tue 2:45 PM**
 MEMORANDUM OF LAW IN OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; re:89 MOTION for Summary Judgment . Document filed by Candice Lue.(sc)

Att: 1  main document,

Att: 2  main document

107  **respoth** **Affidavit in Opposition (non-motion)** **Tue 2:40 PM**
 AFFIDAVIT of Candice Liu IN RESPONSE/OPPOSITION TO "DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS UNDER LOCAL CIVIL RULE 56.1; re:90 Rule 56.1 Statement. Document filed by Candice Lue.(sc)

Att: 1  main document

106  **notice** **Notice (Other)** **Tue 2:34 PM**
 NOTICE OF OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT(Doc. #89); re:89 MOTION for Summary Judgment . Document filed by Candice Lue. (sc)

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EXHIBIT 14

(Google results showing that legal websites republishing and peddling JPMorgan Chase & Co., et al's LIES made under penalty of perjury outnumber my website anywhere from 7 to 10 - 1)

[candicelue.com](#) ▼

Fight Against Employment Racial Discrimination

Candice Lue's Mission Statement. To fight the multi-billion dollar powerhouse, JPMorgan Chase & Co. and its eight (8) managers who UNLAWFULLY ...

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Meet Candice - Pro Se Plaintiff in the Employment Racial ...

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[Lue v. JPMorgan Chase & Co. | 18-1248-cv | 2d Cir ...](#)

Apr 24, 2019 - FOR PLAINTIFF-APPELLANT: **CANDICE LUE**, pro se, Lodi, New Jersey. FOR DEFENDANTS-APPELLEES: ANSHEL J. KAPLAN (Robert S.

[dockets.justia.com](#) › ... › New York › Southern District ▼

[Lue v. JPMorgan Chase & Co. et al 1:2019cv09784 | US ...](#)

Oct 23, 2019 - 14) served on **Candice Lue** on November 22, 2019. Document filed by Kimberly Dauber, Baruch Horowitz, JPMorgan Chase & Co., Alex ...

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Apr 27, 2018 - Friday, April 27, 2018. 1, 1 NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant **Candice Lue**, FILED. [2290471] 18-1248 ...

[www.docketbird.com](#) › [nysd-1:2016-cv-03207-00139](#) ▼

[Lue v. JPMorgan Chase & Co. et al: MEMORANDUM ...](#)

Lue v. JPMorgan Chase & Co. et al. Southern District of New York, nysd-1:2016-cv-03207. MEMORANDUM OPINION & ORDER re: {{89}} MOTION for Summary ...

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[Lue v. JPMorgan Chase & Co. et al :: New York Southern ...](#)

ORDER: re: 47 Objection (non-motion) filed by **Candice Lue**. For substantially the same reasons detailed in Judge Gorenstein's July 18, 2016 Order, see Dkt No.

[www.docketalarm.com](#) › [Cases](#) › [2d Cir.](#) › [18-1248](#) ▼

[Lue v. JPMorgan Chase & Co., 18-1248 \(2d Cir.\) via Docket ...](#)

11/9/2018, 75, ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Appellant **Candice Lue**, FILED. Service date 11/06/2018 by US mail. [2447332] ...

[www.leagle.com](#) › [decision](#) ▼

[Lue v. JPMorgan Chase & Co. - Leagle.com](#)

Mar 27, 2018 - Plaintiff **Candice Lue** ("Plaintiff" or "Lue") alleges various forms of discrimination, harassment, and retaliation based on her race and stemming ...

EXHIBIT 15

**(Twitter posts calling out judges who sit on federal benches for their biases
as well as exposing Employment Racial Discrimination and Retaliation at
JPMorgan Chase & Co.)**



NAACP @NAACP · Feb 11

In this year of [#DefendingOurDemocracy](#), we are clear. In order to protect our vote, we must protect our courts. With his horrendous anti-voter record, Andrew Brasher belongs nowhere near a Southern circuit court. [#BlockBrasher](#)



Alabama NAACP, others oppose Trump nominee to court

The Senate is expected to vote this week on President Trump's nomination of Andrew Brasher to the 11th Circuit Court of Appeals.

[al.com](#)



Logo 🏳️‍🌈 @LogoTV · 1 Nov 2019

After his history of anti-LGBTQ sentiments were brought up at a Senate Judiciary Committee hearing, [#Trump](#) judicial nominee [#LawrenceVanDyke](#) burst into tears



Trump Judicial Nominee Sheds Actual Tears Over Criticism

When his potential anti-LGBTQ bias was brought up at a Senate Judiciary Committee hearing, Lawrence VanDyke broke down.

newnownext.com



NAACP @NAACP · 10 Dec 2019

Federal judges must be fair & impartial, above all else. Trump's nominee to nation's largest circuit court--Lawrence VanDyke--can't be fair to each & every litigant appearing before him.

This is why we must [#StopVanDyke](#).

Call your Senators at 202-224-3121 & say NO to VanDyke.



Elizabeth Warren  @ewarren · 28 Nov 2018

Thomas Farr has worked to disenfranchise African Americans & undermine workers' rights. He doesn't belong anywhere near a federal court bench.

[huffingtonpost.com/entry/thomas-f...](https://huffingtonpost.com/entry/thomas-farr-trump-judicial-pick) #StopFarr



Senate To Vote On Trump Judicial Pick Who Critics Call The 'Vote-Su...

Thomas Farr, Trump's nominee to a federal court seat, defended North Carolina's voter suppression law and racially discriminatory gerrymandering.

huffpost.com



Jimmy GRIZZ Kennedy  @Kennedy73 · Dec 11, 2019



This Is What Racism Sounds Like in the Banking Industry
A JPMorgan employee and a customer secretly recorded their
conversations with bank employees.

 [nytimes.com](https://www.nytimes.com)



The New York Times  @nytimes · Dec 14, 2019

The comments from Jamie Dimon, the chairman and chief executive of JPMorgan Chase, came days after The New York Times published a report detailing allegations of racism at branches of JPMorgan in the Phoenix area.



JPMorgan Chase C.E.O. Says It Needs to Do More to Tackle Racism

The comments came days after The New York Times published a report detailing allegations of racism at branches of JPMorgan in the Phoenix ...

 [nytimes.com](https://www.nytimes.com)