UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. ROBERT M. GOLDMAN AND DR. RONALD KLATZ,

Plaintiffs,

- against -

DR. STEPHEN J. BARRETT AND QUACKWATCH, INC.,

Defendants.

15 Civ. 9223 (PGG)

ORDER

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiffs Robert M. Goldman and Ronald Klatz bring this action against Defendants Stephen J. Barrett and Quackwatch, Inc., asserting claims for defamation per se, tortious interference with prospective economic advantage, and conspiracy to tortiously interfere with prospective economic advantage. (Am. Cmplt. (Dkt. No. 26) ¶¶ 63-86)[1]

On August 24, 2016, this Court granted Defendants' Rule 12(b)(6) motion to dismiss. See Goldman v. Barrett, No. 15 Civ. 9223 (PGG), 2016 WL 5942529 (S.D.N.Y. Aug. 24, 2016); Dkt. No. 23.[2] The Court's dismissal order granted leave to amend, see Goldman, 2016 WL 5942529, at *11, and on October 7, 2016, Plaintiffs filed the Amended Complaint. (Am. Cmplt. (Dkt. No. 26))

Defendant Barrett has moved to dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).[3] (Notice of Motion (Dkt. No. 31))

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[1] The page numbers of documents referenced in this Order correspond to the page numbers designated by this District's Electronic Case Filing system.
[2] Familiarity with the August 24, 2016 order is presumed.
[3] Defense counsel has submitted a record from the Pennsylvania Secretary of State's office indicating that Quackwatch was formed under Pennsylvania law in 1970, and was dissolved in

2009. (See Barrett Decl., Ex. E (Dkt. No. 15-5) at 1-2) Counsel asserts that the claims against Quackwatch should be dismissed on that basis. (See Def. Br. (Dkt. No. 32) at 8-9) This Court takes judicial notice of the Pennsylvania Secretary of State's records concerning Quackwatch's formation and dissolution. See Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC, 127 F. Supp. 3d 156, 166 (S.D.N.Y. 2015) ("it is clearly proper to take judicial notice" of "documents retrieved from official government websites"); Munaron v. Munaron, 21 Misc. 3d 295, 862 N.Y.S.2d 796 (Sup. Ct. 2008) (judicial notice can be taken, as a matter of public record, of an entry on an official Secretary of State website); see also Lefebvre v. Morgan, No. 14 Civ. 5322 (KMK), 2016 WL 1274584, at *13 n.17 (S.D.N.Y. Mar. 31, 2016) (taking judicial notice of the New York State Department of Civil Service website on a motion to dismiss); Elliott v. Nestle Waters N. Am. Inc., No. 13 Civ. 06331 (RA) (SN), 2015 WL 1611316, at *6 (S.D.N.Y. Mar. 3, 2015), report and recommendation adopted as modified, No. 13 Civ. 6331 (RA), 2015 WL 1611333 (S.D.N.Y. Apr. 10, 2015), appeal dismissed (Sept. 9, 2015) (taking judicial notice of New Jersey's Department of Labor and Workforce Development, Employer Frequently Asked Questions website on a motion to dismiss); Wallace v. New York, 40 F. Supp. 3d 278, 286 (E.D.N.Y. 2014) (taking judicial notice of New York's sex offender registry website on a motion to dismiss).

Federal Rule of Civil Procedure "17(b) directs courts to examine the law under which the corporation was organized in order to determine a corporation's capacity to sue and be sued." CBF Industria de Gusa S/A v. Steel Base Trade AG, No. 14 Civ. 3034 (RWS), 2015 WL 1191269, at *3 (S.D.N.Y. Mar. 16, 2015), appeal dismissed as moot sub nom. CBF Indústria de Gusa S/A v. AMCI Holdings, Inc., 846 F.3d 35 (2d Cir. 2017), withdrawn from bound volume, opinion vacated and superseded on reh'g sub nom. CBF Industria de Gusa S/A v. AMCI Holdings, Inc., 850 F.3d 58 (2d Cir. 2017), and appeal dismissed as moot sub nom. CBF Industria de Gusa S/A v. AMCI Holdings, Inc., 850 F.3d 58 (2d Cir. 2017) (citing Fed. R. Civ. P. 17(b)(2); Marsh v. Rosenbloom, 499 F.3d 165, 176-77 (2d Cir. 2007); Mock v. Spivey Co., 167 A.D.2d 230, 230-31 (1st Dept. 1990) (applying Pennsylvania law as to the capacity of a dissolved Pennsylvania corporation to be sued)); see Sevits v. McKiernan-Terry Corp. (N. J.), 264 F. Supp. 810, 811 (S.D.N.Y. 1966) ("Corporate existence and the capacity of a corporation to be sued are determined by the law of the state of incorporation. Fed. R. Civ. P. 17(b)).

The Amended Complaint does not allege Quackwatch, Inc.'s state of incorporation, but the Pennsylvania Secretary of State's record submitted in connection with the motion to dismiss indicates that Quackwatch was organized under Pennsylvania law. (See Barrett Decl., Ex. E (Dkt. No. 15-5) at 1) Under Pennsylvania Law, suits against a dissolved corporation are permitted within two years of dissolution. 15 Pa. C.S.A. § 1979; see Erdely v. Hinchcliffe and Kenner, Inc., 875 A.2d 1078 (Pa. Super. Ct. 2005). Given that this lawsuit was filed in 2015, six years after Quackwatch, Inc. was dissolved, Plaintiffs' claims against the dissolved corporation are time-barred.

Plaintiffs acknowledge that Quackwatch, Inc. has been "dissolved in some capacity," but they contend that "dissolved corporations can always be revived or succeeded by other similar entities." (Pltf. Br. (Dkt. No. 33) at 13) Plaintiffs further contend that it is "possib[le] that Quackwatch continues to function as another sort of entity[,] such as a partnership." (Id. at 13-14) Plaintiffs' speculation that Quackwatch, Inc. might exist in some other form is not sufficient,

BACKGROUND

Plaintiffs Goldman and Klatz each hold medical degrees from the Central America Health Science University School of Medicine, as well as osteopathic medical degrees. (Am. Cmplt. (Dkt. No. 26) ¶¶ 3, 6) Plaintiffs are licensed to practice medicine and surgery in Illinois, and are the co-founders of the American Academy of Anti-Aging Medicine, a "not-for-profit medical organization dedicated to the advancement of technology to detect, prevent, treat and research aging[-]related diseases." (Id. ¶¶ 8, 12)

Defendant Stephen Barrett, a retired psychiatrist, owns and operates the website www.quackwatch.org (the "Quackwatch Website") and other affiliated websites. (Id. ¶ 17) One stated objective of the Quackwatch Website is to identify medical practitioners who use what Barrett considers to be questionable medical practices. (Id. ¶ 19) The Quackwatch Website describes Quackwatch, Inc. as an "international network of people concerned about health-related frauds, myths, fads, fallacies, and misconduct." (Id. ¶ 21)

I. THE ORIGINAL COMPLAINT

In their original complaint, Plaintiffs allege that on or about December 6, 2000, Defendants posted an article on the Quackwatch Website entitled "Anti-Aging 'Gurus' Pay $5,000 Penalties" (the "Article"). (Cmplt. (Dkt. No. 2) ¶ 22) The Article describes an Illinois medical board proceeding concerning Plaintiffs, and reports on a settlement agreement between Plaintiffs and the State of Illinois. (Id.) The Article reads as follows:

> Anti-Aging "Gurus" Pay $5,000 Penalties
>
> On December 6, 2000, osteopathic physicians Ronald Klatz, D.O., and Robert Goldman, D.O., agreed to pay $5,000 each to the State of Illinois and to stop identifying themselves as M.D.s in Illinois unless authorized to do so by the

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given the uncontradicted evidence that it was dissolved in 2009. Accordingly, all claims against Quackwatch, Inc. will be dismissed.

> Illinois Department of Professional Regulation. The agreement indicates that each acquired an "M.D." degree from the Central America Health Sciences University School of Medicine in Belize but was not licensed to use the credential in Illinois. The agreement also permits them to list the credential in their curriculum vitae as long as it does not closely follow their name.
>
> Klatz and Goldman have been associated for many years in activities related to "anti-aging medicine" and the promotion of dietary supplements. The agreements, reproduced below, were identically worded except for their names and license numbers and the final sentence of Klatz's agreement, which is not in Goldman's agreement.

(Article (Dkt. No. 15-6) at 1)[4] The Article then sets forth verbatim the text of the consent orders entered into between Plaintiffs and the State of Illinois Department of Professional Regulation. (Id. at 1-2) The Quackwatch Website indicates that the Article was last revised on March 6, 2001. (Cmplt. (Dkt. No. 2) ¶¶ 25-26)

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[4] In ruling on Defendant's motion to dismiss, this Court may consider – in addition to the Amended Complaint—"those documents attached to the pleadings as an exhibit or any statements or documents incorporated in the [Amended] Complaint by reference, and . . . any documents that are integral to the [Amended] Complaint or an appropriate subject for judicial notice." D'Antonio v. Metro. Transp. Auth., No. 06 Civ. 4283 (KMW), 2008 WL 582354, at *3 n.6 (S.D.N.Y. Mar. 4, 2008) (citing Global Network Commc'ns, Inc. v. City of New York, 458 F.3d 150, 154-56 (2d Cir. 2006)); see also Chambers v. Time Warner, Inc., 282 F.3d 147, 152-53 (2d Cir. 2002) ("Even where a document is not incorporated by reference, the court may nevertheless consider it where the complaint 'relies heavily upon its terms and effect,' which renders the document 'integral' to the complaint.") (quoting Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995) (per curiam)).

In ruling on Defendant's motion to dismiss, this Court has considered the Article – which has been submitted by Defendants – because it is cited by Plaintiffs and is integral to the Amended Complaint. See Murawski v. Pataki, 514 F. Supp. 2d 577, 589 (S.D.N.Y. 2007) ("In support of his motion to dismiss plaintiff's claim of defamation, [defendant] has submitted a copy of the website page containing the allegedly defamatory statement. . . . [T]he Court will [consider this evidence] because plaintiff relies on the [allegedly defamatory] statement in his Complaint and the statement is integral to plaintiff's action." (citing Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47-48 (2d Cir. 1991); Kreiss v. McCown DeLeeuw & Co., 37 F. Supp. 2d 294, 298 n.3 (S.D.N.Y. 1999); Knievel v. ESPN, Inc., 223 F. Supp. 2d 1173, 1176 (D. Mont. 2002))); Condit v. Dunne, 317 F. Supp. 2d 344, 357 (S.D.N.Y. 2004) (considering on a motion to dismiss audio recordings and transcripts of television shows that "are the records of the allegedly slanderous statements made by defendant," because these materials "aid the Court in its determination of whether plaintiff states a claim for relief").

The original complaint further alleges that

> [o]n February 28, 2006, the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation (IDPR) determined that Dr. Goldman and Dr. Klatz have been "licensed physicians and surgeons of osteopathic medicine in good standing in Illinois for over 20 years, which allows them to practice and carry out all duties equivalent to what a medical doctor, an M.D., may do in Illinois."
> . . . .
>
> The Defendants have not posted any follow-up on the Website to reflect the February 2006 Illinois decree or to clarify the statuses of Dr. Goldman and Dr. Klatz.

(Id. ¶¶ 24, 26)

Plaintiffs' original complaint also alleged that Defendants employed search engine optimization ("SEO") techniques on websites such as Google and Bing in order to ensure that the Article would appear high up on the list of Internet search results for any online search conducted concerning Plaintiffs. (Id. ¶ 31) Defendants also allegedly used "meta tags"[5] – "snippets of text that describe a [web]page's content but do not appear on the [web]page itself" – on the Quackwatch Website and in the Article to ensure that the Article would be listed as a search result for any Internet search related to Plaintiffs, including searches using the terms "Goldman Klatz violation," "Dr. Goldman and Dr. Klatz Illinois," and "Goldman Klatz Complaint." (Id. ¶¶ 32-35) In the original complaint, Plaintiffs also alleged that they asked Defendants to remove the Article from the Quackwatch Website, but Defendants had not done so. (Id. ¶¶ 37-42)

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[5] "A metatag is hypertext markup language ('HTML') code, invisible to the Internet user, that permits web designers to describe their webpage." Bihari v. Gross, 119 F. Supp. 2d 309, 320 n. 3 (S.D.N.Y. 2000). "There are two different types of metatags": "[k]eyword metatags," which "permit[] designers to identify search terms for use by search engines" and "[d]escription metatags," which "allow designers to briefly describe the contents of their pages" in a "description [that] appears as sentence fragments beneath the webpage's listing in a search result." Id.

The original complaint asserts claims for defamation per se, defamation by implication, tortious interference with prospective economic advantage, prima facie tort, deceptive business practices under New York General Business Law, Section 349, and civil conspiracy. (Id. ¶¶ 43-94) All of Plaintiffs' claims in the original complaint are premised entirely on allegedly defamatory statements in the Article. (See Cmplt. (Dkt. No. 2))

II. THE AUGUST 24, 2016 ORDER DISMISSING THE COMPLAINT

Defendants moved to dismiss the original complaint (Dkt. No. 13), and on August 24, 2016, this Court granted Defendants' motion, finding, inter alia, that (1) Plaintiffs had not demonstrated that the Article constitutes defamation per se or defamation by implication; (2) Plaintiffs' tortious interference with prospective economic advantage, and conspiracy to tortiously interfere with prospective economic advantage claims were duplicative of their defamation claims; (3) Plaintiffs' prima facie tort claim was duplicative of the defamation claims; (4) Plaintiffs have not pled facts sufficient to make out the "materially misleading" element of Section 449 of N.Y. Gen. Bus. Law; and (5) because all of Plaintiffs' underlying claims were subject to dismissal, Plaintiffs' civil conspiracy claim would likewise be dismissed. See Goldman, 2016 WL 5942529, at *4-9.

As to Plaintiffs' claim of defamation per se, the Court granted dismissal because "the Complaint [did] not allege that any statement made in the Article constitutes a false statement of fact." Id. at *4. The Court noted that "if [a statement] is not alleged to be a false statement of fact, it is not actionable as defamation." Id. (citing cases). As to Plaintiffs' claim of defamation by implication, the Court ruled that "Plaintiffs [had] not ma[de] the requisite 'rigorous showing' that the Article constitute[s] a false suggestion or reflect[s] a misleading

omission. Accordingly, [Plaintiffs had not] not ma[de] out a plausible claim for defamation by implication." Id. at *5 (citing Martin v. Hearst Corp., 777 F.3d 546, 553 (2d Cir. 2015)).

Plaintiffs' tortious interference and conspiracy to tortiously interfere claims were dismissed as duplicative of their defective defamation claims. See id. at *7. Although Plaintiffs claimed that their tortious interference claims alleged an economic injury that went beyond the reputational harm that formed the basis of their defamation claims (see Pltf. Br. (Dkt. No. 17) at 14), the Court concluded that the "'entire injury pleaded in relation to the tortious interference with prospective economic advantage cause[s] of action flow[s] from the effect of the defamatory [Article] on Plaintiffs' reputation.'" Goldman, 2016 WL 5942529, at *7 (quoting Restis v. Am. Coal. Against Nuclear Iran, Inc., 53 F. Supp. 3d 705, 726 (S.D.N.Y. 2014)).

This Court also determined that – because the Article was published no later than 2001, and because the Complaint did not contain any allegations as to when, if at all, Defendants "republished" the Article through search engine optimization techniques and metatags – all of Plaintiffs' claims were time-barred under New York's one-year statute of limitations.[6] See id. at *11.

This Court granted Plaintiffs leave to amend. See id. ("where a claim is dismissed on the grounds that it is 'inadequate[ly] pled,' there is a 'strong preference for allowing [a] plaintiff[] to amend'") (quoting In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig., No. 07 Civ. 10453, 2011 WL 4072027, at *2 (S.D.N.Y. Sept. 13, 2011)).

[6] Because "the essence of all of Plaintiffs' causes of action [in the original complaint] is defamation," "New York's one-year statute of limitations for defamation applies [to all of the original complaint's causes of action]." Id. at *10.

III. THE AMENDED COMPLAINT

The Amended Complaint pleads causes of action for defamation per se, tortious interference with prospective economic advantage, and conspiracy to tortiously interfere with prospective economic advantage. (Am. Cmplt. (Dkt. No. 26) ¶¶ 63-86) The Amended Complaint contains most of the original complaint's factual allegations, but adds new allegations concerning verbal statements Defendants allegedly made to certain unidentified Chinese and Malaysian government officials at unspecified points in time.

Plaintiffs allege that in September 2014, they entered into an agreement "with a Chinese anti-aging company" "to provide consulting services and support for a number of health education clinics and screening centers to be set up in various high density population areas in China (the 'China Project')." (Id. ¶¶ 41-42) According to the Amended Complaint,

> [t]he China Project would be developed over several stages. One such stage involved the build-out of various test centers and clinics as well as further background checks as required by Chinese ministry officials (the "**Officials**").

(Id. ¶ 45) (emphasis in original)

According to Plaintiffs, the unidentified Chinese ministry Officials

> conducted diligence in connection with the China Project and learned about the Defendants through a cursory internet search revealing the Article and its mention of [Plaintiffs] on the Defendant's website.
>
> The Officials then contacted the Defendants to inquire further about the Article and more specifically about [Plaintiffs].

(Id. ¶¶ 46-47)

Plaintiffs further allege that in March and April 2015, the Chinese Officials "interview[ed]" Defendants. (Id. ¶ 48) "[T]he Officials provided the Defendants with information relating to the China Project and the roles that [Plaintiffs] had within the China Project." (Id. ¶ 49)

In response,

> [t]he Defendants told the Officials that [Plaintiffs] had violated numerous U.S. laws and [] would likely be criminally prosecuted in the near future[];
> [t]he Defendants told the Officials that [Plaintiffs] had tried to silence Dr. Barrett by using physical force and other intimidation tactics but that the Defendants had the means and financial support to defeat [Plaintiffs][]; [and]
>
> [t]he Defendants told the Officials that [Plaintiffs] were under further indictment by other countries for distributing drugs to foreign nations.

(Id. ¶¶ 50-52)

The Amended Complaint alleges that the Defendants "asked the Officials whether providing this information to them would allow Barrett to collect a fee or reward and whether such information might terminate [Plaintiffs'] involvement in the China Project." (Id. ¶ 53) Defendants also allegedly told the Officials "that they had more damning evidence against [Plaintiffs] and would provide such information if the circumstances were appropriate." (Id. ¶ 54)

After Defendants spoke with the unnamed Chinese ministry Officials, "the planned clinic was put on indefinite hold." Moreover, "approval of . . . the China Project never occurred," and ultimately the China Project was "terminated." (Id. ¶¶ 55-56)

"[Plaintiffs] were informed that the main reason for termination related to the inability to secure the required initial governmental approval for the construction of the test clinics."[7] (Id. ¶ 57) Plaintiffs assert "[u]pon information and belief, [that] such approvals were denied based on the Defendants' false and malicious assertions to the Officials regarding [Plaintiffs]." (Id. ¶ 58)

[7] The Amended Complaint does not disclose who told Plaintiffs the reason why the China Project was terminated.

The Amended Complaint claims that Defendants also spoke with unidentified Malaysian government officials, and that Defendants made unspecified defamatory statements concerning Plaintiffs that caused their "consulting arrangement" with the Malaysian government to be terminated. (Id. ¶¶ 59-62) Plaintiffs claim that at some unspecified time they had a "consulting arrangement" with the "Malaysian government regarding various public health programs designed to increase health and productive longevity among the general population (the 'Malaysia Project')." (Id. ¶ 59) "The Malaysia Project was terminated in late 2014, initially with little explanation. Upon further inquiry by the Plaintiffs, it was determined that certain officials in the Malaysian government had discussions concerning the Article and the Defendants." (Id. ¶ 61) Plaintiffs allege "upon information and belief, [that] it is likely [that] Defendant Barrett had a similar conversation with Malaysian officials regarding the Malaysian Project which caused the consulting arrangement to be terminated." (Id. ¶ 62)

DISCUSSION

Defendant Barrett has moved to dismiss the Amended Complaint under Rule 12(b)(6), arguing, inter alia, that (1) Plaintiffs' claim for defamation per se is barred by the statute of limitations, and the Amended Complaint does not relate back to the original complaint; (2) the tortious interference claim must be dismissed because it is duplicative of the defamation claim; and (3) the tortious interference conspiracy claim cannot proceed independently of the substantive claim. (Notice of Motion (Dkt. No. 31); Def. Br. (Dkt. Nos. 32, 34))

I. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

"In considering a motion to dismiss . . . the court is to accept as true all facts alleged in the complaint," Kassner v. 2nd Ave. Delicatessen Inc., 496 F.3d 229, 237 (2d Cir. 2007) (citing Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 87 (2d Cir. 2002)), and must "draw all reasonable inferences in favor of the plaintiff." Id. (citing Fernandez v. Chertoff, 471 F.3d 45, 51 (2d Cir. 2006)).

A complaint is inadequately pled "if it tenders 'naked assertion[s]' devoid of 'further factual enhancement,'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557), and does not provide factual allegations sufficient "to give the defendant fair notice of what the claim is and the grounds upon which it rests." Port Dock & Stone Corp. v. Oldcastle Northeast, Inc., 507 F.3d 117, 121 (2d Cir. 2007) (citing Twombly, 550 U.S. at 555).

II. THE AMENDED COMPLAINT'S DEFAMATION CLAIM IS TIME-BARRED

The Amended Complaint's claim for defamation per se is premised on "statements made by Defendants to the Chinese officials." (Am. Cmplt. (Dkt. No. 26) ¶ 64) Defendant Barrett argues that this claim is barred under New York's one-year statute of limitations for defamation, because the Amended Complaint was filed on October 7, 2016, and the newly alleged defamatory statements were made in March and April 2015. (Def. Br. (Dkt. No. 32) at 7)

Plaintiffs do not dispute that "[a]llegations sounding in defamation are subject to a one-year statute of limitations." (Pltf. Br. (Dkt. No. 33) at 8) Plaintiffs argue, however, that their new defamation claim – premised on Defendants' alleged statements to Chinese government officials in March or April 2015 (see Am. Cmplt. (Dkt. No. 26) ¶ 48), relate back to the original complaint filed in November 2015 (see Pltf. Br. (Dkt. No. 33) at 8), which was itself time-barred.

A. Law Concerning Relation Back

"An amendment to a pleading relates back to the date of the original pleading when . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). For a newly-added claim to relate back, the "basic claim must have arisen out of the conduct set forth in the original pleading." Slayton v. Am. Express Co., 460 F.3d 215, 228 (2d Cir. 2006) (quoting Tho Dinh Tran v. Alphonse Hotel Corp., 281 F.3d 23, 36 (2d Cir. 2002)). "[E]ven where an amended complaint tracks the legal theory of the first complaint, claims that are based on an 'entirely distinct set' of factual allegations will not relate back." Id. (quoting Nettis v. Levitt, 241 F.3d 186, 193 (2d Cir. 2001)); see Hirsch v. Suffolk Cty., No. 08 Civ. 2660 (JS) (AKT), 2015 WL 1275461, at *8 (E.D.N.Y. Mar. 18, 2015) ("where the new claims arise from conduct that is separate from yet related to the conduct alleged in the earlier pleading, the new claims will not relate back" (citing Ridge Seneca Plaza, LLC v. BP Prod. N. Am. Inc., 545 F. App'x 44, 47 (2d Cir. 2013) (summary order) (finding that claims concerning separate but related transactions did not relate back where the original complaint included no factual allegations concerning the transactions alleged in the amended complaint)), aff'd sub nom. Hirsch v. Pernat, No. 15-4029-CV, 2017 WL 1147285 (2d Cir. Mar. 27, 2017). "The main inquiry under Fed. R. Civ. P. 15(c) is whether adequate notice has been given to the opposing party 'by the general fact situation alleged in the original pleading.'" Pruiss v. Bosse, 912 F. Supp. 104, 106 (S.D.N.Y. 1996) (quoting Rosenberg v. Martin, 478 F.2d 520, 526 (2d Cir. 1973) and citing Schiavone v. Fortune, 477 U.S. 21, 31 (1986) (critical issue is whether notice was provided within limitations period)). "An amendment will not relate back if it sets forth a new set of operational facts; it can only make more specific what has already been alleged." Id.

B. Analysis

In support of their relation back argument, Plaintiffs contend that

> [t]he general facts regarding Barrett's interference with the [Plaintiffs'] business were stated in the third claim for relief in the Original Complaint. [Cmplt. (Dkt. No. 2) ¶¶ 29, 64-68] The Amended Complaint provides more specificity into Barrett's conduct and further outlines the Plaintiffs' causes of action. The facts surrounding the Original Complaint served as the catalyst to the new pleadings of the Amended Complaint. Defendants' dissemination and promotion of the Article led to its discovery by Plaintiffs' business associates, which in turn resulted in the defamatory statements and tortious interference detailed in both the Original and the Amended Complaint.

(Pltf. Br. (Dkt. No. 33) at 9)

The third claim for relief in the original complaint is for tortious interference with prospective economic advantage. (See Cmplt. (Dkt. No. 2) ¶¶ 63-68) In connection with this claim, the original complaint alleges that "Defendants maintained the defamatory Article on the Website"; that they had "the intent to harm the [Plaintiffs] in their business enterprises"; and that the "Article was accessed by prospective business clients of the [Plaintiffs] and as a result, [Plaintiffs] suffered actual damages in the loss of prospective economic gain with business contacts." (Id. ¶¶ 65-67)

There is nothing in the original complaint that hints at – much less asserts – Plaintiffs' new claim that Defendants made oral statements to Chinese government officials – nearly fifteen years after the Article was published – that were defamatory of Plaintiffs. As discussed above, the defamation claims set forth in the original complaint are premised entirely on Defendants' publication of the Article in the 2000 to 2001 time period. (Id. ¶¶ 22, 25-26) Nowhere in the original complaint do Plaintiffs allege that Defendants spoke with Plaintiffs' business associates, much less with Chinese or Malaysian government officials.

Because Plaintiffs' new "claims [of defamation] . . . are based on an 'entirely distinct set' of factual allegations, [they do] not relate back.'" Suffolk Cty., 2015 WL 1275461,

at *8 (quoting Slayton, 460 F.3d at 228). Accordingly, the Amended Complaint's defamation claim will be dismissed as time-barred.

III. TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE CLAIMS

The Amended Complaint asserts claims for tortious interference with prospective economic advantage, and conspiracy to tortiously interfere with prospective economic advantage. (Am. Cmplt. (Dkt. No. 26) ¶¶ 73-86) As with the original complaint, Defendant Barrett argues that these claims must be dismissed as duplicative of Plaintiffs' defamation claim. (Def. Br. (Dkt. No. 32) at 6-7)

As stated in the August 24, 2016 order dismissing the original complaint, claims for tortious interference with prospective economic advantage are dismissed as duplicative of defamation claims where such claims are premised on the same "'factual allegations . . . [as] the facts underlying [a] defamation claim.'" Goldman, 2016 WL 5942529, at *7 (quoting Restis, 53 F. Supp. 3d at 726 (citing Hengjun Chao v. Mount Sinai Hosp., 476 F. App'x 892 (2d Cir. 2012))); Pusey v. Bank of Am., N.A., No. 14 Civ. 04979 (FB) (LB), 2015 WL 4257251, at *4 (E.D.N.Y. July 14, 2015) ("[Defendant] contends that [Plaintiff's] . . . tortious interference with prospective business relations claims . . . should be dismissed [as] duplicative of her defamation claim. The Court agrees"); see also Krepps v. Reiner, 588 F. Supp. 2d 471, 485 (S.D.N.Y. 2008) ("Plaintiff is not permitted to dress up a defamation claim as a claim for intentional interference with a prospective economic advantage." (citing Pasqualini v. MortgageIT, Inc., 498 F. Supp. 2d 659, 669-70 (S.D.N.Y. 2007))). Where the economic damages asserted by Plaintiffs as part of a tortious interference claim "flow[] from the effect of the defamatory comments on Plaintiffs' reputation," the tortious interference claim will be dismissed as duplicative of a defamation claim. Restis, 53 F. Supp. 3d at 726.

Plaintiffs argue, however, that their tortious interference claims are "substantially different from the defamation claim," because the defamation claim "relate[s] to the certain specific statements made by the Defendants," whereas the tortious interference claims "relate to the intentional interference that the Defendants caused once they knew of the underlying contracts and business relationships" Plaintiffs had with Chinese and Malaysian officials. (Pltf. Br. (Dkt. No. 33) at 9-10) Plaintiffs further contend that "[t]he harm to the Plaintiffs did not flow from an effect on their reputation; rather, it stemmed from direct action taken by the Defendants in order to undermine and destroy the Plaintiffs' lucrative business opportunities." (Id. at 12)

This is nonsense. Plaintiffs' tortious interference claims are clearly premised on the same set of facts as their defamation claim – Barrett's alleged defamatory conversations with Chinese government officials. For example, Plaintiffs' defamation claim is premised on "[t]he [false] statements made by the Defendants to the Chinese officials" (Am. Cmplt. (Dkt. No. 26) ¶ 64), while Plaintiffs' tortious interference claims allege that "Defendants intentionally committed wrongful and culpable conduct by defaming [Plaintiffs] in the interviews [with the Chinese officials]." (Id. ¶ 77) "Because the 'entire injury pleaded in relation to the tortious interference with prospective economic advantage cause[s] of action flow[s] from the effect of the defamatory comments on Plaintiffs' reputation, Restis, 53 F. Supp. 3d at 726, Plaintiffs' causes of action for tortious interference must be dismissed as duplicative of Plaintiffs' defamation claims."[8] Goldman, 2016 WL 5942529, at *7 (quoting Restis, 53 F. Supp. 3d at

[8] Plaintiffs' tortious interference claims are also time-barred, because they are based on conduct that took place in 2014 and 2015, and the Amended Complaint was filed on October 7, 2016. See Am. Cmplt. (Dkt. No. 26) ¶¶ 48, 61; see also Goldman, 2016 WL 5942529, at *9-10 ("the one year statute of limitations for defamation applies to other causes of action that are 'in essence . . . claim[s] for defamation'"; "[h]ere, the essence of all of Plaintiffs' causes of action is

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CONCLUSION

For the reasons stated above, Defendant Barrett's motion to dismiss is granted. Plaintiffs' claims are dismissed with prejudice. See Ruotolo v. City of N.Y., 514 F.3d 184, 191 (2d Cir. 2008) (leave to amend may properly be denied in cases of "'repeated failure to cure deficiencies by amendments previously allowed'"). The Clerk of the Court is directed to terminate the motion (Dkt. No. 31) and to close this case.

Dated: New York, New York
July 25, 2017

SO ORDERED.

Paul G. Gardephe
United States District Judge

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defamation") (quoting Guelen v. Distinctive Pers., Inc., No. 11 Civ. 01204 (JG) (SMG), 2011 WL 3420852, at *4 (E.D.N.Y. Aug. 4, 2011))).

To the extent that Plaintiffs' tortious interference conspiracy claim is based on Barrett's alleged statements to Malaysian officials, that portion of the conspiracy claim is also dismissed as speculative. Among other defects, Plaintiffs have not pled who Barrett spoke with in the Malaysian government, what Barrett said, or when he said it.

Finally, the tortious interference conspiracy claim also fails because the only alleged conspirators are Barrett and Quackwatch, Inc., (see Am. Cmplt. (Dkt. No. 26) ¶¶ 81-86), and – as discussed above – Quackwatch was dissolved in 2009, and may no longer be sued. Moreover, to the extent that Plaintiffs claim that Barrett is the sole owner of Quackwatch, Inc. (see id. ¶ 17 (alleging that "Barrett is the owner and operator" of the Quackwatch website)), the conspiracy claim also founders on the principle that a corporation and its owner cannot conspire with each other. "While it is entirely possible for an individual and a corporation to conspire, it is basic that the persons and entities must be separate." Bereswill v. Yablon, 6 N.Y.2d 301, 305 (1959) (dismissing conspiracy claim where alleged conspirators were corporation and its sole stockholder).