

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

CENTER FOR ADVANCED DEFENSE STUDIES, )  
)  
)  
Plaintiff/Counter-Defendant, )  
)  
v. )  
)  
KAALBYE SHIPPING INTERNATIONAL, )  
)  
Defendant/Counter-Plaintiff, )  
)  
and )  
)  
GLOBAL STRATEGIC COMMUNICATIONS )  
GROUP )  
)  
and )  
)  
PETER HANNAFORD, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. 14-0002273  
Judge Thomas J. Motley  
Next Court Date: 8/26/14 11:00 a.m.  
Event: Motion Hearing

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION  
TO DISMISS OF CENTER FOR ADVANCED DEFENSE STUDIES**

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**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS OF CENTER FOR ADVANCED DEFENSE STUDIES**

Defendant/Counter-Plaintiff Kaalbye Shipping International Ltd. (“Kaalbye”), by and through undersigned counsel and pursuant to District of Columbia Superior Court Rule 12(b)(6) and DC Code § 16-5501 *et seq.* (the “DC SLAPP Law”) hereby submits this memorandum in opposition to the motion to dismiss under Rule 12(b)(6) and the special motion to dismiss of Plaintiff/Counter-Defendant Center for Advanced Defense Studies (“C4ADS”).

**INTRODUCTION**

In “Chapters from My Autobiography,” Mark Twain popularized the phrase that “[t]here are three kinds of lies: lies, damned lies, and statistics.” No mountain of flawed data or stack of

unreliable sources can avoid the impact of the malicious falsehoods about Kaalbye in the Report C4ADS published in September 2013. The “advanced data aggregation software” C4ADS used failed to identify reliable sources available to any member of the public via Google search, so clearly, the software is only as useful as the judgment and bias of its users. The Counterclaim forcefully demonstrates that C4ADS intentionally or recklessly avoided information that contradicted their “hypothesis” about a so-called “Odessa network” and intentionally shunned reliable commercial sources of information. Furthermore, contrary to C4ADS’s unsupported contentions, a motion to dismiss under the DC SLAPP Law is not an opportunity to weigh the competing strength of the evidence, but rather to determine whether the claims make out a *prima facie* case. Accordingly, C4ADS’s motions to dismiss are misguided and must be denied.

By its plain terms, the Counterclaim filed by Kaalbye (the “Counterclaim”) does not seek to inhibit C4ADS’s ability to publish regarding arms transportation or conflict issues, nor does it seek to conceal anything about the Ukrainian arms transportation industry. Kaalbye does not deny that it transports military cargo from time to time, or that it transported cargo to both Venezuela and Syria in 2012 as the Report discussed, or aboard other vessels as well. *See* Kaalbye Answer, ¶¶4, 118, 121, 129; Countercl., 148-53.<sup>1</sup> Kaalbye is not trying to prevent C4ADS from writing about arms transportation or Kaalbye’s role in that business. The Counterclaim only seeks corrections of some maliciously false and damaging inaccuracies in the C4ADS Report (the “Report”) regarding Kaalbye’s safety and business practices. This is not the appropriate subject matter for a dismissal under the DC SLAPP Law. Indeed, the correction that Kaalbye obtained from the Washington Post left virtually all of the important points of the

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<sup>1</sup> C4ADS repeatedly mischaracterizes Kaalbye’s goal in filing the Counterclaim as an attempt to stifle free expression about transporting arms from Ukraine. A cursory reading of Kaalbye’s Answer and its Counterclaims drives a stake through the heart of this self-serving misconception.

relevant Post article intact. Countercl., Ex. E (September 7, 2013 Washington Post article with correction).

Second, Kaalbye has strong claims that will likely succeed on the merits. The Report's statements and conclusions about Kaalbye's safety beacons are not mere opinions. They are admittedly statements based on a ten month "investigation" of factual research and data by research analysts familiar with the field and expert in regional matters in Russia and Ukraine. These are points that C4ADS made abundantly clear in its Report. Ex. 1. to Am. Compl. p. 9, 10, 67 (citing 10 month investigation and use of Palantir data mining software). Pursuing a course of disclaiming liability but nonetheless stating Kaalbye concealed weapons, concealed vessels, and did business with corrupt officials cannot avoid defamation claims (C4ADS does not identify a single legal authority to support this absurd contention). Due to its stated expertise, C4ADS knew or recklessly ignored that the Report omitted material information was false and damaging to Kaalbye. Accordingly, Kaalbye's claims will likely succeed whether it is deemed a private party or a limited purpose public figure.

## **STANDARD OF REVIEW**

### **I. Defamation**

To state a claim for defamation, the claimant must allege four elements: "(1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant published the statement without privilege to a third party; (3) that the defendant's fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm." *Solers, Inc. v. Doe*, 977 A.2d 941, 948 (D.C. 2009) (quoting *Oparaugo v. Watts*, 884 A.2d 63, 76 (D.C. 2005)). Defamation claims are normally subject to a negligence

standard of intent. If a party is deemed a limited purpose public figure or public figure, it must plead that the defamatory statements were published with actual malice. Actual malice means either the publisher had knowledge the statements were false or acted with reckless disregard as to whether the statements were false. *Doe No. 1 v. Burke*, 91 A.3d 1031, 1044 (D.C. 2014). In other words, a defamation claim establishes recklessness if the false statements were based on sources that the defaming party had obvious reasons to doubt. *Houlahan v. Freeman Wall Aiello*, 2014 WL 545922 at \*2 (D.D.C. Feb. 11, 2014); *Lohrenz v. Donnelly*, 350 F.3d 1272, 1283, 358 U.S.App.D.C. 425, 436 (D.C. Cir. 2003). As analysts in the field of ocean transportation of arms and regional arms sales in Ukraine and Russia, C4ADS knew statements about Kaalbye were false or had reckless disregard for a high likelihood the statements were false.

Kaalbye is a Ukrainian shipping company that was relatively unknown in the United States until C4ADS published its Report, not a public figure. A party can become a limited purpose public figure if it “voluntarily injects himself or is drawn into a particular public controversy.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). To analyze whether a party is a limited purpose public figure, “[i]t is preferable to reduce the public figure question to a more meaningful context by looking to the nature and extent of an individual’s participation in the particular controversy giving rise to the defamation. *Id.*, 418 U.S. at 352.

Here, Kaalbye did not inject itself into any public debate about controversial arms sales by attempting to influence the public discourse about such issues, nor is this the “exceedingly rare” case where Kaalbye is an “involuntary public figure.” *See Moss v. Stockard*, 480 A.2d 1011, 1032 (D.C. 1990). Kaalbye transports cargo. It was not well-known in the United States until the Report was published. Kaalbye was therefore not a limited purpose public figure in



September 2013 regarding ocean cargo shipping, ocean safety practices, or maintaining the highest industry standards –until C4ADS published and promoted its Report in September 2013. That Kaalbye retained lawyers, discussed a correction of false information in a Washington Post article, and publicized the correction to limit the damage caused by the Report does not make Kaalbye a limited purpose public figure, nor does C4ADS cite any case or authority to support that notion.

C4ADS’s reliance on *Martin Marietta Corp. v. Evening Star Newspaper Co.*, 417 F. Supp. 947 (D.D.C. 1976) fails to state that the case was decided on summary judgment, after the facts were fully developed. *Id.*, 417 F. Supp. at 954. In addition, neither the DC Court of Appeals nor the DC Circuit has found corporations cannot be defamed absent actual malice, and several courts have rejected such reasoning. *See Trans World Accounts, Inc. v. Associated Press*, 425 F. Supp. 814, 819 (N.D. Cal. 1977); *Schiavone Constr. Co. v. Time, Inc.*, 619 F. Supp. 684, 706 (D.N.J. 1985); *Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 273 (7th Cir. 1983); *Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 589 (1st Cir. 1980). Because the facts concerning Kaalbye’s status as a private party or a limited purpose public figure are hotly disputed and not fully developed, it would be inappropriate to dismiss Kaalbye’s claims prior to developing the facts.

## **II. The DC SLAPP Statute**

The DC SLAPP Law, like a number of other SLAPP statutes, is designed to quickly dispose of meritless lawsuits filed to chill the exercise of First Amendment rights such as freedom of expression. *Verizon Del., Inc. v. Covad Commc’n Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004); *see, e.g.*, R. Smolla, 2 Law of Defamation § 9:107 (2d Ed. 2014). A motion to dismiss under the DC SLAPP Law should be denied if the claims are likely to succeed on the merits.

D.C. Code §16-5502 (2010). In interpreting this section, courts have consistently looked to the standards applied in California to interpret a corresponding statutory requirement. *Boley v. Atl. Monthly Group*, 950 F. Supp. 2d 249, 257 (D.D.C. 2013); *Abbas v. Foreign Policy Group, LLC*, 975 F. Supp. 2d 1, 13 (D.D.C. 2013). Like the D.C. statute, the second step under the California statute requires the claimant to show that there is a probability that the claimant will prevail.

Cal. Code Civ. Proc. § 425.16(b). In adopting the California standard, the U.S. District Court for the District of Columbia has held that the D.C. statute requires a claimant to “satisfy a standard comparable to that used on a motion for judgment as a matter of law.” *Abbas*, 975 F.Supp.2d at 13 (quoting *Price v. Stossel*, 620 F.3d 992, 1000 (9th Cir. 2010), which applied California law). Under this standard, the claimant need demonstrate only that the complaint (1) is legally sufficient and (2) is supported by *prima facie* evidence. *Id.* See also *Boley*, 950 F. Supp. 2d at 257.

This Court should consider the pleadings and evidentiary submissions of both the claimant and the respondent but not weigh the credibility or competing probative strength of competing evidence. *Soukup v. Law Offices of Herbert Hafif*, 139 P.3d 30, 51 (Cal. 2006). The Court must accept as true the evidence favorable to the claimant. *Id.* The claimant “need only establish that [its] claim has minimal merit to avoid being stricken as a SLAPP.” *Id.* (citations and quotations omitted).

### **III. Rule 12 Motions to Dismiss**

Kaalbye’s Counterclaims assert factually specific claims that are far more than the “unadorned, the-defendant-unlawfully-harmed-me accusation” that tend to be vulnerable to a Rule 12 motion to dismiss or a SLAPP motion. *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl.*

*Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). For a complaint to survive a motion to dismiss, it “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (citations and quotation marks omitted). A complaint meets this requirement “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citations and quotation marks omitted). “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.* (citations and quotation marks omitted). The Counterclaim readily satisfies this standard.

Finally, Superior Court Rule of Civil Procedure 12(g) bars both of the motions that C4ADS filed on July 18, 2014. Prior to filing those motions, C4ADS filed a motion to strike under Super. Ct. Civ. R. 12(f). Rule 12(g) provides that “a party [that] makes a motion under [Rule 12] but omits therefrom any defense or objection then available to the party which [Rule 12] permits to be raised by motion, the party *shall not* thereafter make a motion based on the defense or objection so omitted, except as provided in subdivision (h)(2). . . .” Rule 12(h)(2) allows a party to raise the defense of failure to state a claim in a responsive pleading, in a motion for judgment on the pleadings, or at trial. However, the Rule otherwise prohibits Rule 12(b)(6) motions.

In interpreting the corresponding provision of the Federal Rules of Civil Procedure, on which the District of Columbia’s civil procedure rules are based,<sup>2</sup> the Northern District of Illinois described this specific aspect of Civil Rule 12:

The general purpose of Rule 12 is “to expedite and simplify the pretrial phase of federal litigation while at the same time promoting the just disposition of civil cases.” C. Wright & A. Miller, 5B Federal Practice and Procedure § 1342, at 23

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<sup>2</sup> The District of Columbia relies on federal court opinions regarding the interpretation of Super. Ct. Civ. R. 12. *Bible Way Church of our Lord Jesus Christ of the Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 427 n. 5 (D.C. 1996).

(3d ed. 2004). Rules 12(g) and 12(h) serve “to eliminate the presentation of [Rule 12] defenses in a piecemeal fashion.” *Uffner v. La Reunion Francaise, S.A.*, 244 F.3d 38, 41 (1st Cir. 2001) (citing *Pilgrim Badge & Label Corp. v. Barrios*, 857 F.2d 1, 3 (1st Cir. 1988) (per curiam)). “Thus, [s]ubdivision (g) contemplates the presentation of an omnibus pre-answer motion in which defendant advances every available Rule 12 defense and objection he may have that is assertable by motion.” *Pilgrim Badge & Label Corp.*, 857 F.2d at 3 (citation and internal quotation marks omitted).

*Satkar Hospitality Inc. v. Cook County Bd. of Review*, 2011 WL 2182106 at \*4 (N.D. Ill. June 2, 2011). C4ADS’s Rule 12(b)(6) motion is therefore barred because C4ADS did not join it with its Rule 12(f) motion to strike.

The policy against allowing counterclaim defendants to bring defenses against a counterclaim in piecemeal fashion applies to anti-SLAPP motions to dismiss as well. *See Satkar*, 2011 WL 2182106 at \*5. The anti-SLAPP statute creates a substantive defense that a counterclaim defendant can raise by asserting the defense in an answer, filing a motion under Rule 12 or seeking summary judgment under Rule 56. *See Id.* (applying the federal counterpart to Super. Ct. Civ. R. 12 and the Illinois anti-SLAPP law). C4ADS’s anti-SLAPP motion is styled as a motion under Super. Ct. Civ. R. 12 and tests the legal sufficiency of the Counterclaim, hence failing to join it with the Rule 12(f) motion to strike waived the defense, at least at this stage of the proceedings.<sup>3</sup>

**The Court Should deny the Motion Because Kaalbye  
Will Likely Succeed on the Merits of its Defamation Claims**

In September 2013, C4ADS published a report, titled “The Odessa Network: Mapping Facilitators of Russian and Ukrainian Arms Transfers” (the “Report,” Ex. 1 to Amended

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<sup>3</sup> C4ADS’s anti-SLAPP motion relies entirely on the allegations in the pleadings, a single exhibit attached to the complaint, and newspaper articles. C4ADS does not present any affidavits or other evidence that might have converted its motion into a motion for summary judgment under Super. Ct. R. 56. Exhibits to a pleading are incorporated into and considered part of a pleading (*see* Super. Ct. Civ. R. 10(c); *Wetzel v. Capital City Real Estate, LLC*, 73 A.3d 1000, 1006 n.5 (D.C. 2013), and newspaper articles that make facts widely known to the general public can be judicially noticed. *Washington Post v. Robinson*, 935 F.2d 282, 291, 290 U.S. App. DC 116, 125 (D.C. Cir. 1991). Because the material facts of this case are disputed, this matter would not be an appropriate candidate for summary judgment in any event.

Complaint (“Am. Compl.”)), in which Kaalbye was featured prominently. Am. Compl. ¶¶ 2, 49–55, 63–67, 71–76, 89, 92–100, 108–10, 134–37, 141–48. Among other things, the Report alleged that Kaalbye was involved in a 2008-09 incident involving *MV Faina*, a cargo vessel that was hijacked by Somali pirates, Am. Compl. ¶¶ 69–76; a 2001 incident involving a cargo vessel, *MV Anastasia*, which was temporarily detained by Spanish authorities, Am. Compl. ¶¶ 92–100; and 2000-01 shipments of Ukrainian missiles to Iran and China, Am. Compl. ¶¶ 108–10. Co-author Tom Wallace has a college degree in Russian Studies, was named a National Russian Scholar Laureate, has a master’s degree in Security Policy, and focuses his research on government/private collaboration in Russia. Report, Ex. 1 to Am. Compl., p. 3. Co-author Farley Mesko is a “specialist on illicit maritime networks.” *Id.*

In its “investigation roadmap,” the Report indicated that its analysis is “centered on several datasets of Russian and Ukrainian weapons shipments, which were analyzed for patterns. The Report described its findings, conclusions, and insights as the results of C4ADS’s analysis of the data or “applications” of the data. *Id.*, p. 9. The Report stated that C4ADS has “foreign language and regional expertise.” *Id.*, p. 10. In its so-called case study of Syria, C4ADS describes in detail AIS transponder records it gathered; other “datasets” it incorporated. *Id.*, p. 67. The Report discusses the International Maritime Organization (“IMO”), which “publishes lists of ships that are detected with these [AIS] discrepancies, which we included in our database.” *Id.*

In its Syria “case study,” the Report also stated that Kaalbye’s “2013 port calls at Oktyabrsk, Ukraine are followed by long periods with ‘ships missing from [Automatic Identification System] AIS coverage.’” Am. Compl. ¶ 144. C4ADS maintained “[t]his pattern of Kaalbye ships docking at Oktyabrsk, entering the Mediterranean, then disappearing from AIS

coverage has been most prevalent during periods of heavy Russian military aid to Syria.” Ex. 1 to Am. Compl., at 68. C4ADS broke these voyages into three categories: “innocuous,” “moderately suspicious,” and “highly suspicious.” Ex. 1 to Am. Compl., at 68.

Although the Report states that long absences from AIS coverage could be consistent with vessels sailing or docking in areas with poor AIS coverage, the Report also states that such areas are limited worldwide and states that its authors reviewed several sources of available AIS data. The Report then states, based on C4ADS’s detailed factual research, that the facts pertinent to most voyages by Kaalbye vessels in 2013 were “highly suspicious.” In short, the Report conveyed to the public that Kaalbye disabled or tampered with AIS safety beacons aboard its vessels, and that C4ADS’s disclaimers about poor AIS coverage were nothing more than window dressing. Nothing about these statements classifies them as opinions, and the Report cannot by any definition be considered to be an eighty-plus page editorial. Rather, C4ADS published statements as research-based truths.

Prior to the publication of the Report in September 2013, there were no other publications that discussed Kaalbye’s operation of AIS safety beacons aboard its vessels. As detailed in the Counterclaim, many of the false statements in the Report about Kaalbye rely on disreputable foreign news sources, not data, court records, or reliable factual research. Further, C4ADS became aware of shortcomings in its work within days of publishing it. A few days after publishing the original version of the Report, C4ADS removed the Report from its website, excised a number of pages that referred to certain companies or individuals, and added legal disclaimers to protect itself from claims it had made false accusations of illegal conduct. Countercl. ¶¶ 25-31.

Kaalbye asserts that certain allegations in the Report are false, defamatory, and damaging to its reputation and business and has a strong likelihood of succeeding on those allegations, as discussed below.

**A. C4ADS's Allegations About Disabling Safety Beacons Are Defamatory**

Kaalbye will present irrefutable evidence that C4ADS's statements about Kaalbye disabling safety beacons were maliciously false. A Rule 12 motion, even a motion to dismiss under the SLAPP statute, is not the appropriate time or place to weigh the competing evidence, but rather to determine if the claimant has asserted a *prima facie* case. *Abbas*, 975 F.Supp. 2d at 113. False statements or implications that claim to be based on underlying facts are defamatory – they are not opinions. *Mikovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990) (“[e]ven if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications.”). This case is exactly like *Milkovich* in this regard. The Report cites months of factual research and data as well as its own expertise in the field of ocean transportation of weapons in stating that Kaalbye spoofed or disabled its safety beacons. Ex. 1 to Am. Compl. pp. 67-68.

C4ADS's motion completely mischaracterizes the “sting” of the false statements because the true impact of the Report's false statements cannot be avoided and is clearly laid out in the Counterclaim. Kaalbye is not concerned about being identified as a company that transports weapons to conflict zones. Rather, Kaalbye objects to false statements that attack its safety practices and its reputation as a cargo carrier that relies on proper paperwork and maintains high standards throughout its organization. Disabling equipment, doing business with corrupt

officials, having vessels “intercepted” for concealing weapons, and flying the wrong flag are all false and damaging allegations that have nothing to do with the fact Kaalbye openly transports military cargo.

Though C4ADS attempts to hide behind flimsy disclaimers or alternative possibilities, the Report itself dismisses those disclaimers and alternatives as highly unlikely and inconsistent with the data and the months of research and analysis. In short, the Report unmistakably conveys that several Kaalbye vessels that called at the Oktyabrsk Port in 2013 made “highly suspicious” voyages that features “AIS discrepancies” – that Kaalbye disabled its AIS safety beacons to conceal arms deliveries during armed conflict in Syria, and perhaps on other occasions.

These statements are maliciously false because (a) GPS tracking equipment on all Kaalbye’s vessels generated records of their movements that completely refute C4ADS’s false statements; (b) subscription AIS services, which are well known in the industry to be more accurate and reliable than open sources, completely refute C4ADS’s false statements; (c) even open source data refutes C4ADS’s false statements; (d) Kaalbye’s trip itineraries, vessel logs, position reports and other business records corroborate exactly where the vessels traveled and refute with the Report’s false statements; and (e) the International Maritime Organization (“IMO”), a recognized authority on ocean cargo shipping, publishes quarterly lists of vessels known to have AIS tracking discrepancies, and no Kaalbye vessel appeared on those lists in 2013. C4ADS clearly knew or should have known the statements in its Report about Kaalbye’s use of AIS equipment were false, or that there was a recklessly high likelihood the statements were false. Declaration of Olga Seleginskaya, ¶¶4-7; Declaration of Paul Whyte. The damage to Kaalbye as a result of these statements is manifest and well-pleaded in the Counterclaims.



C4ADS recklessly or maliciously defamed Kaalbye because its research analysts, experts in the field, accused Kaalbye of disabling safety equipment with knowing or reckless disregard for the fact that the Report's contentions were false and factually impossible. These experts, after months of research, misled the public regarding the content of IMO reports of AIS deficiencies and relied on open source data they knew was of limited value and accuracy. For example, the Report specifically mentions that C4ADS collected data from the IMO but intentionally misled the public by failing to advise that no Kaalbye vessel appeared in the IMO reports about AIS discrepancies. Kaalbye's reputation was clearly harmed, based on the loss of banking relationships and customer complaints. Seleginskaya Decl. ¶17. Kaalbye will likely show that the C4ADS Report was defamatory on this issue.

**B. C4ADS Defamed Kaalbye by Claiming it Collaborated Corrupt Officials Regarding Illegal Missile Sales to Iran and China in 2000/2001**

The Report's claims that Kaalbye did business with corrupt government officials to ship cruise missiles to China and Iran in 2000 or 2001 are also recklessly false. The Report asserts that Kaalbye facilitated missile sales by corrupt government officials. Countercl. ¶¶101-118. Despite its claim to conduct "data driven" research with powerful search software, C4ADS did not cite or rely on any court records or actual data when it falsely implicated Kaalbye in transporting these missiles. Further, C4ADS failed to make clear that a weapons industry research firm advised that the cruise missiles at issue were transported to Iran and China by air, not ocean, which eliminates any possibility Kaalbye was involved. Seleginskaya Decl. ¶8, Ex. 2. Finally, C4ADS omitted from its Report that a number of individuals were eventually implicated in the corrupt transactions at issue by Ukrainian authorities – yet no employee or owner of Kaalbye was charged. Seleginskaya Decl. ¶8, Ex. 1.

The Report's statements on this issue were maliciously false because C4ADS's regional expertise in Ukraine and Russia meant it knew or should have known that media sources from those countries are inherently unreliable. Countercl. ¶¶190-206. The Report's statements were also maliciously false because it intentionally omitted more credible and contradictory information about how the missiles were transported – information that could be located by a simple google search and that clearly must have been unearthed by the powerful software package C4ADS deployed in its research. For these reasons, this defamation claim will likely succeed on the merits as well.

**C. C4ADS Defamed Kaalbye By Falsely Stating a Vessel was Intercepted, Concealed Military Cargo, and was not Properly Flagged**

The Report's statement that a Kaalbye-operated vessel, the MV Anastasia, was "intercepted" in Las Palmas, Spain where authorities "uncovered" weapons while the vessel flew the flag of the Republic of Georgia while it was registered elsewhere was maliciously false. Ex. 1 to Am. Compl. p. 13. Once again, C4ADS relied solely on unreliable journalism but cited no data – which is particularly malicious given its expertise in ocean cargo shipping. First, Kaalbye has rock-solid evidence that the vessel was indeed registered in Georgia at the time, and only changed its registration a few months later. Seleginskaya Decl. ¶11, Ex. 3. Second, the vessel stopped in Las Palmas for normal refueling, and no arms were "uncovered." Rather, the vessel was legally transporting arms with all appropriate paperwork, and the vessel was seized due to a non-precise oral declaration of the cargo on board. *Id.* Third, C4ADS intentionally omitted the fact that to transport military cargo, Kaalbye and the MV Anastasia necessarily had either certificates for transporting dangerous cargo and/or end user certificates, paperwork required for any arms shipment. Seleginskaya Decl. ¶¶9-10. Finally, C4ADS intentionally omitted from its report that the fact the MV Anastasia was allowed to sail from Las Palmas with

its cargo intact meant that the paperwork associated with its cargo was fully in order. Otherwise, the vessel never would have been allowed to leave the port. *Id.* As experts in the field of ocean transportation of arms, C4ADS knew or recklessly ignored that the facts directly contradicted the unreliable media sources cited in the Report. This defamation claim will also likely succeed on the merits.

**D. C4ADS Defamed Kaalbye by Stating Kaalbye Owned and Operated a Hijacked Vessel Transporting Arms to Sudan**

C4ADS defamed Kaalbye by falsely connecting it to the high-profile hijacking of a vessel, the MV Faina, which reportedly carried arms bound for an uncertain and controversial purchaser in Africa. The statements were false because Kaalbye did not in fact own or operate the vessel. Indeed, C4ADS knew the statements were false because C4ADS actually researched the ownership of the vessel and found that an entirely different company owned and operated it. Ex. 1 to Am. Compl. pp. 18, 41. Moreover, C4ADS actively concealed a number of sources that accurately reported the vessel was owned by an individual with no ties to Kaalbye. Seleginskaya Decl. ¶13; Countercl., ¶¶86-100. Also, despite the Report's claim that its research methodology captures court records, C4ADS failed to find (or actively concealed) that one of Kaalbye's principals successfully sued a Ukrainian publication for libel when it falsely reported the part-owner's statements concerning the ownership and operation of the vessel. Seleginskaya Decl. ¶13, Ex. 4. Though C4ADS attempts to avoid responsibility by citing various news sources that incorrectly reported the ownership of the MV Faina, including the U.S. Military, a party may not rely on news reports it knows to be false. In this case, the factual research conducted by C4ADS made it clear that Kaalbye neither owned nor operated the vessel and therefore had no association with its controversial cargo or the hijacking. This knowing and malicious defamatory statement has merit and will likely succeed.

**E. C4ADS Defamed Kaalbye by Falsely Stating Kaalbye Employs Armed Guards at its Offices**

C4ADS's overall purpose in publishing the Report, regarding Kaalbye, was to spotlight the company's supposedly central role in an arms transportation network that operates in a dangerous world. According to the Report, Kaalbye is company that does business with corrupt, missile-dealing Ukrainian officials, operates vessels seized for concealing weapons and flying the wrong flag to confuse officials, and disables critical safety equipment to evade detection of its arms deliveries. In this context, which C4ADS cannot deny is contained in the Report, falsely accusing Kaalbye of hiring guards armed with automatic weapons at its offices in Odessa is defamatory. C4ADS profoundly mischaracterizes the "sting" of its words by claiming Ukraine is a dangerous place – but clearly, the thrust of its ten-month research exercise was not to spotlight dangerous conditions in Ukraine, and the Report was published months before recent unrest. This company's willingness to misuse the current situation in Ukraine to justify its incompetently or maliciously false reporting should be particularly disturbing to the Court.

Kaalbye will prove that it does not employ any armed guards, much less guards armed with submachine guns, at its place of business. Seleginskaya Decl. ¶¶14-15. In fact, the photograph published in the Report pictures guards at the foot of a staircase in the building where Kaalbye maintains its offices, but the stairs in the photo cannot even be used to access Kaalbye's offices. *Id.* Instead, the stairs may only be used to access a bank and an insurer that have offices on the second floor of the building, and the only guards armed with such weapons who appear in the building work for armored car companies that service the bank. *Id.* Based on the photo in the Report, a C4ADS representative must have visited the building where Kaalbye maintains its offices. Further, C4ADS claims to have regional expertise and the ability to understand Russian. In this context, falsely reporting the purpose of the guards, failing to

disclose the existence of an armored car parked immediately outside the building, and falsely portraying Kaalbye as a company that feels the need to maintain guards with automatic weapons at its offices, was an act sufficiently reckless to support a defamation claim, even if Kaalbye is determined to be a public figure.<sup>4</sup>

**F. C4ADS Defamed Kaalbye by Falsely Associating the Company with a Fictitious Arms-Dealing “Network” that Acts Corruptly and Disables Safety Equipment**

For the various reasons outlined above, the cumulative effect of the Report’s maliciously false statements about Kaalbye is to falsely assert that Kaalbye is part of some kind of disreputable network of arms transporters, and that network is willing to operate unsafely (by disabling safety equipment to cloak the movements of its vessels, or by concealing allegedly dangerous military cargo and mis-flagging its vessels to confuse authorities) or outside international norms (by transporting cruise missiles to Iran at the behest of public officials). However, the vast majority of the Report’s supposedly “data-driven” research consists of nothing more than some half-hearted attempts at research stitched together with largely unreliable news stories. The Report’s most significant attempt at true data research, its case study of alleged arms transportation to Syria during conflicts that occurred in 2013, is horribly inaccurate and knowingly concealed highly material facts in C4ADS’s possession. Kaalbye is not a member of any formal or informal arms transportation network based in Odessa. Seleginskaya Decl. ¶16.

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<sup>4</sup> If Kaalbye is a private figure (indeed, Kaalbye is a relatively small private Ukrainian company that was barely newsworthy for the past several years, prior to the publication of the C4ADS Report), the negligence and rank incompetence demonstrated by C4ADS on this false report easily support a defamation claim.

**CONCLUSION**

For the foregoing reasons, C4ADS's motion to dismiss under Rule 12(b)(6) and its special motion to dismiss under the DC SLAPP Law should be denied.

Respectfully submitted,

Dated: August 4, 2014

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**CERTIFICATE OF SERVICE**

I DO HEREBY CERTIFY that on this 4th day of August, 2014, I served a copy of the foregoing by filing electronically with the Court's electronic filing system, CaseFileXpress, upon the following counsel of record:

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**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

CENTER FOR ADVANCED )  
DEFENSE STUDIES, )  
 )  
Plaintiff/Counter-Defendant, )  
 )  
v. )  
 )  
KAALBYE SHIPPING INTERNATIONAL, )  
 )  
Defendant/Counter-Plaintiff, )  
 )  
and )  
 )  
GLOBAL STRATEGIC COMMUNICATIONS )  
GROUP )  
 )  
and )  
 )  
PETER HANNAFORD, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 14-0002273  
Judge Thomas J. Motley  
Next Court Date: 8/26/14 11:00 am.  
Event: Motion Hearing

**(PROPOSED) ORDER**

Upon consideration of Plaintiff's Motion to strike and Defendant Kaalbye Shipping International's Opposition thereto, it is, this \_\_\_ day of \_\_\_\_\_ 2014, hereby ORDERED that Plaintiff's Motion to Dismiss is denied.

\_\_\_\_\_  
Thomas J. Motley  
ASSOCIATE JUDGE

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