NOTICE OF FILING

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Details of Filing

Document Lodged:	Reply - Form 34 - Rule 16.33
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File Title:	GEOFFREY ROY RUSH v NATIONWIDE NEWS PTY LIMITED & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 34
Rule 16.33

REPLY

NSD2179/2017

Federal Court of Australia
District Registry: New South Wales
Division: General

GEOFFREY ROY RUSH
Applicant

NATIONWIDE NEWS PTY LIMITED
First Respondent

JONATHON MORAN
Second Respondent

The Applicant makes the following assertions:

1. Save and except insofar as it contains admissions, the Applicant joins issue with the Amended Defence filed on 20 February 2018 (the "**Defence**").

2. In answer to paragraph 13(b) of the Defence and the particulars appearing in paragraphs 29 to 36.15, the Applicant says that the Respondents were actuated by malice within the meaning of s.30(4) of the *Defamation Act* 2005 and at common law, in that they published the matters complained of predominantly for the improper motive of harming the Applicant.

Particulars

(a) The Respondents had no evidence, at the time of publication of the matters complained of, that the Applicant had engaged in any misconduct of a sexual nature during the production of King Lear.

(b) The Respondents had not received, at the time of publication of the matters complained of, any information from any source who had direct knowledge of any misconduct on the part of the Applicant of a sexual nature during the production of King Lear.

(c) Prior to the publication of the first and second matters complained of, the Respondents had no information that the Applicant had actually engaged in inappropriate conduct, only that it had been alleged that he had done so.

(d) The Respondents did not speak to the Complainant prior to publishing the matters complained of in order to check the accuracy of the allegations of sexual misconduct that they intended to make against the Applicant.

(e) The Respondents allege, in paragraph 29 of the Defence, that the public interest in the matters complained of was as a result of "*widespread reporting*" of "*allegations of sexual misconduct, bullying and harassment in the entertainment industry*" and they then name a number of celebrities accused of misconduct of a sexual nature and allege that the matters complained of were published in that background context.

(f) The Respondents directly accused the Applicant of misconduct of a sexual nature by calling him "*King Leer*" on the front page on 30 November 2017 and by making imputations 4(b), 5(a), 5(b), 7(a), 7(b), 7(c), 8(a), 8(b), 8(c), 10(a), 10(b), 10(c), 10(e), 11(a), 11(b), 11(c) and 11(e) pleaded in the Statement of Claim.

(g) Despite the statements made in Court on behalf of the Respondents on 8 February 2018 (that "*the articles did not make any allegation that Mr Rush had engaged in inappropriate behaviour of a sexual nature*" and, further, that "[the articles] *don't make any allegation of sexual impropriety*"), the First Respondent nonetheless reported the Court proceedings in *The Australian* on 8 February 2018 under the headline "*Geoffrey Rush secures interim order to gag The Daily Telegraph's evidence*", as follows: "*Mr Rush sued Nationwide News, publisher of The Daily Telegraph, in December after it published a story detailing an investigation into the actor by the Sydney Theatre Company over alleged sexual misconduct...*".

(h) The assertions in Court, referred to at paragraph (2)(g), above, that the allegations against the Applicant in the matters complained of were not of a sexual nature, were false.

(i) The Respondents engaged in a campaign against the Applicant in which they have repeatedly made allegations of misconduct of a sexual nature - namely:

(i) First and second matters complained of published on 30 November 2017;

(ii) Third matter complained of published on 1 December 2017;

(iii) Article in the *Sunday Telegraph* published on 3 December 2017, entitled "*Rush quits arts academy*", in which it was alleged that:

(A) The accusations against the Applicant were said to be "*accusations of repeatedly inappropriately touching a cast member during The Sydney Theatre Company's stage production of King Lear, which ran from November 2015 to January 2016*"; and

(B) "*It is understood the alleged incidents at times occurred in full view of the audience in the Roslyn Packer Theatre*";

(iv) Article in the *Daily Telegraph* published on 4 December 2017, entitled "*Ugly Open Secret Is Centre Stage*", in which the Applicant is named, and a photograph of the Applicant is published, alongside comments made by actor Yael Stone in relation to the #metoo movement, including the following comments: "*The scale of this unspoken culture, and the abuse of power manifested in sexual aggression, shouldn't really come as a surprise...Now we are discovering that this culture also exists in Australia, the truth is hitting home, and it hurts*";

(v) Article published on the *Daily Telegraph* website on 5 December 2017, authored by Karlie Rutherford and Kris Crane, entitled

"*AACTA Awards: Stars of stage and screen urge industry to tackle cancer of sexual harassment*", in which:

(A) A prominent photograph of the Applicant was published immediately above the following words: "*This year's event has been overshadowed by a series of sexual harassment and bullying allegations levelled at some of entertainment's biggest stars following Hollywood's earth-shaking Harvey Weinstein scandal*";

(B) A paragraph referring to the Applicant having been "*accused of 'inappropriate behaviour' towards a female co-star*" was published immediately above the following words: "*TV presenter Don Burke is also facing allegations he denies and dozens of other well-known figures are expected to be accused of misconduct*";

(C) The article concluded with the following words: "*A poll released last month by WIFT revealed 58 per cent of respondents have experienced sexual harassment in the workplace*";

(vi) Article in the *Daily Telegraph* published on 5 December 2017, authored by Karlie Rutherford and Kris Crane, entitled "*Stars of stage and screen urge industry to tackle cancer of harassment*", which is in the same terms, or substantially the same terms, as the article referred to at paragraph 2(i)(v), above;

(vii) Article in the *Daily Telegraph* published on 5 December 2017, authored by Jack Houghton, entitled "*Rush 'just playful: Director*", which appears immediately above another article entitled "*Spacey was sex suspect*";

(viii) Article in the *Daily Telegraph* published on 5 December 2017, authored by Alison Stephenson and Kris Crane, entitled "*'Brave women win praise at glam awards*", which:

(A) Commences with the following words: "*Women speaking out against abuse and harassment in the entertainment industry were last night hailed as 'pioneers', while two more big names revealed they had also been victims*";

(B) Refers to the Applicant in the same paragraph as Don Burke, as follows: "*The industry is reeling after allegations against former AACTA president Geoffrey Rush, who stood down after being accused of 'inappropriate behaviour' towards a female co-star during a production of King Lear - a claim he strongly denies. And TV presenter Don Burke is facing multiple allegations, which he also denies*";

(ix) Article in *The Australian* published on 9 December 2017, authored by Rosemary Neill, entitled "*Celluloid Ceiling*", which includes the following words: "*Now, however, the tsunami of sexual harassment, assault and inappropriate behaviour allegations is engulfing some of the arts and screen industry's most powerful men, including Australia's Don Burke and Geoffrey Rush, who have both firmly denied the claims of misconduct*";

(x) Article in *The Australian* published on 8 February 2018, authored by Dana McCauley, entitled "*Geoffrey Rush secures interim order to gag The Daily Telegraph's evidence*", which includes the following words: "*Mr Rush sued Nationwide News, publisher of The Daily Telegraph, in December after it published a story detailing an investigation into the actor by the Sydney Theatre Company over alleged sexual misconduct…*";

(xi) Article in the *Daily Telegraph* in hardcopy (on the front page and on pages 6 and 7) and online published on 20 February 2018, entitled "*STOP DOING IT*", which purported to be a Court report of the Applicant's strike out application that was heard on 19 February 2018 but was misleading and sensational and reported allegations in the Amended Defence as though they were fact;

(xii) Article in *The Australian* in hardcopy (on the front page and on page 2) and online published on 20 February 2018, entitled "*Actress at heart of case against Rush revealed*", which purported to be a Court report of the Applicant's strike out application that was heard on 19 February 2018 but was misleading and sensational and reported allegations in the Amended Defence as though they were fact;

(xiii) Article in *The Courier Mail* in hardcopy (on page 9) and online published on 20 February 2018, entitled "'*STOP DOING IT*' - *Actress tells King Lear to 'f---off' in toilet, court told*", which purported to be a Court report of the Applicant's strike out application that was heard on 19 February 2018 but was misleading and sensational and reported allegations in the Amended Defence as though they were fact; and

(xiv) Article in *The Herald Sun* in hardcopy (on page 5) and online published on 20 February 2018, entitled "*Court hears that actress repeatedly asked Geoffrey Rush to...STOP DOING IT*", which purported to be a Court report of the Applicant's strike out application that was heard on 19 February 2018 but was misleading and sensational and reported allegations in the Amended Defence as though they were fact.

(xv) Article in *The Australian* published on 19 March 2018, authored by Stephen Brook, entitled "*The Diary*", which includes the following words:

> [T]*he Telegraph's amended defence documents, which were at one point suppressed, include allegations Rush inappropriately touched Eryn Jean Norvill while they were on stage in a Sydney Theatre Company production of King Lear. Rush strenuously denies the allegations. The newspaper's particulars of qualified privilege claim Norvill complained to the STC that Rush 'had touched her genitals during the production of King Lear without her*

consent'. Rush denies this claim and the actor said it had not been raised with him by the complaint or the STC.

(j) The First Respondent published the matters complained of despite an email on or about 29 November 2017 from the Deputy Editor of the *Herald Sun*, a newspaper owned by its related entity and which shares content with the First Respondent, that warned against publication of the matters complained of, in the following terms:

IMPORTANT NOTICE FOR ALL STAFF

Do not retweet or post any articles regarding GEOFFREY RUSH.

(k) The First Respondent also published the matters complained of despite a text message on or about 29 November 2017 from a *Herald Sun* staffer, which warned that publication of the matters complained of would be "*highly libellous*", and which was in the following terms:

...please under no circumstances retweet/share/like/report any stories about Geoffrey Rush on social media etc until further notice. The Tele are running with a yarn which is highly libellous.

(l) The first time that the Respondents approached the Applicant for comment, in relation to the first and second matters complained of, was by an email from the Second Respondent at 5:06pm on 29 November 2017 to the Applicant's agent, the evening before the publication of the first and second matters complained of, and in that approach the Respondents asserted that the investigation was "*part of a broader investigation into a number of high profile people in the entertainment industry in the wake of the Don Burke sandal, and previously the Harvey Weinstein allegations.*"

(m) The Respondents did not put to the Applicant, prior to the publication of the first and second matters complained of, that they intended to refer to him as "*King Leer*", or as a person who had engaged in "*Bard behaviour*", or that they intended to publish the first and second matters complained of which made the imputations pleaded in paragraphs 4, 5, 7 and 8 of the Statement of Claim despite being in a position to read the

entire article, including the headline, to a representative of the Sydney Theatre Company prior to publication.

(n) The Respondents published, in the matters complained of, the content of an email from the solicitor for the Applicant, Nicholas Pullen, dated 29 November 2017, which was marked "*NOT FOR PUBLICATION*".

(o) The first time that the Respondents approached the Applicant for a comment about the third matter complained of was at 6:20pm on 30 November 2017 by an email from the Second Respondent to the Applicant's agent, the evening before the third matter complained of was published on the front page.

(p) The First Respondent has maintained the republication of the second and third matters complained of on its websites, despite the filing of its Defence on 1 February 2018 and despite serving an Amended Defence on 15 February 2018 in which it did not allege that any of the imputations of sexual misconduct were substantially true.

(q) The First Respondent has maintained the accuracy generally of the content of the second and third matters complained of in an article in the *Daily Telegraph* published on 9 December 2017, authored by Matthew Benns, entitled "*Hurt actor takes action*", in which it is stated:

> *The Daily Telegraph stands by its reporting of the complaint made against Rush during his last stint at the STC for the production of King Lear.*
>
> *Editor Christopher Dore said the newspaper would defend its accurate reporting in court.*

'The Daily Telegraph accurately reported the Sydney Theatre Company received a complaint alleging that Mr Geoffrey Rush had engaged in appropriate behaviour', Mr Dore said. 'We will defend our position in court'.

(r) The First Respondent has continued to maintain that its conduct, in publishing the first, second and third matters complained of, was reasonable, including by:

(i) On 9 December 2017, making the comments referred to at paragraph (2)(q), above;

(ii) On 1 February 2018, filing a Defence which included, at paragraph 36, an assertion that "[t]*he Respondents' conduct in publishing the matters complained of was reasonable in the circumstances*";

(iii) On 15 February 2018, serving an Amended Defence (which was subsequently filed on 20 February 2018) which repeated paragraph 36 of the previous iteration of the Defence (as referred to at paragraph (2)(r)(ii), above);

(iv) On 20 February 2018, issuing a statement from Chris Dore, Editor, which included that "*The Daily Telegraph considers that its conduct in publishing the articles...was reasonable*".

(s) Even after the decision of Justice Wigney, handed down on 20 March 2018, the Respondents have continued to repeat the allegations which were struck out by Justice Wigney, namely:

(i) An article published online on "*news.com.au*", on 20 March 2018, entitled "*Daily Telegraph's defamation defence removed in Geoffrey Rush case*", in which it was stated, among other things:

(A) That the matters complained of alleged that the Applicant "*behaved inappropriately to a colleague during a Sydney Theatre Company production of King Lear in 2015*";

(B) That the Respondents' Defence "*alleges Rush touched co-star Eryn Jean Norvill in a way that made her feel uncomfortable on five separate occasions during the final week of the production*" - with the use of the present tense "*alleges*" implying that the allegation had survived the Applicant's strike-out applications and was still included as part of the Respondents' Defence;

(C) That "*Rush is also accused of following his co-star into the women's toilet and standing outside her cubicle until she told him to 'f*** off' at a party to celebrate the end of the production*" - with the use of the present tense "*is...accused*" implying that the allegation had survived the Applicant's strike-out applications and was still included as part of the Respondents' Defence; and

(D) That "*The Telegraph can no longer seek to prove it substantially true that Rush engaged in scandalously inappropriate behaviour*".

(ii) An article published on page 12 of *The Daily Telegraph*, on 21 March 2018, entitled "*Rush case to head for trial*", in which it was stated, among other things, that: "*The Telegraph was seeking to prove that Mr Rush, 66, touched his co-star Eryn Jean Norvill in an inappropriate manner while he carried her on stage as she simulated the lifeless body of King Lear's daughter Cordelia*".

(iii) An article published in *The Australian*, on 21 March 2018, entitled "*Rush defamation case: truth defence rejected*", in which it was stated, among other things:

(A) That the Respondents' Defence "*claimed the 'inappropriate' touching occurred during the production's final five nights, when Rush carried her lifeless body across the stage*"; and

(B) That the Respondents' Defence "*also claimed that at a closing-night cast party, Rush entered the women's toilets and 'stood outside a cubicle' occupied by Norvill. The actress told him to 'f..k off', the document stated, and he left*".

Date: 28 March 2018

Signed by Nicholas Pullen
Solicitor for the Applicant

This pleading was prepared by Sue Chrysanthou and settled by Richard McHugh SC.

Certificate of lawyer

I Nicholas Pullen certify to the Court that, in relation to the Reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 28 March 2018

Signed by Nicholas Pullen
Lawyer for the Applicant