# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

#### FORT LAUDERDALE DIVISION

PRESTON HENN		§		
		§		
Plaintiff,		§		
		§		
v.		§	Case No.:	
		§		
FERRARI NORTH AMERICA, INC.		§		
		§		
Defendant.		§		
		§		
	/	§		

### **VERIFIED COMPLAINT FOR DAMAGES**

(Jury Trial Demanded)

- 1) Preston Henn sues Ferrari North America, Inc., for damages based upon the published statements of its agents and employees that Preston Henn is not qualified to purchase a LaFerrari Spider Automobile; statements which injured Henn's reputation in his profession, trade, occupation, and in the world of high end automobile organizations, associations, and exhibitions and their individual participants. He seeks damages for reputational injury and the mortification caused by declaring him to be not qualified to purchase a LaFerrari Spider.
- 2) Preston Henn is a citizen of the State of Florida and resides in Hillsboro Beach (Broward County), Florida.
- 3) Ferrari North America Inc., (a subsidiary of Ferrari, N.V.) is a company incorporated in Delaware with its principal place of business in Englewood Cliffs, New Jersey.
- 4) The amount in controversy exceeds \$75,000 exclusive of interest and costs. Jurisdiction is based upon diversity of citizenship, pursuant to 28 U.S.C. Section 1332.

#### **FACTS**

- 5) Preston Henn is an 85 year old driver and collector of classic and modern racing automobiles. He owns the Swap Shop in Fort Lauderdale, Florida, where he maintains a Museum of Automobiles for the delight and education of the millions of visitors to the Swap Shop.
- 6) Henn has been a "Ferrarista" (a Ferrari owner) for approximately 50 years. He had a relationship with, and drove for Luigi Chinetti, who in the early 1950s, "made a deal with Enzo Ferrari to be a Ferrari factory agent in the United States [who] owned the first and for a while the only Ferrari dealership in the country [United States]." *See* Wikipedia: Luigi Chinetti. Thus Henn has been involved with Ferrari and its cars almost since its entry into the United States market.
- Among the Ferraris presently owned by Henn and shown by him at the Swap Shop is the 275 GTB/C Speciale (chassis 06885), a car which Sergio Marchionne, the President of Fiat Chrysler Automobiles (which owns Ferrari North America) has told Henn is his "favorite Ferrari." The 6885 has been said to possibly be the world's first \$100 million dollar car.
- 8) Ferrari announced earlier this year that it would produce a convertible version of the LaFerrari which would be known as the LaFerrari Spider. Henn already owns a LaFerrari.
- 9) Preston Henn immediately informed the Ferrari dealer with whom he had an arrangement, that he wished him to place an order for the automobile on his behalf. The owner of the dealership seeking to place the order was told by Ferrari North America officials that a LaFerrari Spider would not be sold to Henn.
- 10) Henn, disappointed that Ferrari North America refused to sell him the LaFerrari Spider despite his long and loyal and beneficial-to-Ferrari relationship with the manufacturer, sought to determine the reason why his order was not going to be honored by Ferrari.

- Henn enlisted friends in the Ferrari world, seeking Ferrari's rationale. They were informed by Ferrari officials that Henn was not qualified to purchase the LaFerrari Spider.
- 12) Hoping that such a comment was not accurate, and that Ferrari officials had somehow overlooked his credentials as a Ferrari owner and purchaser, Henn wrote to Edwin Fenech, President of Ferrari North America, to Enrico Galleria, Ferrari's Senior Vice President for Commercial and Marketing, and to Sergio Marchionne, the Chairman of Ferrari Chrysler Automobiles, recounting his long commitment to Ferrari, seeking approval for his order.
- GTB/C Speciale is his (Marchionne's) "favorite car," included a check for \$1,000,000 as a deposit on the LaFerrari Spider. On July 18, 2016, Enrico Galleria responded to Henn on behalf of Chairman Marchionne. Galleria wrote that "all units have been already sold" and "[A]s a consequence, I am sending you back herewith your deposit" and asked Henn "not to send any of those check [sic] directly to Ferrari or our managers. We cannot be responsible for checks or advances directly provided to us which bear the high risk of being lost." See Composite Exhibit: Henn's letter, his \$1,000,000 check, and Galliera's reply.
- Thus, the decision to refuse to sell a LaFerrari Spider to Preston Henn because he was not qualified has become a *fait accompli*, because by deeming him to be not qualified, Ferrari deprived Henn of the opportunity to purchase the automobile, demeaning him in the process.
- 15) By deeming Henn not qualified and publishing to third parties that Preston Henn was not qualified, Ferrari, acting through its employees and agents, uttered to unrelated third parties a false and defamatory statement, harming Henn's reputation in the universe of Ferrari aficionados.

- Preston Henn is the most qualified, or at least among the 10 most qualified persons in the United States with regard to the standards that Ferrari has historically used to determine who would have "the privilege" of purchasing unique Ferrari automobiles.
- 17) Since the 1960s, Preston Henn has owned multiple Ferraris, including the following:

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275 GTB/C Speciale (chassis 06885)
365 GTB/4 ("Daytona spider")
365 GTB/4 (Competition Conversion, raced by P. Henn)
512 BB (spider conversion by NART)
512 BB/LM Testarossa (raced by P. Henn around the world)
Testarossa (original "Miami Vice" television car)
F40
F50
Enzo Ferrari
FXX (raced by P. Henn around the world)
LaFerrari
458 Italia
458 Speciale
488 GTB
550 Barchetta
599 GTB Fiorano
575M Superamerica
F399 (ex-M. Schumacher Formula One)
Maserati MC12
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18) Preston Henn's 275 GTB/C Speciale Ferrari is displayed at the Swap Shop, along with most of the cars listed above. In recent years Henn has, at Ferrari's request, and at his own expense, transported the 275 GTB/C Speciale to Ferrari, including to "Casa Ferrari" during the 2015 Pebble Beach festivities event where the car was shown on a special pedestal created by Ferrari and in 2014 when Ferrari hosted its 60th Anniversary Gala in Beverly Hills, Henn's 275 GTB was displayed on Rodeo Drive as one of the 60 the most "iconic Prancing Horses."

Available at: http://auto.ferrari.com/en\_US/news-events/news/1000-ferrari-beverly-hills/

- 19) Additionally, the 275 GTB/C and other Ferrari supercars owned by Henn, including the FXX and Enzo have been shown by Henn for years at the annual Cavalino Classic at the Breakers in Palm Beach; a cavalcade of Ferraris attracting thousands of viewers and "considered by some to be the world's premier event dedicated to honoring Ferraris." <sup>2</sup>
- 20) Henn was one of 30 purchasers of the Ferrari FXX, cars that Ferrari transported to race tracks around the world within recent years allowing Henn, and the other 29 owners, to meet and to drive and race their cars on those tracks and where Ferrari engineers would monitor the cars' performance in order to make set-up and engineering decisions for future Ferraris.
- The combination of ownership, driving, racing, displaying and cooperating with Ferrari to enhance the Brand, and allowing the most valuable automobile in the world the 6885 to be used by Ferrari to promote the history and richness of the Ferrari Brand, makes the untrue statement "not qualified" to purchase the LaFerrari Spider a public insult to Henn, as well as the basis for this defamation action.

#### **DEFAMATION**

- 22) Plaintiff Henn repeats and realleges paragraphs 1-20 above.
- 23) The publication of the statement that Preston Henn is not qualified to purchase a LaFerrari Spider is an untrue statement which harms Henn's reputation, and holds him up to ridicule, disrespect, and disrepute in his profession, trade, occupation, avocation, and among his friends and business and social associates.
- 24) Plaintiff seeks damages in excess of \$75,000 exclusive of interests and costs as compensation for the damage to his reputation.

<sup>&</sup>lt;sup>2</sup> 2015 Cavallino Classic: The annual Palm Beach gathering that celebrates old and new Ferraris. Available at: https://blog.hemmings.com/index.php/2015/02/02/2015-cavallino-classic-the-annual-palm-beach-gathering-that-celebrates-old-and-new-ferraris/.

- 25) Plaintiff requests that the Court take jurisdiction of this case and award damages for defamation.
  - 26) Plaintiff demands a trial by jury.

Respectfully submitted,

By: /s/ Bruce S. Rogow BRUCE S. ROGOW Fla. Bar No. 067999 TARA A. CAMPION Fla. Bar No. 90944 BRUCE S. ROGOW, P.A. 100 N.E. 3rd Avenue Suite 1000 Ft. Lauderdale, FL 33301 Ph: (954) 767-8909 Fax: (954) 764-1530

brogow@rogowlaw.com tcampion@rogowlaw.com

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 1, 2016, I electronically filed the foregoing Verified Complaint for Damages with the Clerk of Court using CM/ECF.

By: /s/ Bruce S. Rogow BRUCE S. ROGOW

## **VERIFICATION BY PRESTON HENN**

Under penalties of perjury, I declare that I have read the above Verified Complaint and state that the foregoing facts are true to the best of my personal knowledge and belief.

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JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

#### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Preston Henn		DEFENDANTS Ferrari North America, Inc.					
(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)			County of Residence of First Listed Defendant Bergen  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  Attorneys (If Known)				
(c) Attorneys (Firm Name, A	ddress, and Telephone Number)		Attorneys (IJ Known)				
Bruce S. Rogow Tara A. Campion			<b>B</b>				
(d) Check County Where Actio	n Arose:   MIAMI- DADE	☐ MONROE 🏚 BROWARD 🗆	PALM BEACH  MARTIN  ST. LU	JCIE INDIAN RIVE	R □ OKEECHOBEE □ HIG	HLANDS	
II. BASIS OF JURISDI	CTION (Place an "X" in	One Box Only)	CITIZENSHIP OF PE	RINCIPAL PA			
☐ 1 U.S. Government Plaintiff	U.S. Government N	ral Question Not a Party)	(For Diversity Cases Only) PT Citizen of This State	1 🔲 1 Incom	porated or Principal Place isiness In This State	PTF DEF  ✓ 4 □ 4	
2 U.S. Government Defendant		ersity ip of Parties in Item III)	Citizen of Another State		porated <i>and</i> Principal Plac Business In Another State		
			Citizen or Subject of a Foreign Country	] 3	gn Nation	□ 6 □ 6	
IV. NATURE OF SUIT		ly) RTS	FORFEITURE/PENALTY	BANKRUP	OTEV OTE	HER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment	PERSONAL INJURY  ☐ 310 Airplane ☐ 315 Airplane Product Liability  ☐ 320 Assault, Libel &	PERSONAL INJURY  365 Personal Injury - Product Liability  367 Health Care/ Pharmaceutical	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other	422 Appeal 28 U 423 Withdrawal 28 USC 157	JSC 158 ☐ 375 Fa ☐ 376 Qu 7 ☐ 3729 ☐ 400 Sta	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC _ 3729 (a)) ☐ 400 State Reapportionment	
& Enforcement of Judgment  151 Medicare Act  152 Recovery of Defaulted Student Loans	Slander  330 Federal Employers' Liability  340 Marine  345 Marine Product	Personal Injury Product Liability  368 Asbestos Personal Injury Product Liability	LABOR	820 Copyrights 830 Patent 840 Trademark	430 Ba 450 Cc 460 De 470 Ra		
(Excl. Veterans)    153 Recovery of Overpayment of Veteran's Benefits   160 Stockholders' Suits   190 Other Contract   195 Contract Product Liability   196 Franchise	Liability  350 Motor Vehicle  355 Motor Vehicle Product Liability  360 Other Personal Injury  362 Personal Injury -		☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation	861 HIA (1395f   862 Black Lung   863 DIWC/DIW   864 SSID Title :   865 RSI (405(g)	(923)	onsumer Credit able/Sat TV securities/Commodities/ onge ther Statutory Actions gricultural Acts anvironmental Matters	
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□ 245 Tort Product Liability □ 290 All Other Real Property	445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	☐ 530 General ☐ 535 Death Penalty	IMMIGRATION  462 Naturalization Application 465 Other Immigration Actions	n		Constitutionality of State	
V. ORIGIN  Original Proceeding  Proceeding  (Place Place 2 Remarkation Court	State (See VI	Reinstated 5 Transfer another (specify		7 Appeal to District Jud from Magi- Judgment		t 9 Remanded from Appellate Cour	
VI. RELATED/ (See instructions): a) Re-filed Case □YES ♥NO b) Related Cases □YES ♥NO EE-FILED CASE(S)  JUDGE: DOCKET NUMBER:							
VII. CAUSE OF ACTI			iling and Write a Brief Stateme (for both sides to try entire case		ot cite jurisdictional statu	tes unless diversity):	
VIII. REQUESTED IN COMPLAINT:		S IS A CLASS ACTION	DEMAND \$ 75,101.00	) CHEC	K YES only if demand		
ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE SIGNATURE OF ATTOMNEY OF RECORD							
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FOR OFFICE USE ONLY RECEIPT #	AMOUNT IF	FP JUDGE	<i>U</i> ,	MAG JUDGE			

# UNITED STATES DISTRICT COURT

for the

Southern District of Florida				
Preston He	enn	) ) )		
Plaintiff(s)	<u> </u>	)		
r unugg(s) V.	)	Civil Action No.		
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Ferrari North Ame		) ) ) )		
	SUMMONS I	N A CIVIL ACTION		
To: (Defendant's name and address)  Ferrari North America, Inc.  Registered Agent:  The Corporation Trust Company  Corporation Trust Center  1209 Orange Street  Wilmington, DE 19801				
A lawsuit has been file	d against you.			
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:  Bruce S. Rogow  Tara A. Campion  Bruce S. Rogow, P.A.  100 N.E. 3rd Ave., Ste. 1000  Fort Lauderdale, FL 33301				
If you fail to respond, j You also must file your answer	<b>.</b>	be entered against you for the relief demanded in the complaint.		
		CLERK OF COURT		
Date:		Signature of Clerk or Deputy Clerk		

# COMPOSITE EXHIBIT

# BRUCE S. ROGOW, P.A 100 N.E. THIRD AVENUE, SUITE 1000 FORT LAUDERDALE, FLORIDA 33301

July 13, 2016

Bruce S. Rogow Tara A. Campion Phone (954) 767-8909 Fax (954) 764-1530 brogow@rogowlaw.com tcampion@rogowlaw.com

Sergio Marchionne, Abetone Inferiore N 4 1-41053 Maranello (MO) Italy via International Federal Express – Tracking No.: X5BLQA

RE: LaFerrari Spyder

Dear Mr. Marchionne,

Enclosed please find Preston Henn's \$1,000,000 check as a deposit on the forthcoming LaFerrari Spyder. Upon delivery of the automobile he will pay the balance due.

I am also enclosing the recent correspondence relating to his efforts to order the automobile, including the letters and email sent to Enrico Galliera.

This million dollar deposit reflects Mr. Henn's lifelong commitment to Ferrari. You know his 06558 275 GTB/C Berlinetta Speciale. What a shame it would be to shun him now.

I look forward to your confirmation of receipt of the deposit and Mr. Henn's purchase of the LaFerrari Spyder.

Bruce Rogow

Encls.

cc: Preston Henn

Stuart Hayim, Ferrari of Fort Lauderdale (boss@ferrarili.com)

Enrico Galliera (enrico.galliera@ferrari.com)

Edwin Fenech, (Edwin.fenech@ferrari.com) (250 Sylvan Ave., Englewood Cliffs, NJ, 07632)

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SWAP SHOP MANAGEMENT, LLC

3291 W. SUNRISE BOULEVARD FORT LAUDERDALE, FL 33311-5603 (954) 791-7927

7/9/2016

PAY TO THE ORDER OF

Sergio Marchionne CEO of Ferrari

\$ \*\*1,000,000.00

One Million and 00/100\*\*\*\*\*\*\*\*\*\*\*\*

Sergio Marchionne CEO of Ferrari

DOLLARS

MEMO

depoit on La Ferarri Spyder

SWAP SHOP MANAGEMENT, LLC

Sergio Marchionne CEO of Ferrari

Date 7/9/2016

Type Reference Deposit on Spyder Original Amt. 1,000,000.00

Balance Due 1,000,000.00 7/9/2016

Discount

Payment 1,000,000.00

Check Amount

1,000,000.00

operating a depoit on La Ferarri Spyder

1,000,000.00

SWAP SHOP MANAGEMENT, LLC

Sergio Marchionne CEO of Ferrari

Date 7/9/2016 Type Reference

Bill Deposit on Spyder Original Amt. 1,000,000.00 Balance Due 1,000,000.00 7/9/2016

Discount

Payment 1,000,000.00

Check Amount

1,000,000.00

operating a depoit on La Ferarri Spyder

1,000,000.00

# Ferrari

Mr. Preston B. Henn 3291 W. Sunrise Blvd Ft. Lauderdale, FL. 33311



Maranello, July 18th 2016

Dear Mr. Henn,

We have received your kind letter dated July 13<sup>th</sup>, addressed to our Chairman and I thank you on his behalf.

As anticipated in my last letter, unfortunately I shall confirm you that we are not able to secure you an allocation of a LaFerrari Spider as all units have been already sold.

As a consequence, I am sending you back herewith your deposit which in any case we are not allowed to accept.

In addition, please note for future reference that our cars are, as you know, sold through our dealers network therefore to avoid the risk to lose your check we kindly ask you not to send any of those check directly to Ferrari or our managers. We cannot be responsible for check or advances directly provided to us and which bear the high risk of being lost

I am sorry our reply is not as you were hoping. I thank you again for your continued and enthusiastic support to our Brand and I take the opportunity to send you my kind regards.

Enrico Galliera

Senior Vice President for Commercial and Marketing

Ferrari Spa