

1 Case No: CV 1307113

2 Dept. No. 2 1

FILED
2013 JUL 25 PM 5:00
LINDA F. BURLEIGH
WHITE PINE COUNTY CLERK
BY [Signature]
DEPUTY

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6 IN THE SEVENTH JUDICIAL DISTRICT COURT
7 WHITE PINE COUNTY, STATE OF NEVADA

8 ☺ ☺ ☺ ☺ ☺

9 MICHAEL LEMICH,
10 PLAINTIFF,

COMPLAINT - CIVIL
COMPLAINT FOR CIVIL DAMAGES

11 vs.

12 CHERYL NORIEGA, JAMES
13 ADAMS, TIMOTHY MCGOWAN, ELY JET
14 CENTER, DOES 1 THROUGH 10, AND
DOE INC., 1 THROUGH 10, AND DOE
TRUST, 1 THROUGH 10,
DEFENDANT.

15 COMES NOW MICHAEL LEMICH, Plaintiff who complains, by his counsel, Richard
16 W. Sears, who files this against the Defendants alleging the following claims for
17 defamation, intentional infliction of emotional distress, negligent infliction of
18 emotional distress and civil conspiracy.

19
20 GENERAL ALLEGATIONS

21 1. MICHAEL LEMICH, Plaintiff, ("MIKE") is a resident of White Pine County,
22 Nevada, and has been so throughout all time periods relevant to this matter.

23 2. JAMES ADAMS, Defendant, is a resident of White Pine County, Nevada and has
24 been so throughout all time periods relevant to this matter.

25 3. CHERYL NORIEGA, Defendant, is a resident of White Pine County, Nevada and

SEARS LAW FIRM, LTD.
RICHARD W. SEARS
1330 AULTMAN BLVD. - ELY, NEVADA 89301
775 289-3366

1 has been so throughout all time periods relevant to this matter.

2 4. TIMOTHY MCGOWAN, Defendant, is a resident of White Pine County, Nevada
3 and has been so throughout all time periods relevant to this matter.

4 5. ELY JET CENTER, Defendant, is a limited liability company doing business in
5 White Pine County, Nevada.

6 6. The true names of Defendants DOES I through X inclusive, and DOES, Inc., I
7 through X, whether individual, corporate, associate, or otherwise, are unknown to
8 MIKE, who therefore sues each Defendant by fictitious names. MIKE is informed and
9 thereupon alleges that each of the Defendants designated herein as DOES or DOES,
10 Inc. is in some way responsible for the damages claimed by MIKE herein. MIKE will ask
11 leave of this court to amend this complaint to insert the true names and capacities of
12 Defendants DOES I through X, inclusive, when the identities have been ascertained, to
13 formulate appropriate allegations and to joint such Defendants in this action.

14 7. Upon information and belief, at all times relevant hereto, each of the
15 Defendants set forth herein was the principal, agent, employee, employer or co-
16 conspirator of each other, and at all relevant times were acting within the course and
17 scope of such relationship to injure Mike in his reputation and standing in the state of
18 Nevada.

19 8. On or about July 15, 2013, Defendants published - orally and in writing -
20 defamatory statements, without any privilege to publish the statements to third
21 persons, defaming MIKE in his reputation. The statements were false, and were, at the
22 time they were made by the defendants, known to the Defendants, or any of them, to
23 be false; or, the Defendants, upon reasonable investigation, could have determined
24 that said statements were false *prior to* broadcasting the same to third persons.

25 9. MIKE was injured in his reputation in the community in which he resides, and

1 in the larger community in which he works.

2 10. MIKE is a County Commissioner, duly serving the people of White Pine
3 County in conformance with his oath of office taken in December, 2010.

4 11. Defendants published defamatory statements about Plaintiff by filing a notice
5 of intent to recall MIKE from his elected office as County Commissioner that contained
6 demonstrably false statements of fact, intending to impute criminal acts to MIKE.

7 12. It is a criminal act to file a notice of intent to recall a public official that
8 contains false statements of fact, so there is no privilege that attaches to the act of filing
9 false statements in a notice of intent to recall a public official.

10 13. Defendants, and each of them, published the false statements with actual
11 malice or implied malice, knowing the statements were false, or with reckless
12 disregard to the truth or falsity of the factual statements.

13 14. Defendants falsely stated that MIKE was responsible for a financial disaster in
14 the White Pine County budget: This statement was false when made.

15 15. Defendants falsely stated that Mike intimidated and threatened citizens
16 which would be a crime if true: This statement was false when made.

17 16. Defendants falsely stated that MIKE was under investigation by law
18 enforcement for physical assault of a citizen: This statement was false when made.

19 17. Defendants falsely stated that MIKE was under investigation by law
20 enforcement for theft: This statement was false when made when they stated, "He's
21 been the subject of several state and local investigations."

22 18. Defendants falsely stated that MIKE was responsible for financial difficulties
23 in White Pine County, and that the County was in a fiscally bad position due to
24 mismanagement by MIKE: This statement was false when made.

25 19. Defendants falsely stated that MIKE "has taken upon himself to dismantle the

1 County Fire and EMS services, violating and/or subjecting the County to NRS
2 violations and placing outlying communities in grave risks due to lack of timely
3 services, while simultaneously negotiating land exchanges for the county": This
4 statement was false when made.

5 20. Defendants falsely stated, "Lemich has taken very combative [sic] and pushed
6 personal vendettas against the private operator at the Airport and members of the
7 Airport Board. Accusations, intimidations, lies and outright threats against both the
8 operator and their customers have far crossed the line of ethics": This statement was
9 false when made.

10 I

11 DEFAMATION, SLANDER AND LIBEL

12 21. MIKE incorporates the facts set forth in paragraphs 1 through 20 as though
13 fully set forth herein.

14 22. MIKE was injured in his reputation in Nevada by false statements alleging he
15 was guilty of criminal activity and the target of investigations as the result of his acts
16 that violated the NRS and that he had intimidated citizens doing business with White
17 Pine County.

18 23. Defendants made the foregoing false allegations with actual malice.

19 24. Defendants knew that MIKE was not under investigation for criminal activity
20 and was not the target of investigations as the result of violations of the NRS.

21 25. Defendants knew that Mike had not intimidated or threatened citizens who
22 were doing business with White Pine County.

23 26. Defendants made the false allegations with implied malice.

24 27. Defendants should have exercised reasonable diligence to determine the
25 truth, and acted recklessly with regard to the truth as to *whether or not* MIKE was under

1 investigation for criminal activity and was the target of investigations as the result of
2 violations of the NRS - before publishing false statements about him to third persons.

3 28. MIKE has been actually injured in his reputation in the community due to the
4 false statements by Defendants in an amount in excess of \$10,000 - or the amount that
5 may be proven at trial.

6 29. MIKE has been required to retain counsel to prosecute this action, and is
7 entitled to attorney fees and costs of suit.

8 30. MIKE has been damaged in an amount in excess of \$10,000 in special damages.

9 31. MIKE has been damaged by the Defendants' willful and malicious acts in
10 publishing the defamatory statements set forth in this Complaint, and as a result
11 thereof, this Court should assess punitive damages against the Defendants in the sum
12 in excess of \$10,000, or the amount that may be proven at trial.

13 II

14 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

15 32. MIKE incorporates the facts set forth in paragraphs 1 through 31 as though
16 fully set forth herein.

17 33. The publication of false and defamatory statements continue to cause MIKE
18 stress and suffering in his emotions, such that he has been unable to sleep. MIKE has
19 had to defend his actions when questioned by family members who live throughout
20 the State of Nevada.

21 34. MIKE continues to be confronted by business customers, voters, newspaper
22 reporters, and complete strangers - all of whom repeat the false allegations by the
23 Defendants to MIKE. This causes him substantial emotional stress in his person. As a
24 result, MIKE has had to seek a physician treatment for stress-related problems arising
25 from publication of the false statements.

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35. Defendants intentionally published false statements about MIKE, intending to injure him in his person, so that Defendants could succeed in their recall election attempt and profit in their business ventures.

36. MIKE has been injured in his person in an amount in excess of \$10,000, or the amount to be proven at trial.

37. MIKE has been required to retain counsel in order to prosecute this action, and is entitled to attorney's fees and costs of suit.

38. MIKE has been damaged in an amount in excess of \$10,000 in special damages, in an amount to be proven at trial.

III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

39. MIKE incorporates the facts set forth in paragraphs 1 through 38 as though fully set forth herein.

40. The publication of false and defamatory statements continue to cause MIKE stress and suffering in his emotions, such that he has been unable to sleep. MIKE has had to defend his actions when questioned by family members who live throughout the State of Nevada.

41. MIKE continues to be confronted by business customers, voters, newspaper reporters, and complete strangers - all of whom repeat the false allegations by the Defendants to MIKE. This causes him substantial emotional stress in his person. As a result, MIKE has had to seek a physician treatment for stress-related problems arising from publication of the false statements.

42. Defendants intentionally published false statements about MIKE, intending to injure him in his person, so that Defendants could succeed in their recall election

1 attempt and profit in their business ventures.

2 43. MIKE has been injured in his person in an amount in excess of \$10,000, or the
3 amount to be proven at trial.

4 44. MIKE has been required to retain counsel in order to prosecute this action, and
5 is entitled to attorney's fees and costs of suit.

6 45. MIKE has been damaged in an amount in excess of \$10,000 in special damages,
7 in an amount to be proven at trial.

8 IV

9 CIVIL CONSPIRACY

10 46. MIKE incorporates the facts set forth in paragraphs 1 through 45 as though
11 fully set forth herein.

12 47. Defendants conspired together to publish false statements about Plaintiff,
13 agreeing to publish the statements in order to further their own personal advantages.

14 48. Defendants ADAMS and ELY JET CENTER conspired with the others to further
15 their joint business interests.

16 49. JIM ADAMS was acting within the scope of his employment by trying to
17 remove two commissioners whom he believed wanted to stop portions of his business
18 enterprises in White Pine County, Nevada.

19 50. ELY JET CENTER ratified and promoted Adams' defamation of Commissioner
20 Mike Lemich in order to further their money-making enterprises in White Pine
21 County, Nevada.

22 51. MIKE has been injured in his person in an amount in excess of \$10,000, or the
23 amount to be proven at trial.

24 52. MIKE has been required to retain counsel to prosecute this action, and is
25 entitled to attorney's fees and costs of suit.

1 53. MIKE has been damaged in an amount in excess of \$10,000 in special damages
2 in an amount to be proven at trial.

3 V

4 DEFAMATION, SLANDER, LIBEL

5 54. MIKE incorporates the facts set forth in paragraphs 1 through 53 as though
6 fully set forth herein.

7 55. MIKE has not placed the White Pine County financial situation into a "disaster"
8 as falsely alleged by the Defendants.

9 56. White Pine County has a fund balance of over 10 million dollars. White Pine
10 County's finances comply with the law, and place the county in a fine financial
11 position.

12 57. Defendants maliciously claimed that the county finances were a disaster by
13 recklessly or knowingly failing to review the county's financial position that was a
14 matter of general public knowledge.

15 58. White Pine County was determined to be in severe financial emergency in
16 2005, at which time it was taken over by the Nevada Department of Taxation.

17 59. White Pine County *was released from supervision by the Department of Taxation*
18 *years ago* and has been financially healthy and in compliance with the law of Nevada
19 since release.

20 60. White Pine County filed a budget with the Department of Taxation as
21 required by law in May of 2013, which demonstrated that, in fact, the county finances
22 were *not* a disaster. The budget not only reflected total compliance to law, but showed
23 a significant surplus.

24 61. White Pine County budget hearings were public meetings. The Defendants
25 could have attended these meetings, thereby learning the true financial picture of

1 White Pine County; Defendants recklessly failed to read public documents that
2 demonstrated the County's fiscal surpluses.

3 62. MIKE has been injured in his person in an amount in excess of \$10,000, or the
4 amount to be proven at trial.

5 63. MIKE has been required to retain counsel to prosecute this action and is
6 entitled to attorney's fees and costs of suit.


7 64. MIKE has been damaged in an amount in excess of \$10,000 in special damages,
8 or the amount to be proven at trial.

9 65. Defendants need to suffer exemplary damages for their intentional
10 defamation of MIKE LEMICH.

11 Wherefore, based upon the foregoing facts, Plaintiff prays for the following relief:

- 12 A. For judgment against the Defendants, each and every one of them, jointly and
13 severally, for each count of defamation as alleged in the foregoing Complaint;
- 14 B. For general damages in excess of \$10,000 for each count in the Complaint;
- 15 C. For special damages in excess of \$10,000 for each count in the Complaint;
- 16 D. For punitive and exemplary damages in excess of \$10,000 for each count in the
17 Complaint;
- 18 E. For reasonable attorneys fees and costs of suit for each count as alleged in the
19 Complaint.
- 20 F. For such other and further relief as to the court seems just and proper.

21 DATED this 25th day of July, 2013.

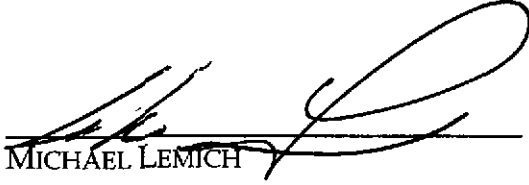
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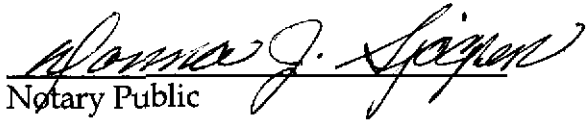
VERIFICATION

Michael Lemich being first duly sworn, upon oath deposes and says:

That he is the Plaintiff in the above-entitled matter; that he has read the within and foregoing Complaint and knows the contents thereof; that the same is true to his knowledge, except for those matters therein stated on information and belief, and as to those matters, he believes them to be true.


MICHAEL LEMICH

Subscribed and Sworn to before me
this 25th day of July, 2013.


Notary Public

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AFFIRMATION

This complaint does not contain the Social Security Number of any person.

DATED this 25th day of July, 2013.


RICHARD W. SEARS, ESQ.