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White Pine County Clerk

Case No: CV 1307113

Dept. No. 2

FILED

2014 JAN -8 PM 12:05

LINDA F. BURLEIGH  
WHITE PINE COUNTY CLERK  
BY: [Signature]

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

• • • • •

MICHAEL LEMICH,  
PLAINTIFF,

vs.

CHERYL NORIEGA, JAMES ADAMS,  
TIMOTHY MCGOWAN, DOES 1  
THROUGH 10, AND DOES INC., 1  
THROUGH 10, AND DOE TRUST, 1  
THROUGH 10,  
DEFENDANT.

SECOND AMENDED COMPLAINT  
- CIVIL  
COMPLAINT FOR CIVIL DAMAGES

COMES NOW MICHAEL LEMICH, Plaintiff, who complains, by his counsel, RICHARD W. SEARS, ESQ., who files this against the Defendants alleging the following claims for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress and civil conspiracy.

GENERAL ALLEGATIONS

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

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

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

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. DOE defendants listed above are subject to the jurisdiction of this court  
5 pursuant to the law of Nevada in that they purposefully availed themselves of the law  
6 and benefits of the State of Nevada and committed civil wrongs with adverse  
7 consequences within the State of Nevada to residents of Nevada.

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

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

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

1 that said statements were false *prior to* broadcasting the same to third persons.

2 9. MIKE was injured in his reputation in the community in which he resides, and  
3 in the larger community in which he works.

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

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

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

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

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

18 15. Defendants falsely stated that MIKE was "subjecting the County to NRS  
19 violations, while simultaneously negotiating land exchanges for the county": This  
20 statement was false when made.

21 16. Defendants falsely stated, "Lemich has taken very combative [sic] and pushed  
22 personal vendettas against the private operator at the Airport and members of the  
23 Airport Board. Accusations, intimidations, lies and outright threats against both the  
24 operator and their customers have far crossed the line of ethics": This statement was  
25 false when made.

I

DEFAMATION, SLANDER AND LIBEL

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

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

19. Defendants made the foregoing false allegations with actual malice.

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

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

22. Defendants made the false allegations with implied malice.

23. Defendants should have exercised reasonable diligence to determine the truth, and acted recklessly with regard to the truth as to *whether or not* MIKE was under investigation for criminal activity and was the target of investigations as the result of violations of the NRS - before publishing false statements about him to third persons.

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

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

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

27. MIKE has been damaged by the Defendants' willful and malicious acts in

1 publishing the defamatory statements set forth in this Complaint, and as a result  
2 thereof, this Court should assess punitive damages against the Defendants in the sum  
3 in excess of \$10,000, or the amount that may be proven at trial.

4 II

5 DEFAMATION, SLANDER AND LIBEL

6 28. MIKE incorporates the facts set forth in paragraphs 1 through 27 as though  
7 fully set forth herein.

8 29. MIKE was injured in his reputation in Nevada by false statements alleging he  
9 was guilty of improper acts being investigated for criminal activity and the target of  
10 several investigations as a result of violations of the NRS.

11 30. Defendants made the foregoing false allegations with actual malice.

12 31. Defendants knew or acted recklessly with regard to the truth as to *whether or*  
13 *not* that MIKE was not under investigation for criminal activity and was not the target of  
14 several investigations as the result of violations of the NRS.

15 32. Defendants knew or acted recklessly with regard to the truth as to *whether or*  
16 *not* that MIKE had not intimidated or threatened citizens who were doing business  
17 with White Pine County and was not under investigation for numerous violations of  
18 the NRS.

19 33. Defendants made the false allegations with implied malice.

20 34. Defendants should have exercised reasonable diligence to determine the  
21 truth, and acted recklessly with regard to the truth as to *whether or not* MIKE was under  
22 investigation for criminal activity and was the target of investigations as the result of  
23 violations of the NRS - before publishing false statements about him to third persons.

24 35. MIKE has been actually injured in his reputation in the community due to the  
25 false statements by Defendants in an amount in excess of \$10,000 - or the amount that

1 may be proven at trial.

2 36. MIKE has been required to retain counsel to prosecute this action, and is  
3 entitled to attorney fees and costs of suit.

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

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

9 III

10 CIVIL CONSPIRACY

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

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

15 41. Defendant ADAMS, NORIEGA, MCGOWAN, AND DOES 1 THROUGH 10 AND DOES,  
16 INC. 1 THROUGH 10 AND DOE TRUSTS 1 THROUGH 10 conspired together to damage Mike's  
17 reputation throughout the community and to injure him in his person, taking  
18 substantial acts in furtherance of their conspiracy by maliciously publishing false  
19 statements in their Notice of Intent to Recall and in their Recall Petition.

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

22 43. MIKE has been required to retain counsel to prosecute this action, and is  
23 entitled to attorney's fees and costs of suit.

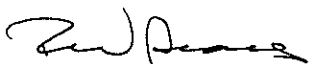
24 44. MIKE has been damaged in an amount in excess of \$10,000 in special damages  
25 in an amount to be proven at trial.

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

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

DATED this 31<sup>st</sup> day of January, 2013.

  
RICHARD W. SEARS, ESQ., 5489  
333 Murry Street  
Ely, Nevada 89301  
775.289.3366

AFFIRMATION

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

DATED this 31<sup>st</sup> day of January, 2013.

  
RICHARD W. SEARS, ESQ.

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