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In Propria Persona

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – WEST CIVIL

HERBERT LESLIE GREENBERG a/k/a LES GREENBERG, Plaintiff, v. CULVER CITY OBSERVER, INC. , STEPHEN LAWRENCE HADLAND, and DOES 1 through 20, inclusive , Defendants.	**CASE NO. SC 129 203** **FIRST AMENDED COMPLAINT FOR DAMAGES** **[Defamation Per Se]** **DEMAND FOR JURY TRIAL** ***Assigned to: Judge Mitchell L. Beckloff*** ***Dept: M*** ***Trial Date: None Scheduled***

Plaintiff HERBERT LESLIE GREENBERG (GREENBERG) complains against defendants CULVER CITY OBSERVER, INC. (OBSERVER), STEPHEN LAWRENCE HADLAND (HADLAND), and DOES 1 through 20, inclusive, and each of them, and alleges as follows:

CASE MANAGEMENT CONFERENCE

10.29.18 Dept. M

Date @ 8:30 am

Judge Mitchell L. Beckloff

PARTIES

1. At all times material hereto, plaintiff GREENBERG has been: (a) a resident of Culver City, County of Los Angeles, California; (b) since 1971, licensed as an attorney at law; and (c) also known as LES GREENBERG.

2. GREENBERG is informed and believes and thereupon alleges that, at all times material hereto, defendant OBSERVER has been and is a "FTB Suspended" corporation that operates a weekly, local newspaper --- Culver City Observer --- (*Observer*) in Culver City, California.

3. GREENBERG is informed and believes and thereupon alleges that, at all times material hereto, defendant HADLAND has been and is an individual, residing in Culver City, California, and doing business as and the Publisher of the *Observer*, and head of the corporation and a general manager of OBSERVER.

4. GREENBERG sues defendants DOES 1 through 20, inclusive, under fictitious names. GREENBERG presently does not know their true names and capacities. When said true names and capacities are ascertained, GREENBERG will amend this Complaint for Damages by inserting such information. GREENBERG is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged herein, and GREENBERG's damages were proximately caused by said defendants.

5. GREENBERG is informed and believes and thereon alleges that at all times relevant, each defendant, including the DOE defendants, was the agent, servant, representative and/or employee of each of the other defendants, and that in doing the things hereinafter alleged, each defendant was acting within the course and scope of his, her or its authority as such agent,

servant, representative and/or employee, with the permission, knowledge, consent and ratification of each of the other defendants.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter as all events occurred in the County of Los Angeles, California.

7. Venue is appropriate in the County of Los Angeles because GREENBERG reside and HADLAND, and OBSERVER's principal place of business is located in the County of Los Angeles, California.

FACTS

8. At all times material hereto, HADLAND authorized, ratified, or approved each of OBSERVER's and *Observer's* acts set forth hereinafter.

9. At all times material hereto, JIM CLARKE (CLARKE) was a member of the Culver City City Council.

10. On March 21, 2018, GREENBERG, in his capacity as an attorney representing the Ad Hoc Committee for Culver City Residents First (COMMITTEE), delivered a "criminal complaint" to the Culver City Police Department (CCPD). The "criminal complaint" is based upon allegations that HADLAND and CLARKE improperly attempted to interfere with the COMMITTEE's exercise of its Constitutional right of free speech. The COMMITTEE anonymously distributed a political flyer that encouraged Culver City residents to vote, but not to vote for two specified City-Council candidates.

11. At all times material hereto, HADLAND and CLARKE endorsed and/or supported a City-Council candidate specified in the COMMITTEE's flyer, and opposed the COMMITTEE's distribution of the political flyer.

12. On March 21, 2018, after the "criminal complaint" was delivered to the CCPD, GREENBERG emailed a copy of his March 21, 2018 CCPD "criminal complaint" to HADLAND. Before that time, GREENBERG did not inform HADLAND or CLARKE that he (GREENBERG) intended to communicate with anyone related to any matter.

13. On March 23, 2018, GREENBERG, in his capacity as an attorney representing the COMMITTEE, wrote to the Culver City City Attorney (City Attorney) requesting that, pursuant to Civil Code § 52.1, she file a Bane Act (civil) lawsuit against HADLAND and CLARKE. The City-Attorney letter is based upon allegations that HADLAND and CLARKE improperly attempted to interfere with the COMMITTEE's exercise of its Constitutional right of free speech.

14. On March 23, 2018, after emailing the City-Attorney letter to the City Attorney, GREENBERG emailed a copy of his March 23, 2018 City-Attorney letter to HADLAND. Before that time, GREENBERG did not inform HADLAND or CLARKE that he (GREENBERG) intended to communicate with anyone related to any matter.

15. On March 22, 2018, in a statement entitled "Publisher, Councilmember Threatened with Criminal Prosecution," the *Observer* published, *inter alia*:

> The Culver City Observer and Councilman Jim Clarke have received notice from Culver City Resident Les Greenberg that he *had sent* a letter to Scott Bixby, Culver City Chief of Police [sic] requesting criminal charges be filed against Culver City Observer Published Steve Hadland and Culver City councilman Jim Clarke.
>
> …
>
> The letter arrived at the Observer offices just before press time.

(Underline and italic emphasis added.)

16. On April 5, 2018, in two statements as set forth hereinafter, the *Observer* published alleged information pertinent to GREENBERG, HADLAND and CLARKE. Each such publication was not and is not privileged.

17. On its front page, in a statement entitled "Observer Publisher Files Complaint with State Bar," the *Observer* published:

> Culver City Observer Publisher Stephen Hadland has filed a complaint with the California State Bar against attorney Les Greenberg, Esq. for requesting criminal charges be filed against him and Culver City Councilman Jim Clarke.
>
> Greenberg sent letters to both City Attorney Carol Schwab and Police Chief Scott Bixby. Schwab has already rejected the request.
>
> In requesting the investigation, Mr. Hadland stated: "In *each* case, Mr. Greenberg, Esq. threatened and requested that Councilmember Clarke and myself be subject to criminal prosecution for exercising our right to Free Speech and challenging the freedom of the Press.
>
> I have attached copies of the pages the articles and comments appeared on. They are also available for review on our website at: http://www.culvercityobserver.com " [sic]
>
> Mr. Hadland went on to quote Section 3.10 of the Rules of Professional Conduct of the State Bar: "Attorneys cannot use their position to threaten criminal action simply because of a civil dispute. There are probably other sections relating to attorneys who abuse their position by making unfounded threats.' [sic]

(Underline and italic emphasis added.)

18. The statement entitled "Observer Publisher Files Complaint with State Bar" contains material false or misleading statements as, e.g.:

(a) Before delivering his "criminal complaint" letter to the CCPD, GREENBERG had no communication with HADLAND or CLARKE and, thus, did not "threaten" either of them that he would present criminal charges to the CCPD or anyone;

(b) Before filing his complaint letter with the City Attorney, GREENBERG had no communication with HADLAND or CLARKE indicating that he planned to communicate with anyone, e.g., the City Attorney, and, thus, did not "threaten" either of them with doing so;

(c) GREENBERG did not present criminal charges to the City Attorney vis-à-vis a request to file "a Bain Act lawsuit," which is a civil action pursuant to Civil Code, Section 52.1;

(d) GREENBERG's CCPD letter and City-Attorney letter refer to threats published in both the March 15, 2018 *Observer* and the March 19, 2018 online *Culver City Crossroads*, wrongfully branding the COMMITTEE's anonymous distribution of a political flyer as illegal[1] and calling upon vigilantes to track down and photograph COMMITTEE members, while promising to publish their identities in the *Observer*, and, thus, subjecting them to "[m]any people … [who] denounce the tactics and facts on the flyer" and "angry people," causing COMMITTEE members "soil[ed]" reputations and "violence," "if this behavior [COMMITTEE's distribution of flyers] continues";

(e) proposed Rules of Professional Conduct, rule 3.10(a),[2] states, *inter alia*: "A lawyer shall not <u>threaten</u> <u>to present</u> criminal … charges to obtain an advantage in a civil dispute" (emphasis added);

(f) proposed Rules of Professional Conduct, rule 3.1, comment 2, states *inter alia*: "This rule <u>does not apply</u> to a threat to bring a <u>civil action</u>. It also <u>does not prohibit actually presenting</u> criminal … charges, even if doing so creates an advantage in a civil dispute" (emphasis added);

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[1] In *McIntyre v. Ohio Elections Commission* 514 U.S. 334 (1995), the United States Supreme Court, in holding that one may anonymously distribute flyers, states, *inter alia*:

> The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. … Accordingly, an author's decision to remain anonymous … is an aspect of the freedom of speech protected by the First Amendment. … Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority.

[2] As of April 5, 2018, proposed Rules of Professional Conduct, rule 3.10, had not been approved by the Supreme Court of California. Current Rules of Professional Code, rule 5-110, contains substantially the same language as proposed rule 3.10.

(g) GREENBERG is informed and believes and thereupon alleges that only proposed Rules of Professional Conduct, rule 3.1, and Rules of Professional Conduct, rule 5-110, deal with "unfounded threats" by attorneys to other than clients;

(h) GREENBERG did not file the CCPD letter or the City-Attorney letter in his individual capacity, but in his capacity as an attorney representing the COMMITTEE.

19. On page 3, in a statement entitled "City Attorney Rejects Claims to File Criminal Charges Against Observer Publisher & City Councilman," the *Observer* published:

> Carol Schwab, the City Attorney of Culver City, rejected requests by local resident Les Greenberg to file criminal charges against Culver City Observer Publisher Stephen Hadland and Culver City Councilman Jim Clarke in regard to an election article published in the Culver City Observer.
>
> In the March 15 article, the Observer reported that a local "ad hoc" organization distributed an inflammatory, campaign flyer to residents that blasted two of the City Council candidates as lackeys of the local chamber.
>
> In her letter to Greenberg, Schwab stated: "Based on the information you provided, there is insufficient evidence that either Mr. Hadland or Council Member Clarke used threats, intimidation or coercion against the Committee to interfere with its First Amendment rights. "
>
> To further clarify her view, Schwab added: "The evidence you cited constitutes Mr. Hadland's and Council Member Clarke's protected speech under the First Amendment and is not a sufficient basis for a Bane Act lawsuit."

(Emphasis added.)

20. The statement entitled "City Attorney Rejects Claims to File Criminal Charges Against Observer Publisher & City Councilman" contains material false or misleading statements as, e.g.:

(a) GREENBERG did not request that the City Attorney "file criminal charges" vis-à-vis file "a Bain Act lawsuit," which is a civil action pursuant to Civil Code, Section 52.1;

(b) The flyers were not "inflammatory" "blast[ing] two of the City Council

candidates as lackeys of the local chamber [of commerce]";

(c) GREENBERG's City-Attorney letter refers to threats published in both the March 15, 2018 *Observer* and March 19, 2018 online *Culver City Crossroads*, wrongfully branding the COMMITTEE's action as illegal and calling upon vigilantes to track down and photograph COMMITTEE members, while promising to publish their identities in the *Observer*, and, thus, subjecting them to "[m]any people … [who] denounce the tactics and facts on the flyer" and "angry people," causing COMMITTEE members "soil[ed]" reputations and "violence," "if this behavior [COMMITTEE's distribution of flyers] continues";

(d) GREENBERG did not send the City-Attorney letter in his individual capacity, but in his capacity as an attorney representing the COMMITTEE.

21. On April 6, 2018, with respect to the April 5, 2018 *Observer* publications, GREENBERG served (email to HADLAND) his detailed letter referencing "Demand for Retraction/Correction" upon OBSERVER and *Observer*, concluding, *inter alia*:

> I request the *Observer* promptly, adequately and conspicuously retract all statements stating or implying: (1) I violated any of the Rules of Professional Conduct and, in particular, I made any threat to the *Observer* or you, and (2) I requested the City Attorney file any "criminal charge[s]."

22. OBSERVER and *Observer* have failed, and, thus, refused to respond to GREENBERG's "Demand for Retraction/Correction" letter or to publish a related retraction/correction.

23. OBSERVER and *Observer* published the aforesaid falsehoods on April 5, 2018 with knowledge of their falsity or with reckless disregard of the truth.

24. GREENBERG is informed and believes, and thereupon alleges, that OBSERVER, through a managing agent, and HADLAND, and *Observer* acted with malice, intending to cause injury to GREENBERG, e.g.:

(a) HADLAND knew that GREENBERG had no communication with him other than his receipt of a copy of the CCPD letter and a copy of the City-Attorney letter, and, thus, knew that proposed Rules of Professional Conduct, rule 3.10, is inapplicable;

(b) HADLAND accused GREENBERG of violating a proposed Rules of Professional Conduct rule whose comment specifically states that the proposed rule is inapplicable to his accusations against GREENBERG;

(c) At all times material, HADLAND endorsed and supported one of the City-Council candidates whom the COMMITTEE's flyer opposed, and failed to disclose that HADLAND's favored candidate is the OBSERVER's and *Observer's* landlord;

(d) On other than April 5, 2018, *Observer* published: (1) false claims that the COMMITTEE acted illegally by anonymously distributing a political flyer; a description of the flyer as "inflammatory" and "drew strong rebuke from local residents"; and claims that some members of the public "denounce the tactics and facts on the flyer"; (2) statements by CLARKE, a fellow endorser and supporter of the candidate denounced by the COMMITTEE's flyer, that falsely describe the flyer as "hate speech" and threaten "if this behavior continues," there will be "soil[ed]" reputations, "violence" and "angry people," while further stating, "We shall no longer tolerate your [COMMITTEE's] profane, defamatory and personal attacks"; (3) statements by another fellow endorser and supporter stating that he is "feeling a profound sense of … anger," while alluding to the COMMITTEE's activities as "bull shit"; and (4) statements in a letter-to-the-editor describing a COMMITTEE member as "a cowardly communist on my doorstep" and the flyer as "egregious," while "hop[ing] … [HADLAND is] able to identify and expose these disgusting people";

(e) HADLAND knew that COMMITTEE members sought to maintain their anonymity, and GREENBERG's CCPD letter and City-Attorney letter set forth legal authority supporting the COMMMITTEE members' right to remain anonymous;

(f) On March 29, 2018, the COMMITTEE timely requested the *Observer* publish a retraction of its March 22, 2018 statement that the COMMITTEE acted illegally;

(g) On March 30, 2018, HADLAND published on the *Observer's* Facebook

page, *inter alia*: "Of course they [COMMITTEE members] have the right to distribute the flyers";

(h) HADLAND and the *Observer* failed and, thus, refused to retract or correct pursuant to the COMMITTEE's March 29, 2018 request;

(i) HADLAND's receipt of a copy of GREENBERG's CCPD letter and City-Attorney letter advised him that, while distributing flyers, some COMMITTEE members had been verbally accosted, photographed and followed;

(j) Though GREENBERG's CCPD letter and City-Attorney letter specifically stated, "The undersigned represents the legal interests of the Ad Hoc Committee For Culver City Residents First," the *Observer* repeatedly failed to state that GREENBERG acted in his capacity as an attorney representing the COMMITTEE, in contrast to a member of the COMMITTEE; thus holding GREENBERG out to the public as a member of the allegedly despised COMMITTEE that was allegedly engaged in illegal activities.

(k) The *Observer* published, in a front-page section entitled "Photos Reveal Flyer Distributors," photographs of GREENBERG and his spouse, thus holding them out to the public as members of the allegedly despised COMMITTEE, which allegedly engaged in illegal activities;

(l) On April 30, 2018 or May 1, 2018, the *Observer* published, in its online edition, *inter alia*:

> Alex Fisch and Daniel Lee were installed as new members of the council. While their election remains under a cloud of investigation due to the distribution of fliers distributed by local attorney Les Greenberg attacking Fisch and Lee's opponents. … While no connection to the Fisch and Lee campaigns have yet been established to the smear campaign, several agencies are investigating the actions of his "phantom" committee. Greenberg is currently under investigation by the California State Bar for threatening criminal action in a civil matter.

(m) No alleged "agency" or the California State Bar has informed GREENBERG, the alleged target of the "investigations," that any "investigation" as described in paragraph 24(l), above, has been commenced.

25. The relevant Culver City City Council election was held on April 10, 2018. Candidates opposed by the COMMITTEE were <u>not</u> elected.

RELIEF REQUESTED

WHEREFORE, GREENBERG seeks judgment against defendants, and each of them, as follows:

1. Compensatory damages according to proof;
2. Punitive damages according to proof;
3. Interest as allowed by law;
4. Costs of suit; and
5. Such other and further relief as the Court may deem just and proper.

DATED: May 5, 2018

HERBERT LESLIE GREENBERG
Plaintiff, In Propria Persona

DEMAND FOR JURY TRIAL

Plaintiff HERBERT LESLIE GREENBERG hereby demands a trial by jury on all claims.

DATED: May 5, 2018

HERBERT LESLIE GREENBERG
Plaintiff, In Propria Persona