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6 Plaintiff, In Propria Persona

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

NOV 27 2018

Sherril R. Carter, Executive Officer/Clerk of Court  
By: Wynette Parker, Deputy

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9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES – WEST CIVIL**

11 HERBERT LESLIE GREENBERG a/k/a  
12 LES GREENBERG,

13 Plaintiff,

14 v.

15 CULVER CITY OBSERVER, INC. ,  
16 STEPHEN LAWRENCE HADLAND, and  
17 DOES 1 through 20, inclusive ,

18 Defendants.

CASE NO. SC 129 203

PLAINTIFF'S TRIAL BRIEF

*Assigned for All Purposes Hon. Mitchell L. Beckloff*

*Dept: WEM*

*Filed: April 30, 2018*

*Final Status Conference: December 7, 2018*

*Trial Date: December 10, 2018*

19 **I. STATEMENT OF FACTS**

20 In 2018, on the front-page of the *Culver City Observer*—a community newspaper—  
21 defendants CULVER CITY OBSERVER, INC. (OBSERVER) and STEPHEN LAWRENCE  
22 HADLAND (HADLAND)(collectively Defendants) maliciously defamed plaintiff HERBERT  
23 LESLIE GREENBERG a/k/a LES GREENBERG (GREENBERG). They knowingly and falsely  
24 published that GREENBERG, an attorney, acted unethically in violation of the California Rules  
25 of Professional Conduct (CRPC). (Plaintiff's Trial Exhibit Nos. 1, 6, 7, 8, 10.)

26 Defendants detested GREENBERG due to his legal representation and association with  
27 the Ad Hoc Committee for Culver City Residents First (Committee). During a bitter-city-council-  
28 election campaign, the Committee effectively opposed Defendants' preferred candidate by

1 anonymously distributing a flyer to thousands of Culver City residents. (Exs. 11, 12, 13, 14, 15.)

2 GREENBERG timely requested that the Defendants, who operated the *Culver City*  
3 *Observer*, publish a retraction. (Code of Civil Procedure [CCP] § 48a.) (Ex. 9.) Defendants  
4 ignored the request and continued defaming GREENBERG. (Exs.10, 20.)

5 On September 6, 2018, this Court deemed admitted the truth of the requests in Plaintiff's  
6 First Set of Requests for Admission. (Ex. 1.) Those admissions effectively close this case.

7 **A. THE PARTIES**

8 HADLAND is a managing director of OBSERVER, which operates the *Culver City*  
9 *Observer*, where HADLAND is the publisher. (Exs. 1, 3, 4, 7, 10.) This Court deemed admitted:

10 **REQUEST FOR ADMISSION NO. 4:**

11 At all times after December 31, 2016, defendant STEPHEN LAWRENCE  
12 HADLAND has been a managing director of defendant CULVER CITY  
OBSERVER, INC.

13 **REQUEST FOR ADMISSION NO. 5:**

14 At all times after December 31, 2016, defendant CULVER CITY  
OBSERVER, INC. operated the *Culver City Observer*, a newspaper.

15 **REQUEST FOR ADMISSION NO. 2:**

16 After December 31, 2016, defendant CULVER CITY OBSERVER, INC.  
17 billed the City of Culver City for publishing services provided by the *Culver City*  
*Observer*, a newspaper.

18 **REQUEST FOR ADMISSION NO. 3:**

19 After December 31, 2016, defendant CULVER CITY OBSERVER, INC.  
20 was paid by the City of Culver City for publishing services provided by the *Culver*  
*City Observer*, a newspaper.

21 **REQUEST FOR ADMISSION NO. 1:**

22 Defendant CULVER CITY OBSERVER, INC.'s corporate status was  
23 suspended by the Franchise Tax Board before December 31, 2016.

24 On its website, the *Culver City Observer* claims, "The *Culver City Observer* is published  
25 every Thursday and distributed to businesses and homes throughout Culver City. The *Culver City*  
*Observer* was adjudicated by the Superior Court as a newspaper of General Circulation on May  
26 8, 2007, adjudication Case No. BS107696." (Ex. 2.) Each edition of the newspaper states,  
27 "Stephen L. Hadland – Publisher." (Exs. 6, 7, 8, 10, 14, 18, 20.) Approximately 40,000 persons  
28 reside in Culver City, with an additional 24,515 people employed there. (Ex. 5.)

1 GREENBERG graduated from Garfield High School in East Los Angeles. Four years  
2 later, he graduated from UCLA with a Bachelor of Arts degree in mathematics. After working  
3 approximately two years in the aerospace industry, he attended and graduated from UCLA  
4 School of Law, while working part-time for United California Bank. He has been an active  
5 member of the State Bar since 1971. From 1971 to 1973, GREENBERG was employed by a  
6 regional New York Stock Exchange member firm as its Compliance Director—responsible for  
7 internal enforcement of trade and regulatory rules, and federal and state laws. Thereafter, he  
8 engaged in the practice of law as a sole practitioner dealing with business litigation/arbitration.  
9 GREENBERG has never been disciplined by the State Bar. GREENBERG and his spouse have  
10 resided in Culver City since 1975.

11 **B. THE FALSE PUBLICATION**

12 In April 2018, on the front-page of the *Culver City Observer* and online, Defendants  
13 falsely published, "Mr. Greenberg, Esq. threatened ... that Councilmember Clarke<sup>1</sup> and myself be  
14 subject to criminal prosecution" in violation of "[then proposed] Section 3.10 of the Rules of  
15 Professional Conduct of the State Bar. 'Attorneys cannot use their position to threaten criminal  
16 action simply because of a civil dispute. There are probably other sections relating to attorneys  
17 who abuse their position by making unfounded threats.'" (Exs. 6, 10.) In May 2018, HADLAND  
18 published in the *Culver City Observer*, "Hadland report[ed] Greenberg to the State Bar for  
19 threatening criminal action against myself and Clarke." (Ex. 7.) Those public statements are not  
20 privileged.

21 Then proposed and now current CRPC, rule 3.10, is substantially identical to former rule  
22 5-100,<sup>2</sup> which prohibits only the *threat, not the actual presentation* of criminal, administrative or  
23 disciplinary charges, even if the purpose was to gain an advantage in the dispute. (CRPC 5-  
24 100(A); *See* San Diego County Bar Assn Ethics Opn. 2005-1 (2005) and Los Angeles Bar Assn  
25 Form. Opn. 469 (1992).)

26 \_\_\_\_\_  
27 <sup>1</sup> James Clarke (CLARKE) is a former Culver City Mayor and City Councilmember.

28 <sup>2</sup> Current CRPC, rule 3.10, and former rule 5-100 state, *inter alia*: "A lawyer [member] shall not threaten to present criminal ... charges to obtain an advantage in a civil dispute."

1 This Court deemed admitted:

2 **REQUEST FOR ADMISSION NO. 14:**

3 Plaintiff HERBERT LESLIE GREENBERG never threatened defendant  
4 STEVEN LAWRENCE HADLAND with presenting criminal charges.

5 **REQUEST FOR ADMISSION NO. 15:**

6 Plaintiff HERBERT LESLIE GREENBERG never threatened JIM  
7 CLARKE with presenting criminal charges.

8 **REQUEST FOR ADMISSION NO. 20:**

9 In 2018, plaintiff HERBERT LESLIE GREENBERG did not violate Rules  
10 of Professional Conduct, rule 5-110.

11 **REQUEST FOR ADMISSION NO. 21:**

12 In 2018, plaintiff HERBERT LESLIE GREENBERG did not violate  
13 proposed Rules of Professional Conduct, rule 3.1.

14 **REQUEST FOR ADMISSION NO. 10:**

15 As of March 23, 2018,<sup>3</sup> no civil dispute existed between defendant  
16 STEPHEN LAWRENCE HADLAND and plaintiff HERBERT LESLIE  
17 GREENBERG.

18 **REQUEST FOR ADMISSION NO. 11:**

19 As of March 23, 2018, no civil dispute existed between JIM CLARKE and  
20 plaintiff HERBERT LESLIE GREENBERG.

21 **II. DEFAMATION PER SE**

22 **A. CAUSE OF ACTION**

23 A statement is defamatory if, among other things, it "[t]ends directly to injure [the  
24 plaintiff] in respect to his office, profession, trade or business, either by imputing to him general  
25 disqualification in those respects which the office or other occupation peculiarly requires, or by  
26 imputing something with reference to his office, profession, trade, or business that has a natural  
27 tendency to lessen its profits." (Civ. Code, § 46, subd. (3).) "Words which fall within the purview  
28 of Civil Code section 46 are deemed to constitute slander per se with the effect that the utterance  
of such words is actionable without proof of special damage." (*Albertini v. Schaefer* (1979) 97  
Cal.App.3d 822, 829.)

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<sup>3</sup> On March 21, 2018, on behalf of the Committee, GREENBERG filed a criminal complaint against HADLAND and CLARKE with the Culver City Police Department. (Ex. 17.)

1            "[F]alse statements ... tending directly to injure a plaintiff in respect to his or her  
2 profession by imputing dishonesty or **questionable professional conduct** are defamatory per se.  
3 [citations.]" (*Burrill v. Nair* (2013) 217 Cal.App.4th 357, 383; bold emphasis added.) "Imputing  
4 dishonesty or **lack of ethics** to an attorney is [] actionable under Civil Code section 46 because of  
5 the probability of damages to professional reputation." (*Albertini v. Schaefer, supra*, at 829-830;  
6 citing *Katz v. Rosen* (1975) 48 Cal.App.3d 1032; bold emphasis added.) Defamatory statements  
7 generally "reflect on the integrity and competence of the plaintiff, the clearest being allegations  
8 of **unethical** activity or incompetence. (See 5 Witkin, [Summary of Cal. Law (10th ed. 2005)]  
9 Torts, § 553, pp. 808-809.)" (*Regalia v. The Nethercutt Collection* (2009) 172 Cal.App.4th 361,  
10 369; bold emphasis added.) "It is vital to the integrity of our adversary legal process that  
11 attorneys strive to maintain the highest standards of **ethics**, civility, and professionalism in the  
12 practice of law." [citation]." (*In Re S.C.* (2006) 138 Cal.App.4th 396, 412; bold emphasis added.)

13            **B. AN ALLEGATION OF UNETHICAL CONDUCT IS NOT AN OPINION.**

14            "The statements that Ruiz acted unconscionably and **in violation of his ethical duties** as  
15 a lawyer are not mere hyperbole, epithet, or "subjective expressions of disapproval, devoid of any  
16 factual content." [citation] This becomes clear when the statements are viewed in context. The  
17 statements contend Ruiz **violated a specific code section based upon identified conduct.**" (*Ruiz*  
18 *v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1472; bold emphasis added.)

19            Whether GREENBERG "threaten[ed] criminal action" in violation of a specific rule of  
20 "the Rules of Professional Conduct of the State Bar" is a provable event, not an opinion. "Threat"  
21 means "A declaration of one's purpose or intention to work injury to the ... rights of another, with  
22 a view of restraining such person's freedom of action." (*Black's Law Dictionary* (5th ed. 1979), p.  
23 1327.) Defendants have admitted that GREENBERG did not make any threat.

24            **C. DEFAMATORY STATEMENTS MAY BE SUSCEPTIBLE TO AN**  
25            **INNOCENT INTERPRETATION, BUT ARE STILL DEFAMATORY.**

26            "The code definition of libel is very broad and has been held to include almost any  
27 language which, upon its face, has a natural tendency to injure a person's reputation, either  
28 generally, or with respect to his occupation." (*Maidman, supra*, at 649.) "A defendant is liable for

1 what is insinuated, as well as for what is stated explicitly." (*Id.* at 651.)

2 "Language may be libelous on its face even though it may be susceptible of an innocent  
3 interpretation.... The language used may give rise to conflicting inferences as to the meaning  
4 intended, but ... it is reasonable to assume that at least some of the readers will take it in a  
5 defamatory sense." (*MacLeod v. Tribune Publ'g Co., Inc.* (1959) 52 Cal.2d 536, 549.)

6 Here, there is no ambiguity—Defendants have falsely alleged a threat. (Exs. 6, 7, 10, 20.)  
7 Defendants' subjective understanding, if any, of what they wrote is irrelevant.

8 **D. DAMAGES ARE CONCLUSIVELY PRESUMED.**

9 "[D]amage to plaintiff's reputation is conclusively presumed and he need not introduce  
10 any evidence of actual damages in order to obtain or sustain an award of damages" including, in  
11 an appropriate case, punitive damages. (*Contento v. Mitchell* (1972) 28 Cal. App.3d 356, 358.)  
12 (See, also, *Finney v. Lockhart* (1950) 35 Cal.2d 161, 163; *Clark v. McClurg* (1932) 215 Cal. 279,  
13 284]; *McGarry v. University of San Diego*, (2007) 154 Cal.App.4th 97, 112; *Barnes-Hind, Inc. v.*  
14 *Superior Court* (1986) 181 Cal.App.3d 377, 382 [damage to plaintiff's reputation is conclusively  
15 presumed to result from a statement that is libelous per se; the plaintiff need not introduce  
16 evidence of actual damages to obtain an award of damages]; *Gertz v. Robert Welch, Inc.* (1974)  
17 418 U.S. 323, 349 [noting "defamation is an oddity of tort law," allowing juries to "award  
18 substantial sums as compensation for supposed damage to reputation without any proof that such  
19 harm actually occurred"].)

20 The preponderance-of-the-evidence burden of proof standard is applicable to Defendants'  
21 conduct.

22 *First*, there was no public controversy. Whether GREENBERG acted unethically by  
23 allegedly threatening HADLAND and CLARKE was not debated publicly nor did it substantially  
24 affect anyone other than GREENBERG, HADLAND and CLARKE. "[I]f the issue was being  
25 debated publicly and if it had foreseeable and substantial ramifications for nonparticipants, it was  
26 a public controversy." (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845.) Defendants'  
27 defamatory statements relate solely to GREENBERG's alleged threats, not to any broader issue.

28

1           *Second*, GREENBERG is not a public figure. Only HADLAND's publication publicly  
2 revealed GREENBERG's relationship to the Committee. GREENBERG made no related public  
3 statement. (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133["those charged with  
4 defamation cannot, by their own conduct, create their own defense by making the claimant a  
5 public figure"].)

6           **E. PUNITIVE DAMAGES—DEFENDANTS' STATEMENTS WERE**  
7           **MALICIOUS.**

8           "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff  
9 or despicable conduct which is carried on by the defendant with a willful and conscious disregard  
10 of the rights or safety of others." (CCP § 3294(c)(1).) Actual malice is evident when "the  
11 allegedly defamatory statements were made with knowledge of their falsity or with reckless  
12 disregard of their truth or falsity." (*Ampex Corporation v. Cargle* (2005) 128 Cal.App.4th 1569,  
13 1578.) Here, HADLAND, individually and as a managing director of OBSERVER and publisher  
14 of the *Culver City Observer*, acted with malice. He knew that GREENBERG had not made  
15 threats. (Exs. 1, 9.) However, HADLAND repeatedly incited the public to invoke vigilante action  
16 against GREENBERG. (Exs. 14, 15, 18, 19.) He repeatedly maligned anyone associated with the  
17 flyer, e.g., "vicious and uncalled for personal attacks," "character assassination," "out of the  
18 gutter" (Ex. 6); "smear campaign" (Ex. 7); "inflammatory flyer," "strong rebuke," "the culprits,  
19 "underhanded attack," "denounce the tactics" (Exs. 14, 15); "smear campaign" (Ex. 20).  
20 Specifically:

21           (1) HADLAND recklessly, falsely accused the Committee's members of acting  
22 illegally—violating the Fair Political Practices Act (FPPA) by failing to register with the Fair  
23 Political Practices Commission (FPPC). (Exs. 14, 15.) Prior to HADLAND's publication, the  
24 FPPC advised him, "there's no real way of knowing" whether the Committee was subject to the  
25 FPPA. (Ex. 13.) The Committee acted lawfully:

26           *First*, the Committee had a constitutional right to distribute anonymous political flyers. In  
27 *McIntyre v. Ohio Elections Commission* 514 U.S. 334 (1995), the United States Supreme Court,  
28 in holding that one may anonymously distribute flyers, states, *inter alia*:



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

8 (Emphasis added.)

9 *Second*, the Committee was exempt from registration under the FPPA. FPPA states, *inter*  
10 *alia*:

11 § 82013. "Committee" means any person or combination of persons who  
12 directly or indirectly does any of the following: (a) Receives contributions totaling  
13 two thousand dollars (\$2,000) or more in a calendar year; (b) Makes independent  
14 expenditures totaling one thousand dollars (\$1,000) or more in a calendar year....

15 § 82015. ... (c) "Contribution" does not include any of the following: ...  
16 (3) Volunteer personal services....

17 The Committee did not meet the financial thresholds requiring it to register with the  
18 FPPC. Further, HADLAND was warned of the Committee's FPPC exemption. (Ex. 13.) This  
19 Court deemed admitted:

20 **REQUEST FOR ADMISSION NO. 16:**

21 Via email on March 13, 2018, Jay Wierenga of the Fair Political Practices  
22 Commission advised defendant STEVEN LAWRENCE HADLAND, with respect  
23 to the Ad Hoc Committee of Culver City Residents First, "[I]f this is a one-time  
24 thing, perhaps it's the first activity and the total cost of the flyer was less than  
25 \$2,000... [sic] then there is no registration required nor a sender ID requirement."

26 After his publication, the FPPC advised HADLAND, "I don't think this is an accurate  
27 description at all...." (Ex. 13.) HADLAND knew GREENBERG represented the Committee;  
28 however, HADLAND never inquired of GREENBERG as to the Committee.

(2) HADLAND, as publisher of the *Culver City Observer*, published various  
incendiary comments by others:

(a) CLARKE's letter (i) labeling the flyer "hate speech"<sup>4</sup>; (ii) threatening the

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<sup>4</sup> The flyer encourages greater voter turnout in a City Council election and promotes the Committee's political opinion. The statements in the flyer are neither false nor defamatory, and do not relate to any topic necessary to qualify as "hate speech," e.g., race, religion, gender.



1 Committee's continued distribution of the flyer "will soil your reputation, given that the Observer  
2 says it intends to name names," and would cause Culver City to "be known as a City of violence  
3 or a City of angry people"; (iii) and stating, "We shall no longer tolerate your [the Committee's]  
4 profane, defamatory and personal attacks" (Ex. 18, p. 3.);

5 (b) an obviously-deranged-Culver-City resident's letter labeling a Committee  
6 member as a "cowardly communist on my doorstep ...hid[ing] his identity," while further stating,  
7 "I find these tactics revolting. ... I hope ... that you [HADLAND] are able to identify and expose  
8 these disgusting people" (Ex. 18, p. 6.); and,

9 (c) the then retiring Mayor's statement, "address[ing] over 400 residents and  
10 business people [] at the annual Mayor's luncheon," expressing "anger" about the Committee's  
11 activities, labeling them "outright mean and nasty" and calling for everyone "to stand up loud and  
12 clear and say enough of this bull shit." (Ex.18, pp. 1, 14.)

13 (3) Further, HADLAND publicly incited vigilantes to photograph and identify the  
14 Committee's members, so that it could publish their names. (Exs. 18, 19.) Some vigilantes  
15 followed and photographed GREENBERG and his spouse. (Ex. 16.) The *Culver City Observer*  
16 specifically identified GREENBERG as a distributor of the flyer (Ex. 20), and published  
17 GREENBERG's and his spouse's photographs on its front-page and on its Internet edition (Exs.  
18 18, 19.), implying that GREENBERG and his spouse acted illegally as members of the  
19 Committee, and, thus, subjecting them to further, potential harassment.

20 (4) Additionally, on April 26, 2018, the *Culver City Observer* recklessly, falsely  
21 published that the State Bar was investigating GREENBERG's alleged acts (Ex. 20), and that  
22 several government agencies were investigating the Committee (Ex. 20.). This Court deemed  
23 admitted:

24 **REQUEST FOR ADMISSION NO. 17:**

25 As of May 10, 2018, defendant STEVEN LAWRENCE HADLAND knew  
26 of no government agency investigating activities of the Ad Hoc Committee for  
Culver City Residents First.

27 **REQUEST FOR ADMISSION NO. 18:**

28 As of April 30, 2018, defendant STEVEN LAWRENCE HADLAND had  
no information that the State Bar of California was investigating plaintiff  
HERBERT LESLIE GREENBERG.

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"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of ... malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (CCP § 3294(a).) "With respect to a corporate employer, the ... malice must be on the part of ... [a] managing agent of the corporation." (CCP § 3294(b).)

At all material times, HADLAND was a managing director of OBSERVER. (Request No. 4, *supra*.) Also, HADLAND claims to serve as President of defendant OBSERVER. (Ex. 4.)

One factor that courts have traditionally considered when assessing the proper amount of punitive damages is the amount necessary to have a deterrent effect on the defendant. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928.) OBSERVER's annual revenue is approximately \$237,785. (Ex. 5.)

**III. CONCLUSION**

Plaintiff GREENBERG seeks \$50,000 in compensatory damages (approximately \$1 per person receiving the defamatory newspaper statements) and at least \$250,000 in punitive damages against Defendants, jointly and severally. Defendants wished to punish GREENBERG due to his representation of the Committee—persons exercising their First Amendment Constitutional rights. Defendants primed the public to be extremely agitated with anyone associated with the Committee's alleged "hate speech," and called for vigilante assistance. Defendants publicly identified GREENBERG and his spouse on the front-page of the *Culver City Observer*, knowing that such exposure "will soil [their] reputation" and would cause Culver City to "be known as a City of violence or a City of angry people." Defendants' unacceptable and morally wrong conduct justifies a large punitive award.

DATED: November 27, 2018

\_\_\_\_\_  
HERBERT LESLIE GREENBERG  
Plaintiff, In Propria Persona

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 10732 Farragut Drive, Culver City, CA 90230.

On November 27, 2018, I mailed from Culver City, California a true and correct copy of the following documents described as **PLAINTIFF'S TRIAL BRIEF** on the interested parties in this action by enclosing them in a sealed envelope addressed as follows:

Stephen Lawrence Hadland  
4346 Sepulveda Boulevard  
Culver City, CA 90230-4722

C. Susan Keen  
Attorney at Law  
1515 Seventh Street # 111  
Santa Monica, CA 90401

and depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 27, 2018, at Culver City, California.

\_\_\_\_\_  
Paulette D. Greenberg