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**COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON**

PAUL BRECHT,

APPELLANT,

v.

**NORTH CREEK LAW FIRM, A PROFESSIONAL
CORPORATION PS; MARK LAMB and JANE DOE LAMB,**

RESPONDENTS.

**APPEAL FROM THE SUPERIOR
COURT OF KING COUNTY**

BRIEF OF APPELLANT

**PAUL BRECHT
APPELLANT PRO SE**

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it excluded ALL of the material presented by Plaintiff on the basis of attempting to convert the CR 12(b)(6) motion to a CR 56 motion.
2. The trial court erred in granting the Defendant's motion to strike and ruling that the Plaintiff's memo and declaration were not timely filed by applying the time requirements set forth in CR 56(c) to a motion to dismiss under CR 12(b)(6).
3. The trial court erred by not applying the requirement in CR 12(b) indicating that if a CR 12(b)(6) motion is treated as a motion for summary judgment, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56."
4. The trial court erred by failing to rule that the Plaintiff stated a claim in accordance with CR 12(b)(6).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err when it excluded ALL of the material presented by Plaintiff on the basis of attempting to convert the CR 12(b)(6) motion to a CR 56 motion?
2. Did the trial court err in granting the Defendant's motion to strike and ruling that the Plaintiff's memo and declaration were not timely filed by applying the time requirements set forth in CR 56 to a motion to dismiss under CR 12(b)(6)?
3. Did the trial court err by not applying the requirement in CR 12(b) indicating that if a CR 12(b)(6) motion is treated as a motion for summary judgment, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56?"
4. Did the trial court err by failing to rule that the Plaintiff stated a claim in accordance with CR 12(b)(6)?

C. STATEMENT OF THE CASE

In the summer and fall of 2007, King County Councilmember Jane Hague was running for re-election as the Council's representative from the 6th District of King County. The 6th District includes all or parts of the cities and communities of Bellevue, Kirkland, Redmond, Mercer Island, Medina, Clyde Hill, Hunts Point, Beaux Arts and Yarrow Point. (CP 2)

Ms. Hague's only opponent in the general election was Richard Pope, a perennial candidate who had previously run for approximately ten different elected offices over several years' time, winning none of them. Early on in the campaign, Ms. Hague was widely favored to win re-election. (CP 2)

In the months before the 2007 election, local media outlets began reporting on a number of stories unfavorable to Ms. Hague. For example, the media reported that Ms. Hague had been ticketed for driving her car while drunk; that her behavior was obnoxious towards the State Troopers who arrested her; that she had possibly tried to conceal the citation from media scrutiny by providing her married name of Springman to the arresting Troopers; that she apparently claimed for decades that she had a college degree when she did not; that she was fined several thousand dollars for violations of campaign finance laws; and a number of other unfavorable reports and stories. (CP 2)

Some of the unfavorable media coverage of Ms. Hague was the direct result of her opponent's efforts. Mr. Pope, for example, filed complaints with the Public Disclosure Commission against Ms. Hague and her campaign, alleging campaign finance violations, which ultimately resulted in fines against her. Mr. Pope was also believed to have been the one who discovered that Ms. Hague never received a college degree, which he then passed on to the media. (CP 3)

Ms. Hague's reaction to the unfavorable media coverage was to step up her attacks on her opponent, Richard Pope, and his supporters. For example, her campaign and consultants developed a mail piece sent to her constituents in the 6th District, which claimed that one of Mr. Pope's endorsers was a notorious offender "at the top of law enforcement's list," who had "multiple domestic violence arrests," and "at least one assault conviction." (CP 3, 53)

The endorser referred to in the mailer was Paul Brecht, the Plaintiff in this lawsuit. Mr. Brecht lives in the 6th District where the mailer was sent. Mr. Brecht did endorse Mr. Pope but he is not a notorious offender and he has never been convicted of domestic violence or assault. (CP 3)

The mailer, created by campaign consultants including Mark Lamb and Brett Bader cited an "Official Washington Court Record Search" as the source of the information regarding Mr. Brecht. However, no court records anywhere support the claims about Mr. Brecht in the mailer. Neither Ms.

Hague, nor her campaign, nor her consultants who produced the mailer, have ever produced any records, official or otherwise, to support their claims. (CP 3)

In 2001, Mr. Brecht's then-wife phoned police and claimed that Mr. Brecht had assaulted her. This occurred on the same evening that Mr. Brecht informed his wife that he would like a divorce, before leaving to go to his office. Mr. Brecht was later arrested at his office and a no-contact order was entered against him solely on the basis of the wife's claims against him. The no-contact order required that Mr. Brecht have no contact or communication with his estranged wife. (CP 4)

About one month later after his wife phoned the police, Mr. Brecht violated the no-contact order when he met his estranged wife and their child in a public place in broad daylight, and gave her money she said she needed. There was no violence, nor any allegation of violence. Afterwards the wife contacted police and reported that her husband had violated the no-contact order. The plaintiff was found guilty of a misdemeanor charge of violating a no-contact order. (CP 4)

There was no evidence to support the wife's original claim of assault. The charge was vigorously and consistently denied by the Plaintiff; court evaluators later found no basis for the claim; the charge stemming from this claim was later dismissed by the court; and all references to domestic violence were vacated in the subsequent dissolution case by a judge. (CP 4)

Mr. Brecht is not “at the top of law enforcement’s list” for anything. He has never been convicted of domestic violence or any other violent crime, including assault. (CP 4)

On October 29, 2007, just days after the mailer was sent to 6th District voters, Mr. Brecht filed a lawsuit for defamation against Ms. Hague and her campaign consultants, who created the mailer. Richard Pope, Ms. Hague’s opponent in the upcoming election, filed the lawsuit as Mr. Brecht’s lawyer. (CP 4)

Mr. Brecht’s lawsuit for defamation against Ms. Hague and her political consultants was widely covered by local media outlets the same day it was filed. The complaint in the lawsuit included Mr. Brecht’s specific denials of domestic violence and convictions, which was also covered by the media. The Seattle Post-Intelligencer also included news of the suit and Mr. Brecht’s defenses, in the early-morning editions of its paper the following day, October 30, 2007. (CP 5)

On October 31, 2007, the defendant Mark Lamb was quoted three times in the Seattle Times Newspaper article. The newspaper has a readership of approximately 1,247,100 people: (CP 43-44)

A. Mark Lamb, a lawyer for Hague's campaign, said Tuesday “the allegation of an assault conviction was based on a Renton police report that said Brecht was convicted of violating a no-contact order.”

B. Lamb said Hague campaign staffers were "going on the information they had" when they wrote that Brecht was

convicted of assault. "I suppose you could make an argument it would be more accurate to say he was convicted of domestic violence," Lamb said, referring to his violation of the no-contact order. "The campaign felt that was too inflammatory to include in the thing."

C. Lamb said he doesn't believe Hague owes Brecht an apology. "It appears that Mr. Pope's complaint was that the piece didn't say that Mr. Brecht was convicted of domestic violence. That's an odd complaint."

On October 31, 2007 Mark Lamb appeared on Seattle Television Station King 5, (CP 12) where the show's host Mr. Mak stated, "you got it wrong, didn't you," Mr. Lamb's only reply was: "Mr. Brecht said last night that I do [he does] not have a domestic violence conviction, that's not true." This interview played several times on King 5: twice during evening news casts on October 31, 2007 and twice on Upfront with Robert Mak November 1, 2007. King 5 has a listening audience of approximately: 180,000 persons for the evening news, 150,000 for the late night news, 50,000 for the Sunday morning edition of Upfront and 55,000 for the Sunday evening edition of Upfront. (CP 5,6) Print and broadcast media combined, Mr. Lamb's false and defamatory statements reached nearly 1.7 million people.

By repeating and republishing the defamatory attacks by the campaign on Mr. Brecht, Mark Lamb was able to reach a far broader audience than the voters that received the mailer and well beyond the geographic limits of the King County's 6th District. The Seattle Times is published and distributed throughout the Western Washington region and

beyond. The King 5 television signal is broadcast all over the entire Puget Sound region of Western Washington. (CP 6)

The defamatory comments by Mark Lamb made to the Seattle Times and King 5 were clearly an effort to divert media attention away from yet another public relations blunder by Ms. Hague and her campaign. After her campaign and consultants had been caught making outrageously false claims about her opponent's supporter, Mr. Brecht, Mark Lamb became spokesman for Jane Hague and her campaign and made the same, defamatory claims but with inflammatory embellishment. This strategy returned the media's focus to the alleged "wife beater" Mr. Brecht, and away from Ms. Hague, in the important, final days of the campaign. (CP 6)

Mr. Lamb is close friends with Brett Bader who as sole shareholder of Madison Communications and was the campaign manager for the Jane Hague Campaign in 2007. They both shared office space together during the 2007 campaign season. Mr. Lamb was utilized by Brett Bader as a legal consultant and was instrumental in both the creation of and approving the defamatory language used in the Hague campaign mailer. (CP 7)

Mr. Lamb either knew, or should have known, that the defamatory claims made by the Jane Hague Campaign and Madison Communications about Mr. Brecht, were specifically denied by Mr. Brecht in a lawsuit filed just days before. The defamation lawsuit was covered extensively by local media outlets in Seattle on October 29, 2007; the defamation lawsuit was

reported in a story by the Seattle PI early on the morning of October 29, 2007. (CP 7)

In an effort save face for Jane Hague against the embarrassment of the Brecht lawsuit, Mr. Lamb provided defamatory statements to the Seattle Times preserving and even increasing the sting of the defamatory mailer language: By juxtaposing the following statements, Mr. Lamb created a defamatory implication: 1) Mr. Lamb stated, “that the allegation of an assault conviction was based on a Renton police report that said Brecht was convicted of violating a no-contact order” *with* 2) "I suppose you could make an argument it would be more accurate to say he was convicted of domestic violence”, *with* 3) "The campaign felt that was too inflammatory to include in the thing." By juxtaposing these three statements, Mr. Lamb created a defamatory implication that Mr. Brecht’s being “convicted of domestic violence” was even MORE inflammatory than an assault conviction, thus creating a false and defamatory implication that Mr. Brecht’s no contact order violation was worse than an assault conviction. This preserved and even increased the sting of the original defamatory Hague campaign mailer. Furthermore, Mr. Lamb failed to state any facts that would contradict the false and defamatory implication. (CP 7, 43, 44)

Again, when Mr. Lamb appeared on channel 5’s Upfront with Robert Mak, where Mr. Mak stated, “you got it wrong, didn’t you?”, Mr. Lamb’s only reply was “Mr. Brecht said last night that I do [he does] not have a domestic violence conviction, that’s not true.” (CP 8)

Mr. Brecht filed his complaint against Mark Lamb et al in this matter on October 29, 2009. (CP 1-15)

On November 30, 2009, Mr. Lamb filed a CR 12(b)(6) motion to dismiss. The hearing date was set for January 6, 2010. (CP 20)

On January 4, 2010, Mr. Brecht served his response to Mr. Lamb and to the court. (CP 29 – 51)

On January 6, 2010, the matter was heard during oral hearing. (see Verbatim Report of Proceedings for January 6, 2010).

The trial court dismissed Mr. Brecht's defamation lawsuit against Mr. Lamb by an order entered on January 7, 2010, the day following the oral argument hearing. (CP 70-71) This order also excluded all of Mr. Brecht's responsive materials on the basis of having additional material outside the pleadings and not complying with CR 56(c) timelines.

On January 19, 2010, Mr. Brecht filed a CR 59 motion to reconsider. (CP 72-75)

On January 28, 2010, Mr. Brecht filed an amended CR 59 motion to reconsider. (CP 82-90)

On February 12, 2010, the trial court issued its order denying Mr. Brecht's motion for reconsideration. (CP 88)

On March 10, 2010, Mr. Brecht filed a Notice of Appeal (CP 89-93)

D. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT EXCLUDED ALL OF THE MATERIAL PRESENTED BY PLAINTIFF ON THE BASIS OF ATTEMPTING TO CONVERT THE CR 12(B)(6) MOTION TO A CR 56 MOTION.

By excluding ALL the material presented by Mr. Brecht, the trial court failed to properly convert the CR 12(b)(6) motion to a CR 56 motion.

CR 12(b)(6) specifically states:

“[When] matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.”

Since Mr. Brecht presented materials outside the pleading (CP 29-51) and the trial court stating in the order to dismiss that these materials were “not considered,” (CP 70-71) the trial court effectively excluded those materials, thus precluding the CR 12(b)(6) motion from being converted into a CR 56 motion. The trial court’s action here was clearly in violation of the non-ambiguous requirements for conversion of a CR 12(b)(6) motion to a CR 56 motion set forth within CR 12(b).

In this case, the trial court excluded ALL of the materials presented by Mr. Brecht. Not only were Mr. Brecht’s declaration and exhibits excluded, but Mr. Brecht’s memorandum of law opposing the CR 12(b)(6) motion was also excluded. Since the trial court excluded ALL of Mr. Brecht’s materials – including the declaration and exhibits – the trial

court was no longer permitted to convert the CR 12(b)(6) motion to a CR 56 motion.

At most, the trial court should have excluded ONLY the additional materials outside the pleadings, which consisted of Mr. Brecht's declaration and exhibits. Once these additional materials were excluded, there was no longer any basis to convert the CR 12(b)(6) motion to a CR 56 motion. The trial court should have considered Mr. Brecht's memorandum of law opposing the CR 12(b)(6) motion in any event.

The converse logic also applies. If the trial court treated the CR 12(b)(6) motion as a CR 56 motion, this necessarily requires that Mr. Brecht's declaration and exhibits were NOT excluded by the trial court. Therefore, the trial court's decision to consider the motion under CR 56 REQUIRED Mr. Brecht's declaration and exhibits TO BE considered and NOT excluded.

2. THE COURT ERRED IN GRANTING THE DEFENDANT'S MOTION TO STRIKE AND RULING THAT THE PLAINTIFF'S MEMO AND DECLARATION WERE NOT TIMELY FILED BY APPLYING THE TIME REQUIREMENTS SET FORTH IN CR 56(C) TO A MOTION TO DISMISS UNDER CR 12(B)(6).

A case directly on point has already been decided by Division One of the Washington Court of Appeals in Foisy v. Conroy, 101 Wn.

App. 36, 4 P.3d 140 (2000). In Foisy, the defendants filed a CR 12(b)(6) motion to dismiss, but included materials outside the pleadings in support of their motion. Plaintiff objected to these materials being considered, but the trial court decided to consider the additional materials, and converted to CR 12(b)(6) motion to dismiss to a motion for summary judgment under CR 56. Plaintiff objected to this conversion, since he had not been given the 28 days notice required under CR 56(c). At the hearing, the trial court offered plaintiff reasonable additional time to submit his own declarations and other materials, but plaintiff rejected the offer. The motion was granted, and plaintiff appealed.

The Court of Appeals held that the timelines set forth in CR 56(c) do not apply when a CR 12(b)(6) motion to dismiss is converted into a motion for summary judgment under CR 56, and that the trial court is merely required to offer all parties a reasonable time period in which to submit declarations and other materials that would be considered under CR 56:

“Foisy complains that he was not given the proper amount of time to respond to a motion for summary judgment and that he was prejudiced by the court's consideration of the motion at the hearing to consider his motion for a temporary re-straining order. However, although a CR 12(b)(6) motion shall be treated as a motion for summary judgment if matters outside the pleadings are presented to and not excluded by the court, **the requirements set forth in CR 56 regarding the time allowed to respond to a summary judgment motion do not apply to motions to dismiss under CR 12(b)(6).** Rather, CR

12(b) indicates that if a CR 12(b)(6) motion is treated as a motion for summary judgment, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56."

Foisy, 101 Wn. App. at 40 (emphasis added).

In the present case, Mr. Brecht submitted a declaration and several exhibits in his response. Mr. Lamb submitted some exhibits in their reply, and did not ask the trial court for additional time to submit other materials outside the pleadings. In any event, Foisy and CR 12(b) do not provide for the CR 56(c) timelines to govern a converted CR 12(b)(6) motion, and it was error for the trial court to strike Mr. Brecht's response for not satisfying these timelines.

In addition, the trial court can convert a CR 12(b)(6) motion to dismiss for failure to state a claim into a CR 56 motion for summary judgment ONLY when a party has presented materials outside the pleadings – such as declarations and exhibits – AND when these additional materials have NOT been excluded by the Court. Since Mr. Brecht's materials were excluded, there could have been NO conversion to a CR 56 motion allowed under the provisions of CR 12(b).

When a trial court converts a CR 12(b)(6) motion to dismiss for failure to state a claim into a CR 56 motion for summary judgment, there is absolutely nothing in CR 12(b) providing that the timelines of CR 56(c) be followed. If the Washington Supreme Court had intended for the

timelines of CR 56(c) to be followed in such a situation, then the language of CR 12(b) would expressly state that the timelines of CR 56(c) would govern when a party sought to offer materials outside the pleadings..

3. THE TRIAL COURT ERRED BY NOT APPLYING THE REQUIREMENT IN CR 12(B) INDICATING THAT IF A CR 12(B)(6) MOTION IS TREATED AS A MOTION FOR SUMMARY JUDGMENT, "ALL PARTIES SHALL BE GIVEN REASONABLE OPPORTUNITY TO PRESENT ALL MATERIAL MADE PERTINENT TO SUCH A MOTION BY RULE 56."

The language set forth in CR 12(b) states: “[A]ll parties shall be given reasonable opportunity to present all material made pertinent to such a motion”. This requirement takes effect only AFTER the trial court decides to convert a CR 12(b)(6) motion into a CR 56(c) motion, and not BEFORE. So once the trial court decided at the January 6, 2010 hearing to convert the CR 12(b)(6) motion to a CR 56(c) motion, the trial court was then REQUIRED to give all parties reasonable opportunity to present declarations and other materials that can be considered on a CR 56 motion.

4. THE TRIAL COURT ERRED BY FAILING TO RULE THAT THE PLAINTIFF PROPERLY STATED A CLAIM OF DEFAMATION IN ACCORDANCE WITH CR 12(B)(6).

“A dismissal for failure to state a claim under CR 12(b)(6) is appropriate only if “it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief.” Haberman v. WPPSS, 109 Wn.2d 107, 120, 744 P.2d 1032, 750 P.2d 254 (1987) (quoting Bowman v. John Doe, 104 Wn.2d 181, 183, 704 P.2d 140 (1985); Orwick v. Seattle, 103 Wn.2d 249, 254, 692 P.2d 793 (1984)).

CR 12(b)(6) motions should be granted only “sparingly and with care’.” Haberman, 109 Wn.2d at 120 (quoting Orwick, 103 Wn.2d at 254). “Any hypothetical situation conceivably raised by the complaint defeats a CR12(b)(6) motion if it is legally sufficient to support plaintiff’s claim.” Halvorson v. Dahl, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978). Hypothetical facts may be introduced to assist the court in establishing the “conceptual backdrop” against which the challenge to the legal sufficiency of the claim is considered. Brown v. MacPherson’s, Inc., 86 Wn.2d 293, 298 n.2, 545 P.2d 13 (1975).

We have held that in determining whether such facts exist, a court may consider a hypothetical situation asserted by the complaining party, not part of the formal record, including facts alleged for the first time on appellate review of a dismissal under the rule. Halvorson, 89 Wn.2d at 675. Neither prejudice nor unfairness is deemed to flow from this rule, because the inquiry on a CR 12(b)(6) motion is whether any facts which would support a valid claim can be conceived. See Halvorson, 89 Wn.2d at 674-75.”

Bravo v. Dolsen, 125 Wn.2d 745, 888 P.2d 147, 150 (1995) (emphasis added)

A defamation plaintiff must show four essential elements: falsity, an unprivileged communication, fault, and damages. Mark v. Seattle Times, 96

Wn.2d 473, 635 P.2d 1081, 1088 (1981). In his complaint, Mr. Brecht showed that Mr. Lamb made several false and defamatory statements to the Seattle Times and King 5 News:

4.1 FALSITY

Mr. Brecht demonstrated ways that that Mr. Lamb's statements can be considered FALSE. In Mohr v. Grant, 153 Wn.2d 812, 108 P.3d 768 (2005), the Washington State Supreme Court ruled on a case concerning defamation by implication and defamation by omission. Mr. Lamb's statements clearly demonstrate the rulings in Mohr v. Grant in that they "would likely leave an impression to the reader or listener that Mr. Brecht was indeed convicted of violence towards another person." (Implication) (CP 8) and that "By failing to explain the non violent circumstances surrounding Mr. Brecht's violation of a no contact order, Mr. Lamb implied that Mr. Brecht was convicted of violent abuse against his wife." (Omission) (CP 8).

In this instance, falsity can be determined according to the standards as set forth in Mohr v. Grant.

In Mohr v. Grant, the Washington Supreme Court stated:

"Defamation by implication occurs where "the defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts."

Mohr v. Grant, 153 Wn.2d at 823 (emphasis added)

Mr. Lamb made several statements that juxtaposed a series of facts so as to imply a defamatory connection between them and created a defamatory implication by omitting facts. The requirement for this element of falsity is one or the other; however Mr. Lamb's actions satisfy both implication and omission: (CP 43-44)

A. Mark Lamb, a lawyer for Hague's campaign, said Tuesday "the allegation of an assault conviction was based on a Renton police report that said Brecht was convicted of violating a no-contact order."

B. Lamb said Hague campaign staffers were "going on the information they had" when they wrote that Brecht was convicted of assault. "I suppose you could make an argument it would be more accurate to say he was convicted of domestic violence," Lamb said, referring to his violation of the no-contact order. "The campaign felt that was too inflammatory to include in the thing."

C. Lamb said he doesn't believe Hague owes Brecht an apology. "It appears that Mr. Pope's complaint was that the piece didn't say that Mr. Brecht was convicted of domestic violence. That's an odd complaint."

1. Mr. Lamb made a false and defamatory statement of fact "the allegation of an assault conviction was based on a Renton police report that said Brecht was convicted of violating a no-contact order." There is no Renton Police Report or police report anywhere else that states Mr. Brecht has an assault conviction. Therefore this statement is a complete false and defamatory fabrication.

2. Mr. Lamb juxtaposed the statements “the allegation of an assault conviction was based on a Renton police report that said Brecht was convicted of violating a no-contact order,” with “I suppose you could make an argument it would be more accurate to say he was convicted of domestic violence,” with “The campaign felt that was too inflammatory to include in the thing.”

By implying that Mr. Brecht’s conviction for a no contact order was more inflammatory than an assault conviction, Mr. Lamb created a false and defamatory implication that Mr. Brecht’s conviction was for something WORSE than assaulting his wife.

3. “It appears that Mr. Pope’s complaint was that the piece didn’t say that Mr. Brecht was convicted of domestic violence. That’s an odd complaint.” This is a false statement of fact because the complaint was that Mr. Brecht was falsely and defamatorily accused of assaulting his wife. Here, Mr. Lamb falsely and defamatorily equates Mr. Brecht’s no contact order conviction – where no allegations of physical violence were made – with the Hague campaign mailer’s false allegation of an assault conviction.

Next, the Mohr v. Grant court states:

“This court has stated the plaintiff must show the statement is provably false, either in a false statement or because it leaves a false impression.

Mohr v. Grant, 153 Wn.2d at 825 (emphasis added)

1. To state “the allegation of an assault conviction was based on a Renton police report that said Brecht was convicted of violating a no-contact order.” This is provably false, because no police report anywhere has any allegation that Mr. Brecht was convicted of assault. Furthermore, this statement leaves a false impression that an official record exists as an absolute matter of fact stating Mr. Brecht has an assault conviction.

2. To state that “it is more accurate to say Mr. Brecht was convicted of domestic violence” juxtaposed with and after falsely stating that the police record had an “allegation of an assault conviction” leaves the false impression that Mr. Brecht’s no contact order violation involved a physical assault. This is provably false because the no contact order was for meeting his then wife at the Southcenter Mall food court and there were no allegations of physical violence in the police report.

To state that “it was more inflammatory to include the thing” is also provably false and leaves a false impression because a violation for a no contact order - where no physical violence was alleged - is LESS inflammatory than an assault conviction.

3. To state "It appears that Mr. Pope's complaint was that the piece didn't say that Mr. Brecht was convicted of domestic violence. That's an odd complaint" is also provably false and leaves a false impression because the complaint was that Mr. Brecht was falsely accused of having an assault conviction. It appears that Mr. Lamb is equating Mr. Brecht’s no contact

order violation - where again there was no allegation of violence - with an assault conviction and this is absolutely false and leaves a false impression.

Next, the Mohr v. Grant court states:

"The 'sting' of a report is defined as the gist or substance of a report when considered as a whole." Herron, 112 Wn.2d at 769. In applying this test, we require plaintiffs to show that the false statements caused harm distinct from the harm caused by the true portions of a communication:

Mohr v. Grant, 153 Wn.2d at 825 (emphasis added)

The gist of Mr. Lamb's statements are that Mr. Brecht was convicted of something WORSE than assault. The reality is Mr. Brecht was only convicted of violating a no contact order where there were no allegations of violence. The distinction is night and day. A false allegation that someone has an assault conviction is exponentially more harmful. It creates the impression that someone physically harmed another person, namely Mr. Brecht's then wife. There are few offenses that engender a higher level of animus towards the perpetrator than someone who beats his wife. Mr. Lamb knew this. It was a calculated attack on Mr. Brecht and designed to be harmful.

Furthermore, Mr. Lamb NEVER stated the true nature of Mr. Brecht's conviction of a no contact order. Inferences by Mr. Lamb to a conviction of Mr. Brecht were always implied as an assault conviction and NOT a no contact order violation, therefore there are no true portions to his

communication. This is sufficient probative evidence to support a finding of falsity as to this element and for a jury to conclude that the defendants' statements are false.

Next, the Mohr v. Grant court states:

“What is necessary is a provably false impression which is contradicted by inclusion of omitted facts.

Mohr v. Grant, 153 Wn.2d at 827 (emphasis added)

The provably false impression is that Mr. Brecht's no contact order conviction was WORSE than an assault conviction and it must have been true because it was stated as such in a Renton police report. If Mr. Lamb had stated that Mr. Brecht had violated a no contact order where there were no allegations of violence, this would have totally contradicted the absolutely false impression that Mr. Brecht was convicted of something WORSE than assault.

Finally, the Mohr v. Grant court states:

A media defendant in a defamation action cannot be held accountable for omissions of fact from a report if the facts were denied to the defendant at the time the report was made.

Mohr v. Grant, 153 Wn.2d at 829 (emphasis added)

The events of Mr. Brecht's record occurred at least five years prior to Mr. Lamb's false and defamatory statements. Mr. Lamb had full access to these records.

4.2 FAULT

The actions by Mr. Lamb constitute actual malice. The definition of actual malice adhered to by Washington State is: “knowledge of falsity or reckless disregard for the truth.” Along with the actual malice standard, there is a companion requirement that it be proved with clear and convincing clarity. Only the element of fault - proof of actual malice – must be proven by clear and convincing evidence. Other statements can be established by a preponderance of the evidence. Richmond v. Thompson, 130 Wn.2d 368, 922 P.2d 1343 (1996).

The Washington State Supreme Court in Herron v. King Broadcasting, 109 Wn.2d 514, 746 P.2d 295 (1987) states that evidence of defamation must be viewed cumulatively. When viewed in its entirety, Mr. Lamb’s statements paint a picture with several strokes that Mr. Brecht was a convicted wife beater when there was no legal basis anywhere for these false and defamatory allegations. Mr. Lamb paints the picture, that when looked at as a whole with the other objective evidence, would allow a jury to reasonably conclude Mr. Lamb in deed was aware of the falsity of his statements. Recalling the guidance from the Washington Supreme Court in Herron v. King:

“While no single factor establishes actual malice, several factors are probative evidence of actual malice. A reasonable jury could find that these factors taken together show actual malice with convincing clarity.”

Herron v King Broadcasting, 109 Wn.2d at 527.

“Although actual malice is subjective, a “court typically will infer actual malice from objective facts.” Bose Corp. v. Consumers Union of United States, Inc., 692 F.2d 189, 196 (1st Cir. 1982) (“whether [defendant] in fact entertained serious doubts as to the truth of the statement may be proved by inference, as it would be rare for a defendant to admit such doubts.”), aff’d, 466 U.S. 485, 80 L. Ed. 2d 502, 104 S. Ct. 1949 (1984); Dalbec v. Gentleman’s Companion, Inc., 828 F.2d 921, 927 (2nd Cir. 1987) (“Malice may be proved inferentially because it is a matter of the defendant’s subjective mental state, revolves around facts usually within the defendant’s knowledge and control, and rarely is admitted.”). These facts should provide evidence of “negligence, motive and intent such that an accumulation of the evidence and appropriate inferences supports the existence of actual malice.” Bose Corp., 692 F.2d at 196 (emphasis added); see Goldwater, 414 F.2d at 342 (“There is no doubt that evidence of negligence, of motive and of intent may be adduced for the purpose of establishing, by cumulation and by appropriate inferences, the fact of a defendant’s recklessness or of his knowledge of falsity.”)

Celle v. Filipino Reporter Enterprises Inc., 209 F.3d 163, 183 (2000)
(emphasis added)

LIST OF CUMULATIVE EVIDENCE OF ACTUAL MALICE

4.2.1 INDICATIONS THAT THE PUBLISHER HAS A PRECONCEIVED PLAN “TO GET” THE PLAINTIFF AND PURPOSEFUL AVOIDANCE OF THE TRUTH. Citing Sack on Defamation 5.5.2 at note 414

In the case of Scientology v. Time Warner, Inc. the Court stated:

“...The combination of inadequate investigation with bias on the part of the publisher can give rise to an inference of actual malice. See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 682, 105 L. Ed. 2d 562, 109 S. Ct. 2678 (1989). With a showing of an extreme departure from standard investigative techniques, bias of the reporter becomes relevant to explain this extreme departure as more than mere carelessness -- rather as purposeful avoidance of the truth.”

Scientology v. Time Warner, Inc., 903 F. Supp. 637, 641 (1995).

Definition of bias – Preference or inclination that inhibits impartial judgment; prejudice. *The American Heritage Dictionary*

"A review of the entire record of the instant case disclosed substantial probative evidence from which a jury could have concluded that the Journal was singularly biased in favor of Dolan and prejudiced against Connaughton as evidenced by the confidential personal relationship that existed between Dolan and Blount, the Journal Editorial Director, and the unqualified, consistently favorable editorial and daily news coverage received by Dolan from the Journal as compared with the equally consistently unfavorable news coverage afforded Connaughton.

Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 688, 691; 109 S. Ct. 2678; 105 L. Ed. 2d 562 (1989).

In this instance there is ample evidence of bias on behalf of Mr. Lamb. He worked as a consultant for the campaign and had a vested interest in seeing his candidate win and the candidate Mr. Brecht had endorsed lose. Mr. Lamb also had an extremely close relationship with Mr. Bader. During the Brecht v. Hague trial, Mr. Bader testified that the two of them fabricated the mailer language that resulted in a jury finding for defamation in Brecht v. Hague. (CP 29-51) This is direct evidence of Mr. Lamb's behavior showing his motive to defame Mr. Brecht and is evidence of reckless disregard for the truth.

Furthermore, as reported by the U.S. Supreme Court in Time v. Firestone, 424 U.S. 448, 96 S. Ct. 958, 47 L. Ed. 2d 154 (1976) and confirmed in Mark v. Seattle Times, 96 Wn.2d 473, 494, 635 P.2d 1081 (1981), "The Supreme Court has held that "inaccurate and defamatory reports of facts" drawn from judicial proceedings are not deserving of First Amendment protection." Mr. Lamb stated he used Mr. Brecht's record as

the basis of his allegations and then totally misrepresented the substance of his record with falsity, defamation and actual malice.

As an attorney licensed to practice in the State of Washington, Mr. Lamb either knew or should have known that juxtaposing false statements of fact or omitting facts to create a defamatory implication is unlawful. He should have also known that the term ‘domestic violence’ in a legal sense refers to a broad category of offenses in Washington state law amongst household members and that some of these offenses do not involve any acts of physical violence, including in the situation where people decide to peaceably meet in spite of a standing no contact order. By omitting the facts that Mr. Brecht’s No Contact Order violation was for an offense where no physical violence was alleged, and by juxtaposing this with the other false statements of fact, Mr. Lamb created a false and defamatory implication.

As an attorney, Mr. Lamb either knew or should have known that there is no specific crime labeled “domestic violence” and therefore no one can be arrested for or ‘convicted of domestic violence’ because no such crime exists. Therefore the term ‘convicted of domestic violence’ is a false statement of fact and was used by Mr. Lamb as artful subterfuge and sophistry to imply that Mr. Brecht’s violation of a no contact order was for an assault conviction.

As an attorney, Mr. Lamb either knew or should have known that the police report claimed as the basis for his false assault conviction was for a

violation of a no contact order without any allegations of physical violence. Neither this police report, nor any other for that matter in Mr. Brecht's name contains any allegation of an assault conviction. Therefore this statement by Mr. Lamb is a false statement of fact.

As an attorney, Mr. Lamb either knew or should have known that by accusing Mr. Brecht of being convicted of domestic violence – about an incident where there were no allegations of violence – would likely leave an impression to the readers and listeners that Mr. Brecht was indeed convicted of violence towards another person. By failing to explain the non-violent circumstances surrounding Mr. Brecht's violation of a no contact order, Mr. Lamb implied that Mr. Brecht was convicted of violent abuse against his wife.

Mr. Lamb knew or should have known that he created a false statement of fact by stating "The campaign felt that was too inflammatory to include in the thing." The campaign had already demonstrated that they WERE interested in stating inflammatory statements about Mr. Brecht by publishing the false and defamatory campaign mailer which eventually led to a jury finding of guilt in *Brecht v Hague* (2009).

Mr. Lamb knew or should have known he created a false statement of fact by stating "It appears that Mr. Pope's complaint was that the piece didn't say that Mr. Brecht was convicted of domestic violence. That's an odd complaint." This statement falsely and defamatorily attributes Mr. Brecht's

conviction of a no contact order violation to their false allegation of an assault conviction. This statement also misrepresents the substance of Mr. Brecht's complaint in that he was falsely accused of an assault conviction.

Mr. Lamb knew or should have known that by failing to make any curative announcements before, during or after the show, regarding the defamatory claims made against Mr. Brecht, he omitted information necessary for the truth of his statements. Furthermore, in both the Seattle Times article and the King 5 newscasts, Mr. Lamb was given an opportunity to retract the defamatory allegations against Mr. Brecht. Instead Mr. Lamb chose to repeat the false accusation – further compounding the opprobrium and defamatory sting - that Mr. Brecht committed a physically violent criminal act against his wife.

The evidence explained here of the defendant's extreme departure from standard investigative techniques support a preconceived plan "to get" of the plaintiff. This is sufficient probative evidence of an inadequate investigation with bias on his part which gives rise to an inference of actual malice. Scientology v. Time Warner, Inc., 903 F. Supp. 637, 641 (1995).

Again, as evidenced in this section on actual malice, reckless disregard of the truth can be shown through many different factors:

However, each of the above factors may be taken into account cumulatively as probative evidence of actual malice. St. Amant, at 732.

Herron v. Tribune Publishing Co., 108 Wn.2d at 172.

4.2.2 PUBLICATION IN THE FACE OF VERIFIABLE DENIALS OR WITHOUT FURTHER INVESTIGATION DESPITE THE SERIOUSNESS OF THE ALLEGATIONS: Citing Sack on Defamation 5.5.2 at note 416

In the case of Curran v. Philadelphia Newspapers, Inc., the court stated:

The term "reckless disregard" is not amenable to one infallible definition. It is a term which is understood by considering a variety of factors in the context of an actual case. Such factors may be whether the author published a statement in the face of verifiable denials, Brown & Williamson Tobacco Corporation v. Jacobson, 827 F.2d 1119 (7th Cir. 1987), cert. denied __ U.S. __, 108 S.Ct. 1302, 99 L.Ed.2d 512 (1988), and without further investigation or corroboration, where allegations were clearly serious enough to warrant some attempt at substantiation, Stickney v. Chester County Communications, Ltd., 361 Pa.Super. 166, 522 A.2d 66 (1987).

Curran v. Philadelphia Newspapers, Inc., 376 Pa. Super. 514; 546 A.2d 639 (1988) (emphasis added)

In this instance, as already evidenced above, there were verifiable denials. Mr. Lamb was on notice from the several Seattle newspaper and media broadcasts – which he was an integral part of – that Mr. Brecht had filed a lawsuit specifically denying the false and defamatory statements about him. The Seattle P-I article that came out just the day before Mr. Lamb's defamatory statements stated (A) that Mr. Brecht denied the defamatory allegations, (B) that there was a lawsuit to that effect and (C) the information for which to verify the truth or falsity of the reports was available in a Washington Court Record Search. The allegations were serious enough to warrant some attempt at substantiation because Mr.

Brecht had been accused of being a ‘notorious wife beater with multiple assault convictions.’ This accusation was designed to be as inflammatory as possible. There is nothing more loathsome in society than a wife beater. Compounded with the attribution of being on ‘top of law enforcement lists’ with multiple ‘assault convictions’ added an evil component – one that arises to accusations of moral turpitude. This is sufficient probative evidence for a jury to conclude that the defendant acted with reckless disregard for the truth.

4.2.3 WARNING THAT THE STATEMENT IS NOT TRUE THUS CREATING SERIOUS DOUBTS AS TO THE TRUTH OR FALSITY REQUIRING FURTHER INVESTIGATION.

In the case of O’Brien v. Tribune, the Court stated:

“As stated in St. Amant v. Thompson, 390 U.S. 727, 20 L. Ed. 2d 262, 88 S. Ct. 1323 (1968), the determination of what is a reckless disregard for the truth or falsity of a statement is governed by the necessity to prove by clear and convincing evidence that defendants entertained serious doubts as to the truth or falsity of the defamatory publication. A clear warning from O’Brien that the statement was not true would have furnished an objective manifestation which would logically create serious doubts as to the truth or falsity of the statement. This would have required Franich to investigate the facts more carefully.” See Miller v. Argus Publishing Co., 79 Wn.2d 816, 490 P.2d 101 (1971).

O’Brien v. Tribune Publishing Co., 7 Wn. App. 107, 125, 499 P.2d 24 (1972) (emphasis added)

This is not a case where Mr. Lamb did not just investigate properly. Instead, he investigated, and using the records of his investigation, created a complete fabrication of the facts and purposely turned them into a lie to support a campaign that he was personally and financially vested in. Mr.

Lamb had ample notice prior to his media interviews that his allegations against Mr. Brecht were not true, yet he chose to state them anyway. This is sufficient probative evidence for a jury to conclude that Mr. Lamb acted with reckless disregard for the truth.

4.2.4 FAILURE TO SEEK CORROBORATION FROM THE MOST OBVIOUS SOURCE. *Citing Sack on Defamation 5.5.2 at note 409*

In the case of Harte-Hanks v. Connaughton, the Court stated:

“Although failure to investigate will not alone support a finding of actual malice, see St. Amant, 390 U.S., at 731, 733, the purposeful avoidance of the truth is in a different category.”

“There is a remarkable similarity between this case -- and in particular, the newspaper's failure to interview Stephens and failure to listen to the tape recording of the September 17 interview at Connaughton's home -- and the facts that supported the Court's judgment in Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). In Butts the evidence showed that the Saturday Evening Post had published an accurate account of an unreliable informant's false description of the Georgia athletic director's purported agreement to "fix" a college football game. Although there was reason to question the informant's veracity, just as there was reason to doubt Thompson's story, the editors did not interview a witness who had the same access to the facts as the informant and did not look at films that revealed what actually happened at the game in question. 38 This evidence of an intent to avoid the truth was not only sufficient to convince the plurality that there had been an extreme departure from professional publishing standards, but it was also sufficient to satisfy the more demanding New York Times standard applied by Chief Justice Warren, Justice Brennan, and Justice White.”

Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 692-93, 109 S. Ct. 2678, 2698-99, 105 L. Ed. 2d 562, 591-92 (1989)

In this instance, similarly as the Harte-Hanks Court found, there is also a remarkable similarity between this case and the Mr. Lamb's failure

to interview Mr. Brecht's wife or Mr. Brecht. Mr. Lamb also failed to accurately report Mr. Brecht's record which was easily accessible and plainly alluded to in the campaign mailer that attributed the allegations to a "Washington Court Record Search." This is sufficient probative evidence for a jury to conclude that Mr. Lamb acted with a purposeful avoidance of the truth which is evidence of reckless disregard for the truth.

4.2.5 INDICATIONS THAT THE PUBLISHER WAS HOSTILE.
Citing Sack on Defamation 5.5.2 at note 415

In the case of Arroyo v. Rosen, the Court stated:

"Because a "plaintiff will 'rarely be successful in proving awareness of falsehood from the mouth of the defendant himself,'" Batson v. Shiflett, 325 Md. at 730, (quoting Herbert v. Lando, 441 U.S. 153, 170, 60 L. Ed. 2d 115, 99 S. Ct. 1635 (1979), plaintiffs must normally rely on circumstantial evidence, including evidence of motive and intent. Ill will, hatred, and the desire to injure thus have probative value although they alone "are insufficient to establish actual malice." Batson, 325 Md. at 730.

Arroyo v. Rosen, 102 Md. App. 101, 113, 648 A.2d 1074 (1994).

In this instance, when considered as a whole, Mr. Lamb had a motive to harm Mr. Brecht: the more he could falsely vilify him as having been convicted of something worse than assault, the more damage he could inflict on Mr. Pope and his chances to win the election. This was the motive for the Hague Campaign as contained in their defamatory mailer.

This is sufficient probative evidence for a jury to conclude that the defendant acted with hostility and intent to injure which is evidence of reckless disregard for the truth.

4.2.6 UNEXPLAINED DISTORTION OR THE ABSENCE OF ANY FACTUAL BASIS TO SUPPORT THE STATEMENT. *Citing Sack on Defamation 5.5.2 at note 417*

In the case of Curran v. Philadelphia Newspapers, the Court stated:

“Likewise, evidence of unexplained distortion or the absence of any factual basis to support an accusation may be considered in determining whether the record is sufficient to support a finding of "actual malice". *Id.* See also Frisk v. News Company, 361 Pa. Super. 536, 523 A.2d 347 (1986) (clear departures from acceptable journalistic procedures, including the lack of adequate prepublication investigation; the use of wholly speculative accusations and accusatory inferences; and the failure to utilize or employ effective editorial review, were sufficient to support finding of reckless disregard for the falsity of the information). See also Curtis Publishing Co. v. Butts, 388 U.S. 130, 158, 87 S.Ct. 1975, 1993, 18 L.Ed.2d 1094 (1967).

Curran v. Philadelphia Newspapers, 376 Pa. Super. 514, 546 A.2d 639 (1988)

In this instance, Mr. Lamb made several false statements that juxtaposed a series of false statements of fact so as to imply a defamatory connection between them and created a defamatory implication by omitting facts. This unexplained distortion left a false impression that Mr. Brecht was a convicted wife beater.

Considered as a whole, these unexplained distortions or the absence of any factual basis to support those accusations, left an unmistakable impression in the minds of well of nearly 1.7 million readers and listeners that Mr. Brecht was convicted of physical violence toward his former wife.

At no time did Mr. Lamb include any language that would correct the false impressions caused by his statements. His omission of key facts helped perfect their defamation by implication. The key facts being that 1)

Mr. Brecht was only convicted of violating a no contact order with no allegations of physical violence and that 2) no court ever found Mr. Brecht guilty of any violence towards his then wife or anybody else for that matter.

Similarly to the Court's affirmation above in the Curran v. Philadelphia Newspapers case, there is a complete absence of any factual basis to support these accusatory inferences of defamation against Mr. Brecht. This is sufficient probative evidence to support a finding of reckless disregard for the falsity of the information and for a jury to conclude that the defendants acted with reckless disregard for the truth.

4.2.7 INTENTIONAL MISSTATEMENT OF A CHARGE TO MAKE IT SEEM MORE CONVINCING OR CONDEMNATORY THAN IT IS. Citing Sack on Defamation 5.5.2 at note 422

In the case of Westmoreland v. CBS, the Court stated:

“Although a reporter may have sufficient evidence of his charge to foreclose any material issue of constitutional malice for its publication, he may nonetheless make himself liable if he knowingly or recklessly misstates that evidence to make it seem more convincing or condemnatory than it is. If, for example, a publication asserts falsely and without basis that the charge was confirmed by an eyewitness, if in the editing process it distorts statements of witnesses so that they seem to say more than in fact was said, or if it falsely overstates a witness' basis for his accusation, these might raise triable issues of constitutional malice in spite of a sufficient foundation for the constitutionally protected publication of the basic charge. Cf. Goldwater v. Ginzburg, 414 F.2d 324, 337 (2d Cir. 1969), cert. denied, 396 U.S. 1049, 24 L. Ed. 2d 695, 90 S. Ct. 701 (1970); Edwards v. National Audubon Society, Inc., *supra*, at 120; Nader v. de Toledano, *supra*, at 51-54.

Westmoreland v. CBS Inc., 596 F. Supp. 1170, 1174 (1984)

In this instance, Mr. Lamb's false juxtaposed statements misstate the evidence as contained in Mr. Brecht's record, making it seem more

convincing or condemnatory than it is. This is sufficient probative evidence to support a finding of reckless disregard for the falsity of the information and for a jury to conclude that the defendants acted with reckless disregard for the truth.

4.2.8 INHERENT IMPROBABILITY OF THE INFORMATION BEING CONVEYED:

In the case of Herron v. King Broadcasting, the Court re-stated:

“Professions of good faith [by the defendant] will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports. St. Amant, at 732.

Herron v. King Broadcasting, 109 Wn.2d 514, 524, 746 P.2d 295 (1987)

In this instance, it is inherently improbable that one could start with a record of a singular conviction for violating a no contact order and transform it to statements implying that Mr. Brecht was convicted of something WORSE than physically assaulting someone. The fact that these statements were juxtaposed as they were is evidence of reckless disregard because as both the Herron Court and the St. Amant Court cited above agree that only a reckless man would have put them into circulation.

4.2.9 INNUENDO.

In the case of Herron v. King Broadcasting, the Court stated:

“Here, viewing the evidence in the record in a light most favorable to Herron, there is abundant circumstantial evidence of actual malice. McGaffin's exchange with

Deputy Prosecuting Attorney Sebring was extremely hostile. McGaffin threatened to "get" Herron or his staff in a story he intended to broadcast on the evening news because he was angry at their failure to cooperate with his investigation. He then in fact did broadcast a story casting the prosecutor's office and specifically Herron in a very evil and criminal light in a story that contained inexplicable falsehoods. In addition, the general tenor of the story is hostile and even implies that Herron arranged court records to hide his illegal activities. See Goldwater v. Ginzburg, 414 F.2d 324, 337 (2nd Cir. 1969) (innuendo can be indicative of actual malice).

The allegations in the story that a bondsman had "heavily contributed" to Herron's campaign in 1974 "and again in 1978," and that bail bondsmen "contributed approximately half of all campaign money collected by Don Herron . . ." are conceded to be false. The innuendo in the story that Herron was involved in the rack-eteering scandal and was not collecting bond forfeitures because his friends and campaign contributors were bail bondsmen is also false.

Herron v. King Broadcasting, 109 Wn. 2d at 525.

In this instance, the innuendo of the Mr. Lamb's story is that Mr. Brecht was convicted of something WORSE than physical assault. This has been proven false in the prior section on falsity. Mr. Brecht asks that the Court consider this section in relation to this area. Combined with all of the other evidence of reckless disregard, there is abundant circumstantial evidence of actual malice.

Mr. Lamb is a lawyer licensed in Washington State since the year 2000. He was in possession of Mr. Brecht's Washington Court records. Viewed cumulatively, and under all of these circumstances, Mr. Lamb demonstrated actual malice for Mr. Brecht by knowingly making false and

defamatory statements or recklessly disregarding the truth thereto. He knew the truth yet he purposely chose to tell a lie. This is actual malice.

4.3 DAMAGES

As a proximate cause of the defendants' wrongful conduct, all as described above, the plaintiff has sustained substantial damages, including pain, suffering, and other presumed damages.

4.4 PRIVILEGE

There are no applicable privileges.

E. CONCLUSION

The trial court granting of dismissal was error because it failed to follow explicit court rules on the handling of CR 12(b)(6) motions. It was also error to assign timelines for summary judgment when the case was not properly converted as such by the court. Finally, the court was in error when it failed to rule that Mr. Brecht properly stated a claim of defamation. Appellant Paul Brecht respectfully requests that the Court of Appeals Court reverse the trial court's January 7, 2010 order of dismissal and remand his case for trial.

RESPECTFULLY SUBMITTED this 30th day of August, 2010.



Paul Brecht
Appellant, Pro Se

DECLARATION OF SERVICE

I declare under penalty of perjury, according to the laws of Washington State, that on the date written below, I delivered a true and correct copy of this Brief of Appellant to the Attorneys for the Respondents and Defendants as addressed below:

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Signed at Bellevue, Washington on August 30, 2010.



PAUL BRECHT
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