

APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

En Banc

S246521

**Court of Appeal, Third Appellate District -
No. C086233**

[Filed February 21, 2018]

NEVADA DEPARTMENT)
OF WILDLIFE,)
Petitioner,)
)
v.)
)
SUPERIOR COURT OF)
NEVADA COUNTY,)
Respondent;)
)
MARK E. SMITH,)
Real Party in Interest.)
)

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

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APPENDIX B

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT**

**C086233
Nevada County
No. TCU176741**

[Filed January 11, 2018]

NEVADA DEPARTMENT)
OF WILDLIFE,)
Petitioner,)
)
v.)
)
THE SUPERIOR COURT)
OF NEVADA COUNTY,)
Respondent;)
)
MARK E. SMITH,)
Real Party in Interest.)
)

BY THE COURT:

The petition for writ of mandate is denied.

/s/ Blease
BLEASE, Acting P.J.

cc: See Mailing List

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**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT**

MAILING LIST

Re: Nevada Department of Wildlife v. The Superior
Court of Nevada County
C086233
Nevada County No. TCU176741

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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APPENDIX C

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF NEVADA**

CASE NO.: TCU17-6741

DEPT. NO.: A

[Filed December 27, 2017]

MARK E. SMITH, an Individual; and as)
Assignee of Mark E. Smith Foundation (MESF))
and Nevada Wildlife Alliance (NWA))
Plaintiff(s),)
)
vs.)
)
BRIAN WAKELING, an Individual; JOHN)
“JACK” ROBB, an Individual; CARL)
LACKEY, an Individual; NEVADA)
DEPARTMENT OF WILDLIFE; ABC)
CORPORATIONS, I through X; BLACK AND)
WHITE COMPANIES, I through X, and JOHN)
DOES I through X inclusive,)
Defendant(s).)

**ORDER DENYING DEFENDANT'S MOTION
TO QUASH SERVICE OF SUMMONS
AND STAYING MATTER**

The Defendants' Motion to Quash or Stay or Dismiss Action on Ground of Inconvenient Forum and Motion to Strike Complaint (SLAPP, CCP § 425.15) came on for hearing before this Court on December 11, 2017. After full consideration of the motions, oppositions, replies, the evidence and authorities submitted by counsel, as well as counsel's oral argument, and for good cause, the Court enters the following order. Defendants, first, have moved to quash service of the summons and complaint on grounds that (1) this Court lacks personal jurisdiction over Defendants and (2) the exercise of jurisdiction over a sister state or its political subdivisions violates the doctrine of interstate sovereign immunity. Defendants have also moved to dismiss or stay on grounds that California is an inconvenient forum for this action.

I. Defendants' Motion to Quash Service of the Summons and Complaint is denied.

A. Motion to quash based on lack of personal jurisdiction.

Personal jurisdiction may be either general or specific. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445, 58 Cal.Rptr.2d 899, 926 P.2d 1085 (*Vons*)). "The nature and the quality of the defendant's contacts determine whether jurisdiction, if exercised, is general or specific. General jurisdiction exists when a defendant is domiciled in the forum state or his activities there are

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substantial, continuous, and systematic.” (*F. Hoffman–La Roche, Ltd. v. Superior Court*, *supra*, 130 Cal.App.4th at p. 796, 30 Cal.Rptr.3d 407.) Where the contacts are sufficiently substantial, continuous, and systematic, it is not necessary that the cause of action alleged be connected with the defendant’s business relationship to the forum. (*Vons*, *supra*, 14 Cal.4th at p. 445, 58 Cal.Rptr.2d 899, 926 P.2d 1085.) However, “contacts that are random, fortuitous, or attenuated do not rise to the minimum level, and general jurisdiction cannot be exercised under these circumstances.” (*F. Hoffman–La Roche, Ltd. v. Superior Court*, *supra*, 130 Cal.App.4th at p. 795, 30 Cal.Rptr.3d 407.)

If a defendant’s contacts with the forum state are not substantial, continuous, and systematic, the defendant may be subject to specific jurisdiction. “A court may exercise specific jurisdiction over a nonresident defendant only if: (1) ‘the defendant has purposefully availed himself or herself of forum benefits’ [citation]; (2) ‘the “controversy is related to or ‘arises out of [the] defendant’s contacts with the forum” [citations]; and (3) “the assertion of personal jurisdiction would comport with ‘fair play and substantial justice.’” [Citations.]” (*Pavlovich*, *supra*, 29 Cal.4th at p. 269, 127 Cal.Rptr.2d 329, 58 P.3d 2.)

When a defendant challenges personal jurisdiction, the plaintiff has the burden to prove, by a preponderance of the evidence, the

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factual basis for the exercise of jurisdiction. (*Vons, supra*, 14 Cal.4th at p. 449, 58 Cal.Rptr.2d 899, 926 P.2d 1085.) Where, as here, the jurisdictional facts are undisputed, the question of jurisdiction is a purely legal question and, therefore, is subject to de novo review. (*Ibid.*)

General jurisdiction is proper only where the defendant's contacts in the forum are continuous and systematic. Continuous and systematic contacts include such activities as maintaining an office and employees in the forum, use of forum bank accounts, and the marketing or selling of products in the forum state. (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 415, 104 S.Ct. 1868, 80 L.Ed.2d 404.). . . .

Shisler v. Sanfer Sports Cars, Inc. (2006) 146 Cal. App. 4th 1254, 1258–59.

In the present case, the complaint alleges that Defendants conducted a PowerPoint presentation in Truckee, located in the state of California, where the purported defamation and slander occurred. This constitutes specific jurisdiction over the named Defendants.

B. Motion to quash based on the doctrine of interstate sovereign immunity.

Defendant Nevada Department of Wildlife, a state agency, has argued, in its briefing and at oral argument, that under the doctrine of interstate sovereign immunity, one state may not exercise jurisdiction over a sister state or its political

subdivisions. But under the U.S. Supreme Court's decision in *Nevada v. Hall* (1979) 440 U.S. 410, specific jurisdiction may exist over the Nevada Department of Wildlife. Accordingly, the motion to quash on the basis of interstate sovereign immunity is denied.

II. Defendants' Alternative Motion to Stay or Dismiss Based on Inconvenient Forum is denied.

Defendants' Motion to Stay or Dismiss is denied.

The fact the defendant may have consented or submitted to California jurisdiction does not prevent it from moving to stay or dismiss the action on forum non convenient grounds. [*Appalachian Ins. Co. v. Sup.Ct. (Union Carbide Corp.)* (1984) 162 CA3d 427, 440, 208 CR 627, 635].

The moving parties have the burden of proof to show that the forum is seriously inconvenient. *In re Marriage of Taschen* (2005) 134 Cal. App. 4th 681, 691; *Stangvik v. Shiley, Inc.* (1991) 54 Cal. 3d 744, 751.

Here, Defendants did not file any declarations in support of the motion. Thus, this court does not have any evidence upon which to analyze the 25 factors set forth in *In re Marriage of Taschen* (2005) 134 Cal. App. 4th 681, 691; *Great Northern Ry. Co. v. Sup. Ct.* (1970) 12 Cal.App.3d 105, 113.

Thus, Defendants' Motion to Stay or Dismiss is denied.

Nonetheless, the trial court has independent statutory authority to stay or dismiss the action on its own motion when it determines "that in the interest of

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substantial justice (the) action should be heard in a forum outside this state.” [CCP § 410.30(a) (parentheses added)].

Here, the court determines that substantial justice requires that the action should be heard in the state of Nevada.

First, the court notes “if the plaintiff is a resident of the jurisdiction in which the suit is filed, the plaintiff’s choice of forum is presumed to be convenient. . . .” *Stangvik v. Shiley* (1991) 54 Cal. 3d 744, 754. But, the substantial deference given to a resident plaintiff’s choice of forum, is not accorded to a foreign plaintiff. *Campbell v. Parker-Hannifin Corp.* (1999) 69 Cal. App. 4th 1534, 1543.

Here, the complaint alleges that Plaintiff as well as all named Defendants are residents of the state of Nevada. Nevada is a suitable place for trial and both private and public interests weigh favor of the state of Nevada.

Based upon the inconvenient-forum analysis, trial courts should consider discouraging multiple litigation, avoiding unseemly conflicts with the other court, best determining rights of the parties (depending on the subject matter, witness availability, and stage of the case), and should consider any aspect related to suitability or convenience of the forums. *Century Indem. Co. v. Bank of Am.* (1997) 58 Cal. App. 4th 408, 412.

Accordingly, this case is hereby stayed pending resolution of all issues by the State of Nevada. This Court will retain jurisdiction during the pendency of the Nevada litigation and may permit discovery under

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this Court's jurisdiction, and subject to California law, should such discovery be required.

III. Defendants' Anti-Slapp Motion to Strike.

Based upon the stay order issued above, the Court drops the Anti-SLAPP motion to strike. This case is hereby stayed.

IT IS SO ORDERED.

Dated this 26th day of December, 2017

Robert L. Tamietti
HON. ROBERT L. TAMIETTI

Submitted by:

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APPENDIX D

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF NEVADA**

**Case No. TCU17-6741
Dept. No. A**

[Filed July 13, 2017]

MARK E. SMITH, an Individual;)
and as Assignee of Mark E. Smith)
Foundation (MESF) and)
Nevada Wildlife Alliance (NWA))
Plaintiff,)
)
vs.)
)
BRIAN WAKELING, an Individual;)
JOHN "JACK" ROBB, an Individual;)
CARL LACKEY, an individual;)
NEVADA DEPARTMENT OF WILDLIFE;)
ABC CORPORATIONS, I through X;)
BLACK AND WHITE COMPANIES,)
I through X, and JOHN DOES I)
through X, inclusive,)
Defendants.)

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DEL HARDY, ESQ. (SBN 108926)
STEPHANIE RICE, ESQ. (SBN 277076)
WINTER STREET LAW GROUP
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(775) 786-5800
Attorneys for Plaintiff

Assigned to Judge Robert L. Tamietti
For All Purposes

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, MARK E. SMITH, by and through his attorneys, DEL HARDY, ESQ. and STEPHANIE RICE, ESQ. of WINTER STREET LAW GROUP, hereby demands a trial by jury of all issues contained herein and for causes of action against the Defendants BRIAN WAKELING, JOHN "JACK" ROBB, CARL LACKEY and the NEVADA DEPARTMENT OF WILDLIFE, states, alleges and complains as follows:

PARTIES

1. Plaintiff, MARK E. SMITH (hereinafter "SMITH"), is and at all times herein was a resident of Washoe County, Nevada, with a part time seasonal residence in Nevada County, California and is Assignee of the claims of Mark E. Smith Foundation and Nevada Wildlife Alliance and hereinafter, "Plaintiff".

2. Plaintiff is informed and believes, and thereon alleges that Defendant, BRIAN WAKELING (hereinafter "WAKELING"), is an individual who is and at all times herein is believed to be a resident of Sparks, Washoe County, Nevada, from time to time

availing himself, having contacts with and doing business in Nevada County, California.

3. Plaintiff is informed and believes, and thereon alleges that Defendant, JOHN “JACK” ROBB (hereinafter “ROBB”), is an individual who is and at all times herein is believed to be a resident of Reno, Washoe County, Nevada, from time to time availing himself, having contacts with and doing business in Nevada County, California.

4. Plaintiff is informed and believes, and thereon alleges that Defendant, CARL LACKEY (hereinafter “LACKEY”), is an individual who is and at all times herein is believed to be a resident of Minden, Douglas County, Nevada, from time to time availing himself, having contacts with and doing business in Nevada County, California.

5. Upon information and belief, Defendant, NEVADA DEPARTMENT OF WILDLIFE (hereinafter “NDOW”), is a political subdivision of the State of Nevada, headquartered in Reno, Washoe County, Nevada, doing business in the State of Nevada and as well as the State of California including but not limited to Nevada County, California.

6. Plaintiff is informed, believes and thereon alleges that, at all times mentioned herein, the Defendants and each of the Defendants unknown to Plaintiff who are therefore sued by fictitious names herein, ABC CORPORATIONS 1-X Inclusive; BLACK & WHITE COMPANIES 1-X inclusive; and JOHN DOES 1-X inclusive, in addition to acting for himself, herself, or itself and on his, her, or its own behalf individually, is and was acting as the agent, servant, employee and

representative of, and with the knowledge, consent and permission of, and in conspiracy with, each and all of the Defendants and within the course, scope and authority of that agency, service, employment, representation, and conspiracy, and responsible for the events and incidents set forth herein. Plaintiff further alleges on information and belief that the acts of each of the Defendants were fully ratified by each and all Defendants.

**JURISDICTION AND
GENERAL ALLEGATIONS**

7. Upon information and belief, the actions giving rise to this Complaint occurred in Truckee, California.

8. Plaintiff, a private citizen with significant investments in Nevada County California, is an active member and director of the Mark E. Smith Foundation (“MESF”) as well as the Nevada Wildlife Alliance (“NWA”), both of which are non-profit entities focused on wildlife advocacy including but not limited to matters concerning bears and trapping. As to MESF and NWA, Plaintiff Smith is assignee of the claims of both for all purposes and on behalf of for the benefit of both said nonprofits.

9. Upon information and belief, due to a difference of opinion regarding the broad topics of wildlife advocacy between Plaintiff and the Defendants named herein, Defendants have been rude and insulting to Plaintiff.

10. Upon information and belief, in or about August and September of 2016, Defendant LACKEY, on behalf of and through his scope of employment with Defendant NDOW, gave wildlife training presentations

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to Truckee law enforcement, whereby LACKEY presented a PowerPoint slide show (the "Presentations") to the private law enforcement (Truckee Police Department) audience misrepresenting both orally and through the written Presentation slides that Plaintiff was "soliciting harassment," that Plaintiff's wildlife advocacy amounted to "domestic terrorism," a crime, and used both Plaintiff's name and image to misrepresent such to Truckee law enforcement.

11. Domestic terrorism is a very serious crime and consists of the use or threat of violence that is carried out against one's own government or fellow citizens.

12. At no time whatsoever has Plaintiff "solicited harassment."

13. Plaintiff has unequivocally never ever engaged in domestic terrorism or anything related thereto.

14. At all times herein, Defendant LACKEY knew his statements and Presentations regarding Plaintiff were false, yet he still represented them as factual to Truckee law enforcement, evidencing LACKEY's malicious intent to harm Plaintiff.

15. Upon information and belief, Defendants ROBB and WAKELING in their capacity as NDOW officials and as superiors, knew of and/or reviewed LACKEY's Presentations prior to its publication to the private Truckee law enforcement training meetings and approved, condoned, and allowed LACKEY include such false allegations of "Domestic Terrorism" on the part of Plaintiff and the publication thereof.

16. At all times herein, Defendants ROBB and WAKELING knew LACKEY's allegations against Plaintiff were false, yet they still allowed and condoned such misrepresentations to be included in LACKEY's Presentations to Truckee law enforcement on behalf of NDOW.

17. Upon information and belief, on multiple occasions Defendants LACKEY and WAKELING have also represented to other NDOW staff, employees and associates that Plaintiff is a "terrorist;" and Defendant ROBB has also routinely referred to Plaintiff in front of NDOW staff and others by using derogatory and false names like "anti", a "hater", and "crazy".

18. At all times herein, Defendant LACKEY and WAKELING knew that Plaintiff is not a "terrorist" and thus that their statements representing such were false, yet they did and, upon information and belief, maliciously continue to make such factual misrepresentations about Plaintiff to NDOW staff, employees and associates.

19. Upon information and belief, Defendant ROBB has been present during LACKEY and WAKELING's false statements to NDOW staff and associates that Plaintiff is a "terrorist" and, despite knowing such representations to be false, ROBB has failed to take action with respect to LACKEY and WAKELING's false statements about Plaintiff made during the course and scope of their employment with NDOW, thereby facilitating and creating an environment for such misconduct.

20. Defendants' oral and written misrepresentations of fact regarding Plaintiff have injured Plaintiff's

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reputation both generally and with respect to his businesses and the non-profits he works with.

21. Plaintiff has also suffered substantial emotional distress as a result of the written publishing of the PowerPoint slides and Defendants' oral false statements of fact that Plaintiff is engaged in soliciting harassment and "Domestic Terrorism" and that Plaintiff is a "terrorist."

FIRST CAUSE OF ACTION

(Defamation, Libel and Libel on its Face- LACKEY and NDOW)

22. Plaintiff incorporates by reference herein each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

23. In accordance with California Civil Code Section 45, "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation."

24. In accordance with California Civil Code Section 45a, Libel on its Face is "A libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face."

25. As set forth more fully herein, in or about August and September of 2016, on behalf of and through his scope of employment with Defendant NDOW, LACKEY gave wildlife training Presentations to Truckee law enforcement, whereby LACKEY

published and distributed to the private law enforcement audience slides utilizing Plaintiff's name and pictures representing that Plaintiff's wildlife advocacy and work with his wildlife advocacy non-profits amounts to "solicitation of harassment" and "Domestic Terrorism," thereby alleging Plaintiff has committed a crime.

26. All such derogatory representations made by LACKEY are untrue.

27. At all times herein, Defendant LACKEY knew the slides he published and distributed containing such derogatory allegations about Plaintiff were false, yet he still maliciously published such false and defamatory statements about Plaintiff.

28. Due to LACKEY's false and defamatory statements set forth, published and distributed by way of his Presentations, Plaintiff has suffered embarrassment, humiliation, public scorn and damages to his personal and professional reputations as well as damages to the non-profits he is closely affiliated with.

29. Upon information and belief, LACKEY individually and on behalf of Defendant NDOW, continues to make and publish defamatory statements regarding Plaintiff to third-parties, causing Plaintiff further humiliation, mortification, embarrassment and damages.

30. As a direct result of LACKEY's Presentations on behalf of Defendant NDOW, which contained untrue statements alongside photographs of Plaintiff, Plaintiff has been damaged in an amount in excess of \$25,000, to be determined at trial.

31. In publishing the defamatory statements, LACKEY acted maliciously, fraudulently, and with the wrongful intent of injuring Plaintiff. Because LACKEY acted with an improper motive amounting to fraud and malice with the intent to injure and damage Plaintiff, he is entitled to recover punitive damages from LACKEY in an amount according to proof.

32. Plaintiff has been required to retain the services of an attorney to prosecute this matter and is entitled to be reimbursed for his attorney's fees and costs incurred herein.

SECOND CAUSE OF ACTION
(Defamation, Slander- LACKEY,
WAKELING, ROBB and NDOW)

33. Plaintiff incorporates by reference herein each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

34. Pursuant to California Civil Code Section 46, "Slander is a false and unprivileged publication, orally uttered, . . . which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something

with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;

4. Imputes to him impotence or a want of chastity; or

5. Which, by natural consequence, causes actual damage.

35. In or about August and September of 2016, Defendant LACKEY, on behalf of and through his employment with NDOW, gave wildlife training Presentations to Truckee law enforcement, with the knowledge, consent and encouragement of the other Defendants, whereby LACKEY presented a PowerPoint slide show to the private law enforcement audience misrepresenting both orally and through the written slides that Plaintiff was “soliciting harassment,” that Plaintiff’s wildlife advocacy amounted to “domestic terrorism,” which is a crime, and used both Plaintiff’s name and photos of Plaintiff to make such false statements of fact to Truckee law enforcement.

36. Upon information and belief, over the past year, LACKEY, ROBB and WAKELING have and continue to make defamatory comments regarding Plaintiff to NDOW staff and other third parties, representing that Plaintiff is a “terrorist,” which is a crime, and other derogatory statements, which are untrue, causing Plaintiff humiliation, mortification, embarrassment and damages to his personal and professional reputations and to the non-profit organizations he is associated with.

37. At all times herein, Defendants LACKEY, ROBB and WAKELING knew that Plaintiff is not a

“terrorist” and thus that their statements representing such were false, yet they did and, upon information and belief, maliciously continues to make such factual false statements of fact about Plaintiff to NDOW staff, employees and associates.

38. As a direct result of LACKEY, ROBB and WAKELING’s false statements and representations that Plaintiff is a “terrorist,” Plaintiff has been damaged in an amount in excess of \$25,000, to be determined at trial.

39. In publishing the defamatory statements, LACKEY, ROBB and WAKELING, individually and on behalf of Defendant NDOW, acted maliciously, fraudulently, and with the wrongful intent of injuring Plaintiff. Because LACKEY, ROBB, WAKELING and NDOW acted with an improper motive amounting to fraud and malice with the intent to injure and damage Plaintiff, he is entitled to recover punitive damages from LACKEY, ROBB, WAKELING and NDOW in an amount according to proof.

40. Plaintiff has been required to retain the services of an attorney to prosecute this matter and is entitled to be reimbursed for his attorney’s fees and costs incurred herein.

THIRD CAUSE OF ACTION

(Civil Conspiracy- ALL DEFENDANTS)

41. Plaintiff incorporates by reference herein each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

42. Actionable civil conspiracy consists of three elements: (1) the formation and operation of the

conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct...The conspirators must agree to do some act which is classified as a civil wrong. *Kidron v. Movie Acquisition Corp.*, 40 Cal.App.4th 1571 (1995).

43. Defamation is the intentional publication of a statement of fact which is false, unprivileged, and has a natural tendency to injure or which causes special damage.” *Ringler Associates Inc. v. Maryland Casualty Co.*, 80 Cal.App.4th 1165, 1179, 96 Cal.Rptr.2d 136 (2000).

44. Defendant LACKEY, on behalf of and through his scope of employment with Defendant NDOW, gave a wildlife training Presentations to Truckee law enforcement, whereby LACKEY presented a PowerPoint slide show to the private law enforcement audience which included false statements of fact regarding Plaintiff, specifically that Plaintiff was “soliciting harassment,” that Plaintiff’s wildlife advocacy amounted to “Domestic Terrorism” and used both Plaintiff’s name and image to make and publish such false facts.

45. Plaintiff has not “solicited harassment” and Plaintiff has unequivocally never engaged in domestic terrorism or anything related thereto.

46. Upon information and belief, Defendants ROBB and WAKELING in their capacity as NDOW officials, managers and supervisors, knew and/or reviewed LACKEY’s Presentations prior to its publication to the private Truckee law enforcement training meetings and approved, condoned, allowed and encouraged LACKEY to include such false statements of fact

regarding Plaintiff that he is “soliciting harassment” and engaged in “Domestic Terrorism.”

47. At all times herein, Defendants LACKEY, ROBB, WAKELING and NDOW knew LACKEY’s statements regarding Plaintiff were false, yet they still allowed, condoned and encouraged LACKEY to make such false statements in his Presentations on behalf of NDOW.

48. Upon information and belief, on multiple occasions LACKEY, ROBB and WAKELING have also represented to other NDOW staff and associates the false statement of fact that Plaintiff is a “terrorist.”

49. At all times herein, Defendants LACKEY, ROBB, WAKELING and NDOW knew that Plaintiff is not a “terrorist” and thus that LACKEY and WAKELING’s malicious statements representing such were false, yet Defendants allowed, condoned and encouraged LACKEY, ROBB and WAKELING to make such false and defamatory statements of fact to other NDOW staff, employees and associates and failed to take any action to stop or correct LACKEY, ROBB and WAKELING’s false statements of fact about Plaintiff made by LACKEY, ROBB and WAKELING during the course and scope of their employment with NDOW.

50. Defendant LACKEY’s oral and written misrepresentations and Defendant ROBB’s and WAKELING’s false statements of fact regarding Plaintiff have injured Plaintiff’s reputation both generally and with respect to his businesses and the non-profits he works with.

51. Plaintiff has also suffered substantial emotional distress as a result of the written publishing of the

PowerPoint slides and LACKEY's oral false statements of fact that Plaintiff is engaged in "soliciting harassment," that Plaintiff's involvement with his wildlife advocacy non-profits amounts to the crime of "Domestic Terrorism," and LACKEY, ROBB and WAKELING's false statements that Plaintiff is a "terrorist."

52. As a direct result of Defendants civil conspiracy to defame Plaintiff, Plaintiff has been damaged in an amount in excess of \$25,000, to be determined at trial.

53. In conspiring to defame Plaintiff, Defendants LACKEY, ROBB, WAKELING and NDOW acted maliciously, fraudulently, and with the wrongful intent of injuring Plaintiff. Because Defendants acted with an improper motive amounting to fraud and malice with the intent to injure and damage Plaintiff, he is entitled to recover punitive damages from Defendants in an amount according to proof.

54. Plaintiff has been required to retain the services of an attorney to prosecute this matter and is entitled to be reimbursed for his attorney's fees and costs incurred herein.

FOURTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress-
ALL DEFENDANTS)

55. Plaintiff incorporates by reference herein each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

56. Intentional infliction of emotional distress exists where the defendant engages in extreme and outrageous conduct with the intent of causing, or

reckless disregard of the probability of causing, emotional distress, which actually causes the plaintiff severe or extreme emotional distress. *Hughes v. Pair*, 46 Cal.4th 1035, 1050-1051 (2009).

57. By knowingly publishing derogatory false statements of fact about Plaintiff both in writing and orally and by allowing, condoning, encouraging and conspiring with LACKEY and WAKELING to publish such knowingly false statements of fact to Truckee law enforcement and NDOW staff, employees and associates, Defendants engaged in extreme and outrageous conduct.

58. Upon information and belief, Defendants intentionally engaged in such extreme and outrageous conduct with the express malicious intent of causing Plaintiff severe emotional distress and damages.

59. As a direct result of Defendants conduct set forth herein, Plaintiff has in fact, suffered severe emotional distress including but not limited to insomnia, sleeplessness, loss of appetite, embarrassment, mortification, loss of his personal and professional reputations and other such damages in excess of \$25,000, to be determined at trial.

60. Plaintiff has been required to retain the services of an attorney to prosecute this matter and is entitled to be reimbursed for his attorney's fees and costs incurred herein.

61. Defendants' conduct as herein alleged was malicious and oppressive in that it was carried out by Defendants in a willful and conscious disregard of Plaintiff's rights and subjected him to cruel and unjust ridicule and other damages as set forth herein; and, as

such, Plaintiff is therefore entitled to an award of punitive damages against Defendants.

FIFTH CAUSE OF ACTION

(Interference with Prospective Business Advantage-
ALL DEFENDANTS)

62. Plaintiff incorporates by reference herein each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

63. As a result of Defendants' conduct, specifically the conspiratorial defamatory statements that Plaintiff's wildlife advocacy and his work through his wildlife advocacy non-profits amounts to "Domestic Terrorism" and that Plaintiff is a "terrorist," Plaintiff, individually and his businesses and investments, as well as his respective affiliated non-profits have suffered a loss of reputation and lost compensation in the form of donors who, upon information and belief, have revoked or reconsidered their decision to donate to the non-profits as well as the loss of funding from others who would have donated and financially supported the organizations in the future, but for the rumors and false information disseminated by Defendants as set forth more fully herein.

64. Upon information and belief, Defendants conspired to and did make such false and defamatory statements about Plaintiff with the intent to harm Plaintiff's businesses, investments, and affiliated non-profits and business relationships as Defendants' false and derogatory statements in part directly implicate Plaintiff's wildlife advocacy work in asserting it amounts to "Domestic Terrorism."

65. Due to the damage to Plaintiff's personal and professional reputations as a direct result of being accused of engaging in "Domestic Terrorism" and being a "terrorist," Plaintiff has lost revenue through his two for-profit businesses and has in turn lost personal business income for reasons such as clients are fearful and unwilling to do business with an individual who is alleged to be a "terrorist" and/or involved with "Domestic Terrorism."

66. As a direct and proximate result of Defendants' conduct, Plaintiff, Individually and as Assignee, has suffered significant harm, individually and for loss of non-profit funding and financial support, loss of wages, loss of future income, emotional distress and other related damages in an amount in excess of \$25,000, to be determined at trial and estimated to be in excess of five million dollars (\$5,000,000).

67. Plaintiff has been required to retain the services of an attorney to prosecute this matter and is entitled to be reimbursed for his attorney's fees and costs incurred herein.

68. Defendants' conduct as herein alleged was malicious and oppressive in that it was carried out by Defendants in a willful and conscious disregard of Plaintiff's rights and subjected him to cruel and unjust ridicule and other damages as set forth herein; and, as such, Plaintiff is therefore entitled to an award of punitive damages against Defendants.

SIXTH CAUSE OF ACTION

(Trade Disparagement and Intentional Interference
with Business Relations- ALL DEFENDANTS)

69. Plaintiff incorporates by reference herein each and every allegation contained in paragraphs 1 through 77 as if fully set forth herein.

70. There existed between Plaintiff and numerous long standing third party individuals and businesses of Plaintiff's for profit as well as his affiliated non-profits, valid contractual and/or business relationships and/or valid business expectancy of Plaintiff.

71. Defendants' herein had knowledge of those relationships and expectancies, as they are obvious relationships or expectancies for such wildlife advocacy and consulting businesses, and of which Defendants knew of and were familiar with.

72. By conspiring to and in fact making the false statements of fact as alleged herein, Defendants intentionally interfered with Plaintiff's business and professional relationships and expectancies, thereby directly inducing a disruption, breach or termination of such relationships and expectancies.

73. At all times herein Defendants knew that such derogatory statements about Plaintiff were false.

74. Plaintiff suffered damages in the form of loss of business from contractual and business relationships as well as business expectancies built up over 30 years of doing business, wildlife advocacy and non-profit work. The damage to Plaintiff's reputation is permanent and have caused Plaintiff a loss of earnings,

non-profit funders and financial support and other such damages.

75. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages in an amount in excess of \$25,000, to be determined at trial and estimated to be in excess of five million dollars (\$5,000,000).

76. Plaintiff has been required to retain the services of an attorney to prosecute this matter and is entitled to be reimbursed for his attorney's fees and costs incurred herein.

77. Defendants' conduct as herein alleged was malicious and oppressive in that it was carried out by Defendants in a willful and conscious disregard of Plaintiff's rights and subjected him to cruel and unjust ridicule and other damages as set forth herein; and, as such, Plaintiff is therefore entitled to an award of punitive damages against Defendants

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Individually and as Assignee, prays for judgment against Defendants as follows:

1. For an award of money judgment for mental pain and anguish and severe emotional distress, according to proof;
2. For an award of past and future general damages, according to proof;
3. For an award of past and future special damages, according to proof;

4. Punitive damages, according to proof;
5. For pre-judgment and post-judgment interest as allowed by law;
6. For an award of attorney's fees and costs incurred herein; and
7. For any and all other relief this Court may deem just and proper.

DATED this 13th day of July, 2017.

/s/ Stephanie Rice

STEPHANIE RICE, ESQ. (SBN 277076)

DEL HARDY, ESQ. (SBN 108926)

Attorneys for Plaintiff:

MARK E. SMITH

APPENDIX E

U.S. Const. art. III

Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original

Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

U.S. Const. art. IV

Section 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the

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Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

U.S. Const. amend. XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.