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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

NOV 12 2003



6 Attorneys for Plaintiff Burt Ward

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10 BURT WARD,

11 Plaintiff,

12 vs.

13
14 THE PRESS-ENTERPRISE COMPANY,
15 PAIGE AUSTIN, and DOES 1 through 50,
inclusive,

16 Defendants.

CASE NO. 403072
COMPLAINT FOR LIBEL

DEMAND FOR JURY TRIAL

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1 Plaintiff Burt Ward ("plaintiff"), on information and belief, alleges as follows:
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3 **INTRODUCTION**

4 1a. This is an action for damages based upon an article and a purported "corrective"
5 article published by defendant THE PRESS-ENTERPRISE COMPANY, about plaintiff Burt
6 Ward, an actor, who played Robin, the Boy Wonder, on the 1960's television show "Batman".
7 The Press-Enterprise article, published on April 2, 2003 and written by defendant PAIGE
8 AUSTIN, and the purported "corrective" article, published on May 3, 2003, falsely stated that the
9 Santa Ana Regional Water Quality Control Board ("SARWQCB") had ordered plaintiff Burt
10 Ward to clean up the water runoff from the Great Dane Rescue Center located on his property
11 after samples taken on nearby land owned by the City of Norco contained unacceptable levels of
12 fecal bacteria. The article and the corrective article falsely portrayed plaintiff as a polluter and
13 someone who had acted in violation of criminal environmental laws and governmental
14 regulations.

15 1b. The truth is that plaintiff was never directed or ordered at anytime by any
16 governmental agency, including the SARWQCB, to clean up any alleged water runoff from the
17 Great Dane Rescue Center owned and operated by his wife. The SARWQCB never attributed the
18 high levels of fecal bacteria which it detected to plaintiff or anything located on his property, nor
19 was it possible to do so. No order or directive was ever issued to him, nor was any finding even
20 made that he had violated any law or regulation, or that he was responsible in any way for
21 allowing pollutants of any kind to leave his property.

22 1c. The SARWQCB officials informed The Press-Enterprise newspaper and defendant
23 AUSTIN about the falsity of the article prior to publication and requested that they not publish
24 any article until after the SARWQCB had completed its investigation and made a determination of
25 wrong doing. Further, plaintiff informed PAIGE AUSTIN on the day before the Press-Enterprise
26 published its article that neither plaintiff nor his wife had been contacted by anyone at the
27 SARWQCB, nor had they received any communication, written or verbal, that plaintiff or
28 plaintiff's wife had violated any laws or had done something wrong, or which could be construed

1 inaccurate. Thus, THE PRESS-ENTERPRISE CO. and defendant AUSTIN knew the falsity of
2 the above statement prior to the publication of the article yet proceeded to publish the libelous and
3 defamatory statement anyway.

4
5 11. “Water flows from Ward's property into a small creek that washes into the
6 Santa Ana River, said Milasol Gaslan of the Santa Ana Regional Water Quality Control
7 Board. A sample of that runoff taken in February contained at least 40 times the fecal
8 bacteria level acceptable for such a creek, she said.” The impression a reasonable reader is left
9 with by the above statements, when taken in the entire context of the article, is that the fecal
10 bacteria at levels forty times the acceptable level for a creek was washing off plaintiff's property
11 into a creek which flowed into the Santa Ana River, thereby polluting the river. As stated earlier,
12 there is no small creek located on or near plaintiff's property (including the adjacent City of Norco
13 property) nor is there a creek which connects plaintiff's property to the Santa Ana River. Further,
14 Ms. Gaslan did not state that water from plaintiff's property flows into a creek which washes into
15 the Santa Ana River. Also, the test did not reveal that the runoff was 40 times the “level
16 acceptable” for a creek. It revealed that the runoff was 40 times the level acceptable for fecal
17 bacteria in the Santa Ana River. Ms. Gaslan never said, “A sample of that runoff taken in
18 February contained at least 40 times the fecal bacteria level acceptable for such a creek.” Indeed,
19 prior to the publication of the article, Ms. Gaslan asked The Press-Enterprise not to run the article
20 because it was false by virtue of the fact that the SARWQCB had not completed its investigation
21 of plaintiff and therefore had not issued a directive. In addition, Michael Adackpara, Division
22 Chief of the SARWQCB, also prior to the publication of the article, informed The Press-
23 Enterprise of the falsity of the above statements and asked them not to run the story. Despite
24 actual notice of the statements' falsity, defendant THE PRESS-ENTERPRISE COMPANY
25 published the above statements anyway. This is proof of constitutional malice on defendants'
26 part.

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28 12. “On Tuesday, board officials asked Ward to submit plans to fix the problem or

1 face possible fines or closure. He offered to install a septic tank, a measure that could solve
2 the problem, Gaslan said.” This statement is false because 1) board officials never issued a
3 directive or asked plaintiff to fix the problem or face possible fines and closure; 2) the
4 SARWQCB lacks the authority to order closure of the Great Dane Rescue; 3) plaintiff offered to
5 install a septic tank during a conversation with Michael Roth approximately two months before
6 the publication of the article at a point where Mr. Roth had indicated that there was no violation.
7 At that time, Mr. Roth advised plaintiff that neither he nor his wife were required to take any
8 action unless and until they were informed by the SARWQCB that some action needed to be
9 taken; and 4) the offer to install a septic tank was not done in response to threats of fines or
10 closure by the SARWQCB or in response to any directive or finding by the SARWQCB. No such
11 threats, directives or orders were ever received by plaintiff or his wife. No directive or order was
12 ever issued by the SARWQCB nor has there been any basis for such a directive or order.

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14 will not

RETRACTION DEMANDS

15 13. In fulfillment of California Civil Code section 48a, on April 8, 2003, plaintiff made a
16 demand for correction which was sent to the Executive Editor of The Press-Enterprise by certified
17 mail. The recipient of the 48a notice had actual authority to determine whether and how to
18 respond to requests for correction. Prior to publishing a correction, representatives of defendant
19 The Press-Enterprise informed plaintiff's counsel of the substance of their planned correction.
20 While acknowledging that the SARWQCB never issued a written directive to plaintiff to clean up
21 the water runoff from the Great Dane Rescue Center, The Press-Enterprise newspaper still
22 maintained that a verbal directive was issued to plaintiff by SARWQCB to clean up the water
23 runoff after the SARWQCB concluded that the high fecal bacteria count originated from
24 plaintiff's property. Plaintiff's counsel informed defendant THE PRESS-ENTERPRISE
25 COMPANY of the falsity of these statements in two separate letters dated April 22, 2003 and
26 April 28, 2003. Nonetheless, THE PRESS-ENTERPRISE COMPANY published their
27 "corrective" article entitled "Setting it Straight" on May 23, 2003. (A true and correct copy is
28 attached hereto as Exhibit "B"). The following statements from this article are false and

1 assertions concerning the events surrounding plaintiff's dealings with the Santa Ana Regional
2 Water Quality Control Board and leaves a reasonable reader with the false impression that
3 plaintiff is a polluter and had acted in violation of environmental criminal laws and orders. Below
4 are the statements from the article which are false and which convey the false impression of
5 plaintiff as a polluter.

6 **THE FALSE AND DEFAMATORY STATEMENTS**

7 9. **"DOGS; Fecal bacteria is found in a Norco creek behind land where Burt Ward**
8 **keeps Great Danes.**" The article states that fecal material was found in a Norco creek behind
9 land where Burt Ward keeps Great Danes. The clear implication of this statement and the
10 impression it gives a reasonable reader is that fecal material from Great Danes living on plaintiff's
11 property contaminated a creek located on plaintiff's property. This is false in several respects.
12 First, no fecal material was detected on plaintiff's property. The lone water test that was
13 conducted took place on February 25, 2003 on land owned by the City of Norco. Second, no
14 determination has ever been made by anyone that the fecal bacteria in question was the result of
15 dog excrement, let alone dogs found on plaintiff's property or anything else originating from
16 plaintiff's property. Indeed, the fecal bacteria could have resulted from any kind of animal,
17 including horses and coyotes which are known to travel in the area where the test was taken. The
18 area where the test was taken includes runoff from several sources, including other neighbors'
19 property. Thus, there is and was no way to determine, nor has it been determined, that any fecal
20 bacteria found originated from plaintiff's property. Finally, there is simply no creek on or near
21 the property where the test was conducted.

22
23 10. **"The Santa Ana Regional Water Quality Control Board on Tuesday directed**
24 **Burt Ward to clean up the water runoff from his Great Dane Rescue Center after samples**
25 **taken contained unacceptable levels of fecal bacteria.**" The article falsely states that plaintiff
26 was directed by the SARWQCB on "Tuesday"(April 1, 2003) to clean up the water runoff from
27 his Great Dane Rescue Center after samples taken contained unacceptable levels of fecal bacteria
28 and states that the reason for the "directive" is a finding that fecal bacteria from plaintiff's

1 property was in violation of the law. Neither Plaintiff, nor his wife who actually owns the land
2 and the dog rescue, ever received a directive or order from the SARWQCB, on that day or any
3 other day, to take any steps regarding runoff from the Great Dane Rescue. The true events are as
4 follows:

5 a) In response to a complaint from a neighbor, Michael Roth from the SARWQCB
6 visited plaintiff's property on Friday, February 7, 2003 to determine whether runoff from the
7 Great Dane Rescue was leaving plaintiff's property onto adjacent land. During the February 7,
8 2003 visit, Mr. Roth concluded that no violation had taken place and that any runoff from the
9 rescue was being contained entirely on plaintiff's property. At this time, Plaintiff and his wife
10 offered to connect a drain pipe to a septic tank to eliminate any theoretical possibility of any
11 problem emanating from the property, even though they had no responsibility to do so. Mr. Roth
12 informed plaintiff that this might not be necessary and that plaintiff did not need to do anything
13 until it was officially determined that something needed to be done.

14 b) After Mr. Roth's February 7, 2003 to plaintiff's residence, there was no
15 communication, written or oral, from the SARWQCB to plaintiff or to his wife prior to The Press-
16 Enterprise notifying plaintiff on April 1, 2003 of the alleged directive issued by the SARWQCB.
17 On February 25, 2003, at the urging of the same neighbor who made the previous complaint,
18 Michael Roth returned to plaintiff's residence but plaintiff was not home and Mr. Roth had no
19 access to his property. Mr. Roth then walked approximately 300 feet away from plaintiff's
20 property and collected water samples from land owned by the city of Norco adjacent to the front
21 portion of plaintiff's property. The area where he collected the sample contained runoff from
22 several sources, including runoff from other neighbors, mixed together. The area where the
23 sample was taken is also traversed by coyotes and horses. Thus, it was impossible to tell from the
24 sample he collected what source was responsible for the elevated levels of fecal material.

25 c) Further, two officials from the SARWQCB had told The Press-Enterprise newspaper,
26 including the author of the article defendant PAIGE AUSTIN, before it published the article that
27 no directive was issued and that a directive may never be issued regarding runoff from the Great
28 Dane Rescue and that the paper should not publish the story it intended to run because it was

1 inaccurate. Thus, THE PRESS-ENTERPRISE CO. and defendant AUSTIN knew the falsity of
2 the above statement prior to the publication of the article yet proceeded to publish the libelous and
3 defamatory statement anyway.

4
5 11. “Water flows from Ward's property into a small creek that washes into the
6 Santa Ana River, said Milasol Gaslan of the Santa Ana Regional Water Quality Control
7 Board. A sample of that runoff taken in February contained at least 40 times the fecal
8 bacteria level acceptable for such a creek, she said.” The impression a reasonable reader is left
9 with by the above statements, when taken in the entire context of the article, is that the fecal
10 bacteria at levels forty times the acceptable level for a creek was washing off plaintiff's property
11 into a creek which flowed into the Santa Ana River, thereby polluting the river. As stated earlier,
12 there is no small creek located on or near plaintiff's property (including the adjacent City of Norco
13 property) nor is there a creek which connects plaintiff's property to the Santa Ana River. Further,
14 Ms. Gaslan did not state that water from plaintiff's property flows into a creek which washes into
15 the Santa Ana River. Also, the test did not reveal that the runoff was 40 times the “level
16 acceptable” for a creek. It revealed that the runoff was 40 times the level acceptable for fecal
17 bacteria in the Santa Ana River. Ms. Gaslan never said, “A sample of that runoff taken in
18 February contained at least 40 times the fecal bacteria level acceptable for such a creek.” Indeed,
19 prior to the publication of the article, Ms. Gaslan asked The Press-Enterprise not to run the article
20 because it was false by virtue of the fact that the SARWQCB had not completed its investigation
21 of plaintiff and therefore had not issued a directive. In addition, Michael Adackpara, Division
22 Chief of the SARWQCB, also prior to the publication of the article, informed The Press-
23 Enterprise of the falsity of the above statements and asked them not to run the story. Despite
24 actual notice of the statements' falsity, defendant THE PRESS-ENTERPRISE COMPANY
25 published the above statements anyway. This is proof of constitutional malice on defendants'
26 part.

27
28 12. “On Tuesday, board officials asked Ward to submit plans to fix the problem or

1 face possible fines or closure. He offered to install a septic tank, a measure that could solve
2 the problem, Gaslan said.” This statement is false because 1) board officials never issued a
3 directive or asked plaintiff to fix the problem or face possible fines and closure; 2) the
4 SARWQCB lacks the authority to order closure of the Great Dane Rescue; 3) plaintiff offered to
5 install a septic tank during a conversation with Michael Roth approximately two months before
6 the publication of the article at a point where Mr. Roth had indicated that there was no violation.
7 At that time, Mr. Roth advised plaintiff that neither he nor his wife were required to take any
8 action unless and until they were informed by the SARWQCB that some action needed to be
9 taken; and 4) the offer to install a septic tank was not done in response to threats of fines or
10 closure by the SARWQCB or in response to any directive or finding by the SARWQCB. No such
11 threats, directives or orders were ever received by plaintiff or his wife. No directive or order was
12 ever issued by the SARWQCB nor has there been any basis for such a directive or order.

13 14 RETRACTION DEMANDS

15 13. In fulfillment of California Civil Code section 48a, on April 8, 2003, plaintiff made a
16 demand for correction which was sent to the Executive Editor of The Press-Enterprise by certified
17 mail. The recipient of the 48a notice had actual authority to determine whether and how to
18 respond to requests for correction. Prior to publishing a correction, representatives of defendant
19 The Press-Enterprise informed plaintiff's counsel of the substance of their planned correction.
20 While acknowledging that the SARWQCB never issued a written directive to plaintiff to clean up
21 the water runoff from the Great Dane Rescue Center, The Press-Enterprise newspaper still
22 maintained that a verbal directive was issued to plaintiff by SARWQCB to clean up the water
23 runoff after the SARWQCB concluded that the high fecal bacteria count originated from
24 plaintiff's property. Plaintiff's counsel informed defendant THE PRESS-ENTERPRISE
25 COMPANY of the falsity of these statements in two separate letters dated April 22, 2003 and
26 April 28, 2003. Nonetheless, THE PRESS-ENTERPRISE COMPANY published their
27 "corrective" article entitled "Setting it Straight" on May 23, 2003. (A true and correct copy is
28 attached hereto as Exhibit "B"). The following statements from this article are false and

1 defendant The Press-Enterprise knew the falsity of these statements prior to publication:

- 2 a) The story did not allude to any written document (this refers to The Press-
3 Enterprises' contention that their April 2, 2003 article did not allude to a written
4 directive or document asking plaintiff to clean the runoff);
5 b) Agency officials advised Ward,, in a verbal directive that runoff from the
6 kennel contributed to an abnormally high fecal bacteria count and that steps had
7 to be taken to mitigate that condition.

8 First, the April 2, 2003 article did allude to a written document because a reasonable reader of the
9 article would have believed that a written document of some sort had been issued to plaintiff
10 directing him to clean up the runoff. Second, no verbal directive was ever issued to plaintiff that
11 runoff from the Kennel contributed to an abnormally high fecal bacteria count and that steps had
12 to be taken to mitigate the condition. Indeed, subsequent to the publication of the April 2, 2003
13 article and prior to the publication of the "corrective" article, Michael Adackpara of the
14 SARWQCB again clarified to Defendant AUSTIN that no order or directive of any type had been
15 issued to plaintiff. Further, as stated above, it was impossible to determine from the test
16 conducted by Roth whether runoff from plaintiff's property contributed to the elevated levels of
17 fecal bacteria. The "corrective" article therefore failed to mitigate the damages caused by the
18 April 2, 2003 article and instead caused new and separate injuries to plaintiff.

19
20 14. In fulfillment of California Civil Code section 48a, plaintiff's counsel sent THE
21 PRESS-ENTERPRISE COMPANY a Demand for Correction of the article "Setting it Straight"
22 on May 23, 2003 by certified mail. The recipient of the 48a notice had actual authority to
23 determine whether and how to respond to requests for correction. Defendant THE PRESS-
24 ENTERPRISE COMPANY to date has still not published a correction or retraction of this article.

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26 15. Each of the statements set forth in Paragraphs 9-13 above in the April 2, 2003 article
27 and May 3, 2003 "corrective" article and the articles as a whole are false and constitute libel per
28 se or are actionable, as plaintiff has suffered special damages as a proximate result thereof. The

1 statements set forth in Paragraphs 9-13 are the type that would expose an individual like plaintiff
2 to hatred, contempt, ridicule, and obloquy, as well as cause the individual to be shunned and
3 avoided, and injure his occupation.

4
5 16. Each of the statements set forth in Paragraphs 9-13 above in the April 2, 2003 article
6 and May 3, 2003 "corrective" article and the articles as a whole were defamatory and they were so
7 understood by the readers of the article. The statements set forth in Paragraphs 9-13 are the type
8 that would expose an individual like plaintiff to hatred, contempt, ridicule, and obloquy, as well as
9 cause the individual to be shunned and avoided, and injure his occupation.

10
11 17. Defendants THE PRESS-ENTERPRISE COMPANY and AUSTIN falsely and
12 maliciously published the libelous words set forth above and the articles as a whole, thereby
13 meaning and wishing to have it understood that plaintiff was a polluter.

14
15 18. At the time of publication, defendants THE PRESS-ENTERPRISE COMPANY, and
16 AUSTIN knew the article and "corrective" article described above were false or were substantially
17 likely to be false. Defendant published with knowledge of the articles' falsity or with reckless
18 disregard for the truth.

19
20 19. Defendant THE PRESS-ENTERPRISE COMPANY and AUSTIN published the
21 Article with actual malice as defined in California Civil Code Section 48a, common law malice
22 and constitutional malice. Defendants also published the articles with the knowledge that the
23 information contained therein would likely be widely disseminated throughout the world. Indeed,
24 defendants are responsible for the mass dissemination of the false information that plaintiff is a
25 polluter. After publication of articles, other news services throughout the world, including
26 television, radio, newspapers, and the internet, reported the false statements contained in THE
27 PRESS ENTERPRISE COMPANY's articles.

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1 20. At the time of publication, defendants THE PRESS-ENTERPRISE COMPANY and
2 AUSTIN knew that the publication of the aforementioned articles would severely affect plaintiff's
3 reputation and his businesses.

4
5 21. As a direct result of defendants' acts and omissions, plaintiff has suffered both special
6 and general damages, including injury to his reputation and business, emotional distress, mental
7 anguish, and humiliation. He has been ridiculed in his professional capacity and has become the
8 subject of hatred, ridicule, contempt, and obloquy.

9
10 22. Defendants THE-PRESS ENTERPRISE COMPANY and AUSTIN acted with
11 reckless, willful or callous disregard for plaintiff's rights and with malice, fraud or oppression
12 toward plaintiff, thereby entitling plaintiff to an award of punitive damages.

13
14 **FIRST CAUSE OF ACTION**

15 (LIBEL)

16 (AGAINST ALL DEFENDANTS)

17
18 23. Plaintiffs reallege and incorporate by reference each and every allegation contained in
19 paragraphs 1 to 22 as though fully set forth herein.

20
21 24. Defendants published the aforementioned articles and "corrective" article, which
22 contained, directly or by clear implication, false factual statements of and concerning plaintiff.

23
24 25. Defendants published the defamatory articles and "corrective" article with
25 constitutional malice in that defendants knew that the statements were false or acted with reckless
26 disregard for the truth. The statements were made with a high degree of awareness of their
27 probable falsity.

28 26. As alleged above and in accordance with California Civil Code section 48a,

1 defendants received notice of the libelous statements and a demand for correction within twenty
2 days after knowledge of the publication. In addition, plaintiff suffered special damages as a result
3 of the false statements in the articles and "corrective" article.

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5 27. Defendants failed to correct the false statements adequately.

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7 28. Plaintiff is entitled to general damages for his loss of reputation, shame, mortification,
8 hurt feelings and emotional distress in accordance with proof at trial.

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10 29. Plaintiff is entitled to special damages for the damage done to his property, business,
11 trade, profession or occupation, including amounts of money plaintiff expended as a result of the
12 defendants' defamatory statements and assertions.

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14 30. As a direct result of defendants' wrongful acts, plaintiff has suffered emotional
15 distress and other damage in an amount to be proven at trial.

16

17 31. Defendants acted with reckless, willful or callous disregard for plaintiff's rights and
18 with malice, fraud or oppression toward plaintiff, thereby entitling plaintiff to an award of
19 punitive damages in accordance with proof at trial.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff requests judgment against defendants as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For exemplary and/or punitive damages;
4. For plaintiff's cost of suit; and
5. For such other relief as the court may deem just and proper.

Dated: November 11, 2003

SCHONBRUN DeSIMONE SEPLOW
HARRIS & HOFFMAN LLP

By: 
Paul L. Hoffman
Attorneys for Plaintiff
Burt Ward

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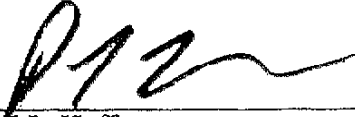
DEMAND FOR JURY TRIAL

Plaintiff Burt Ward hereby demands a trial by jury on all claims.

Dated: November 11, 2003

SCHONBRUN DESIMONE SEPLOW
HARRIS & HOFFMAN LLP

By: _____


Paul L. Hoffman
Attorneys for Plaintiff
Burt Ward

