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April 8, 2024

NOTICE OF CLAIM
A.R.S. § 12-821.01



Via Personal Service

Tami Mayes, City Clerk
City of Cottonwood
824 N. Main St.
Cottonwood, AZ 86326
(928) 340-2725

Tim Elinski, Mayor



Jenny Winkler



Scotty Douglass, City Manager



Amanda Wilber



Re: *Palosaari v. City of Cottonwood, a municipal corporation, Tim Elinski, Scotty Douglass, Amanda Wilber, and Jenny Winkler, in their official and personal capacities*

To Whom it May Concern:

I represent Derek Palosaari and Gail Palosaari regarding a coordinated character assassination of Derek that took place between city council members and employees of the City of Cottonwood.

This coordinated attack on Derek's character was evidenced in an attempt to pass a defamatory resolution "condemning" his "conduct" toward city employees. Except Derek was never formally accused or put on adequate notice of any such conduct toward city employees before this resolution was put forth, and vehemently denies that he has ever been untoward with any city employees or violated any ordinance, code or statute as to any conduct. Nonetheless, the foregoing persons chose to advance false and/or highly misleading statements about Derek's character that placed him in a false light, or were simply false as



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 2 of 9

portrayed, severely ruining his personal reputation and standing, and causing serious damage to his and his wife's income and well-being. The resolution, and acts that led to it, were also malicious and done to clearly cause harm, done in concert and conspiracy with one another either intentionally or recklessly in conscious disregard of the harm caused thereby.

This defamatory resolution stems from a city holiday party on December 8, 2023. What truly happened was that Derek was joking with a female city employee who was, or at least he then thought, a friend with whom he had worked to find a home, and to whom he and his wife had actually loaned money in order to close on the home, without seeking repayment. After that, he and his wife had socialized with the woman and her husband. In response to a comment made by the woman, Derek made a comment about her appearance that was clearly in jest to someone he thought was his personal friend; and the comment he made was in a joking manner and not intended to cause offense. Nevertheless, it was apparent that the woman saw it differently and was offended. Derek apologized for any offense immediately, and later fully admitted to the comment, but that it was not intended in any way to be harassment whatsoever.

This same personal friend and alleged victim did not even request for Derek to leave the function, when asked, showing she was never actually intimidated or harassed in any way. Yet, she was then used to blow the situation entirely out of proportion by the persons set out above, for ulterior purposes. Apparently, some form of investigation was done seeking out other employees in the city who had never complained about Derek, or about being sexually harassed in any way. A detailed reading of this report reveals the weak and hyperbolic subjectivism of the accounts given.

During the party, the city attorney, Jenny Winkler, and Derek met one-on-one to discuss the incident. Derek was happy to do so because he had done nothing wrongful except perhaps make a bad joke. However, he again apologized for the minor incident and said it would not happen again. Ms. Winkler advised Derek that she would be seeking legal advice and assistance from outside counsel about the matter, but never explained why she needed to do so, or why she felt prompted to do this, nor did she ever advise him of just what the advice was. It is not known whether she actually sought any such advice either. It was at this point that Derek



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 3 of 9

informed her that he would be seeking legal counsel himself because he vehemently denied any wrongdoing, and objected to the matter being used to pursue some other end or aim.

Around this time, the so-called “investigation” occurred, including the city manager as well. Why such an “investigation” was expanded to seek out other city employees to broaden the scope of this incident is unknown, but it was not warranted, and would only seek to encourage others seeking favor to “pile on.” This activity is questioned as it is unnecessary to investigate this incident.

No similar incident had ever been reported here. After casting this wide net to find some reason to pursue Mr. Palosaari, Ms. Winkler also told him that he was prohibited from entering non-public spaces where City employees work. No one explained to Derek why he was being banned from non-public spaces at the city, who exactly had decreed such, or why it was necessary. Such a prohibition of our client’s rights as a City Councilman seems unprecedented and entirely unfair and unjust, and he was deprived this right by some unknown process he did not participate in.

Perhaps worse than that, the above-named city employees and council members then attempted to pass a defamatory resolution published on the city website for all to see, soon after the party, which stated that Derek admitted to sexual harassment and prohibited conduct. That is not true at all. He never admitted that the joking comment made to what he thought was a friend, was sexual harassment or prohibited conduct. He merely apologized for any offense taken by that “friend” and city employee. Verde Valley news outlets caught wind of this and later repeated this lie that Derek admitted to sexual harassment.¹ Nothing of the sort is true, but it was published anyway with the help and encouragement of a defamatory resolution conducted with no due process and without a fair hearing. It further concluded: “Council Member Derek Palosaari has engaged in inappropriate conduct toward female employees that may violate state and federal law, the laws of the City of Cottonwood, and his oath of office.” No reason for this highly

¹ [Investigation details the sexual harassment of numerous female city staffers by Cottonwood City Councilman Derek Palosaari - Sedona Red Rock News](#)



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 4 of 9

damaging and defamatory comment sent out as official business of the City was included, let alone just what potential laws Derek “may” be in violation of or why. No hearing or other process occurred to notify Derek of any other alleged inappropriate behavior claimed. Yet, it was published nonetheless in a rush to attack our client’s character, and it succeeded in doing so, unfortunately. It was a complete “hatchet” job designed by the above-named persons to maliciously cause unnecessary harm and damage to a sitting elected official.

The resolution also incredibly went even further, stating: “[C]ouncil Member Palosaari’s behavior toward female employees is indecent, immoral, and in the opinion of this Mayor and Council, demonstrates that he is unfit to hold office.” It was posted December 18, 2023, to the general public, again, without any due process afforded for such libelous and defamatory remarks.² At no point in time was any of this content from this resolution provided to Derek before it was published, nor was he given any opportunity as a sitting councilman to respond and address it, and he maintains that he has never been on notice of such allegations that resemble a “pattern of behavior” falsely asserted as to female city employees. These comments were unnecessary, defamatory per se, and went directly to his fitness for his position and work as an elected councilman. As such, damage is presumed.

As far as Derek is concerned, he had never even seen any sort of investigative report, but even if he did, he was never given any kind of due process related to responding fully to the events claimed therein before the persons that drafted the Resolution defamed him. Derek calls into question this entire process, and those who made the decision to expand it and to defame him, as well as the so called “investigation” itself, and will endeavor to determine others that may have also been a part of the conspiracy to defame him and to politically seek to end his career in public service.

The Resolution published on the city website further stated: “[C]ouncil

² A news article was published reflecting this as well. [Resolution condemns councilman for conduct toward female employees | The Verde Independent | Cottonwood, AZ \(verdenews.com\)](#)



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 5 of 9

Member Palosaari approached a female employee, grabbed her by both shoulders, pulled her close to him, and made an inappropriate comment about her breasts.” Derek vehemently denied such events as stated ever happened—he only admitted he told a joke to a friend, after she herself had made comments about her breasts, which is the extent of the “conduct” he admitted to, and immediately apologized for to the extent it was taken in any other way than as a joke. It did not call for or warrant the defamation to his character, nor call for the expansion of this matter to cast a wide net over his “fitness” to sit as a Councilman. It was handled in a purposeful way so as to destroy his character and fitness to sit for reasons having nothing to do with the incident, which was wrongfully used as a pretext to do so.

The Resolution also said: “[T]he employee freed herself from Council Member Palosaari’s grip and walked away. The employee’s husband was with her, witnessed this exchange, and immediately reported it to the City’s Human Resources Director. Council Member Palosaari admitted his conduct to the employee’s husband, the Human Resources Director, the City Attorney, and the City Manager...” However, despite this, Derek denies that he admitted anything to anyone (including the woman’s husband) about this incident other than the fact he obviously told what was intended solely in a joking manner to a friend that she simply mistook, and he thus apologized for any unintended offense taken. He never admitted that he had any kind of “grip” on the woman and did not admit to any kind of sexual harassment.

On December 19, 2023, the Cottonwood city council failed to approve the Resolution condemning Derek’s conduct towards female employees of the city by a 3-3 vote. No copies of any kind of investigation report were provided to members voting on the resolution. Some of the council members at the time agreed with each other that they should not be voting on something without any information to review. Unfortunately, the damage had been done.

The investigation “report” was only provided to Council Members after a Council Member made a request for the report and was provided a few days after the defamatory resolution was voted on without any kind of executive session taking place. However, the report was somehow provided to Verde Valley journalists in an obvious attempt to get them to publish the findings from the report. All of the findings of Derek’s alleged “conduct” toward city employees were



April 8, 2024
Page 6 of 9

undated and vague, and no names were released of individuals who claim to have been victimized somehow by Derek in some way, but who never lodged any complaint about it to either him or the City, because their claims would be immediately challenged. However, they get to hide behind anonymity—my client's reputation, on the other hand, has been ruined forever. Derek vehemently denies any sexual harassment intended as to any city employee, or that is claimed to have occurred. The persons above nonetheless strained to damage Derek as a member of council, and to declare him unfit for office for reasons that have nothing to do with him being any danger whatsoever to any employee or the City. The City was not protecting itself from any liability, but was instead causing it.

I. LIABILITY

A. Defamation

The resolution is littered with defamatory smears but was intentionally, or at the very least recklessly, published anyway. Defamatory comments about Derek were published to the public and at the December 19, 2023, City Council meeting before voting on the resolution ever took place. Rather than handling the matter in an Executive Session to the extent the persons above believed there was some liability issue to the City, which was not then known to be an issue, these persons conspired to destroy my client's reputation and livelihood and participation as an elected official for malicious reasons. Arizona courts have also ruled that statements made during the course of a public hearing may be liable for defamation. *Burns v. Davis*, 196 Ariz. 155, 164 ¶ 36 (App. 1999). This can include public officials as well.

B. Intentional infliction of emotional distress

The City helped to publish a conclusory resolution, which was not officially adopted, that stated Derek admitted to sexual harassment, committed it, was despicable, and which made him unfit for office, and which was known to be reprinted by Verde Valley journalists to harm our client and his wife. Intentional infliction of emotional distress occurs when a person performs acts that are extreme and outrageous with the intent to cause emotional distress and resulting in severe emotional distress. *Ford v. Revlon*, 734 P.2d 580 (Ariz. 1987). As could be



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 7 of 9

expected, this attack on our client's character has had severe effects on his life, his and his wife's loss of their jobs, and ability to function and make a living.

C. False light

The tort of false light invasion of privacy occurs when a person gives publicity to a matter concerning another that places the other before the public in a false light, the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Restatement (Second) of Torts § 652(E). The resolution involving Derek is a total misrepresentation of what occurred, but it was published anyway along with conclusions never formally adopted by the Council, and in fact, later rejected by it as a whole.

D. 42 U.S.C. § 1983

The City discriminated against my clients and violated Derek's equal protection rights when they attempted to demote him from, and interfere with, his position as a City councilman over a defamatory resolution. Furthermore, the City's 1) banning of Derek from entering non-public City spaces where City employees work, and 2) the City's publishing of a defamatory resolution of him to the public, all without affording him the opportunity for an evidentiary hearing prior to these events taking place, violated his fundamental, Constitutional requirement of due process. Derek was also subjected to a public hearing where no evidence or "investigation" reports were ever presented to the City council. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1971).

II. DAMAGES

The emotional toll that this has taken on Derek's life and reputation has been extensive. This has affected his family and his profession as both a city council member and a realtor.

Derek has been on the front page of both local newspapers weekly, several times. Social media has been bashing him, and other real estate agents are using



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 8 of 9

him as an example of sexual harassment. This has been an assassination on his character and who he is as a person. You as the mayor, along with the others have used your official position to completely destroy my client's livelihood, public office and reputation maliciously and wantonly and intentionally. Derek will forever be affected by the false and unprecedented things printed about him and caused by you and these other individuals. If you Google Derek's name, you will see all the accusations and other character-smearing articles that occurred and were intended by you and those others above.

Derek's own employer severed his real estate license with him. His wife also lost work over this. No agency in Cottonwood will take Derek's phone calls now that his reputation is in the gutter.

Derek rarely leaves his home now, due to the looks and comments from people he does not even know. Derek has severe anxiety that he has never had before. He has a fear of those around him, and what they may be thinking, or trying to do to him, and his confidence and bright demeanor have reached an all-time low. He cannot sleep as well as he once did, he has lost an unhealthy amount of weight, and his own family relationships have become strained over this ordeal.

There is currently a recall effort to remove Derek from office initiated by Cottonwood residents only after the journalistic hit pieces on him were published and caused by the conduct of the above-named individuals and perhaps others not yet known who participated in this conspiracy to take a simple misunderstanding and attempt to convert it into an overblown drama.

Derek's wife, Gail Bissel Palosaari, is in the mortgage industry, and works closely with real estate agents in the Verde Valley. She has not received one phone call or referral since December, when these events first happened, as she is clearly being lumped into these events through guilt by association.

Not only have both of my clients lost income because of this situation, but it will cost tens of thousands of dollars to try to remove Derek's name from internet searches related to these salacious articles alone.



WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

April 8, 2024
Page 9 of 9

Derek has raised 3 daughters and is a great father to them. This entire process has hurt that relationship because he is very aware that others may be doubtful of him in some way given what has happened. In fact, he is the legal guardian to one of his daughters, and her primary caregiver. The harm to his income has caused him great concern in this regard. He is a great friend and protector of women, not some kind of predator that a choice few have attempted to make him out to be. Derek grew up in Cottonwood, and for the past 50 years had enjoyed a good reputation and life. Now, his reputation has been totally soiled in the matter of a few days.

III. CONCLUSION AND DEMAND

If this suit were to go to trial, we would expect a verdict for Derek and not only a significant award for actual damages, but for punitive damages to deter such conduct by you and the others in the future. Derek and Gail are beloved family members and community members who have dedicated their lives and careers to service and helping those around them. Derek has served as a council member to help his community. The anguish Derek has had to endure related to this ridiculous ordeal and coordinated media smears over the last several months will be obvious to anyone.

In order to satisfy the “sum certain” requirement of A.R.S. § 12-821.01, my clients hereby demand \$2,000,000.00 for settlement of their defamation, false light, and intentional infliction of emotional distress claims. This demand shall remain open pursuant to the requirements of the statute.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dennis I. Wilenchik', written in a cursive style.

Dennis I. Wilenchik, Esq.

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