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Plaintiff Pro Se

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

BARRY L. PLOTKIN,

Plaintiff,

vs.

“THE ASTORIAN;” EO MEDIA GROUP;
KARI BORGEN; STEVEN FORRESTER;
FLOYD E. HOLCOM; “FLOYD FOR
ASTORIA;” THOMAS A. HILTON;

Defendants.

Case No.: 3:20-cv-1865 SB

COMPLAINT

Violation of: First and Fourteenth
Amendments of the Constitution of the
United States; 42 U.S.C. Section 1983

DEMAND FOR JURY TRIAL

I.

COMPLAINT

Plaintiff brings this Complaint against Defendants and their employees, agents, and successors, alleging, on information and belief, that, on or about October 26, 2020, Defendants, individually, severally, or as a group, willfully conspired, collaborated, or otherwise agreed to force Plaintiff, in violation of Plaintiff’s rights under the First Amendment of the Constitution of the United States, to withdraw from publication a political advertisement that Plaintiff had placed, and paid for, in “The Astorian” and its related publications.

II.
JURISDICTION

1. Jurisdiction is conferred upon this Court pursuant to 28 USC Section 1331 in that the claim alleged herein arise under the laws of the United States.

III.
VENUE

2. Venue is proper pursuant to 28 USC Section 139 (b) because the claims alleged herein arose in this district, and all parties reside in this district.

IV.
PARTIES

3. Plaintiff Barry L. Plotkin (“Plaintiff”) is a United States citizen, currently residing in Clatsop County, Oregon.
4. Defendant Keri Borgen (“Ms. Borgen”) is a United States citizen, currently residing in Clatsop County, Oregon.
5. Ms. Borgen is employed as the Publisher of “The Daily Astorian,” a newspaper also known as “The Astorian,” which has its offices located in Clatsop County, Oregon.
6. “The Daily Astorian” is a business organized under the laws of the State of Oregon.
7. “The Daily Astorian” is owned or controlled by, or is a subsidiary of, EO Media Group, a business organized under the laws of the State of Oregon.
8. Defendant Steven Forrester (“Mr. Forrester”) is a United States citizen, whose principal residence is in the State Oregon.
9. Mr. Forrester is employed as the Chief Executive Officer of the EO Media Group, which is a business organized under the laws of the State of Oregon.
10. Mr. Forrester is also a part-owner of the EO Media Group.

11. Defendant Floyd E. Holcom (“Mr. Holcom”) is a United States citizen, currently residing in Clatsop County, Oregon.
12. Mr. Holcom is a 2020 General Election candidate for City Councilor to represent Ward 2 in the City of Astoria, Oregon.
13. Defendant “Floyd for Astoria” is a Committee organized and registered under the laws of the State of Oregon to promote the candidacy of Mr. Holcom; its principal office is located in Clatsop County, Oregon.
14. Defendant Thomas A. Hilton (“Mr. Hilton”) is a United States citizen, currently residing in Clatsop County, Oregon.
15. Mr. Hilton is a 2020 General Election candidate for City Councilor to represent Ward 4 in the City of Astoria, Oregon.

V.

FACTUAL ALLEGATIONS

16. On or about October 21, 2020, Plaintiff made arrangements with a representative (“the Representative”) of the Advertising Department of “The Daily Astorian” to run a political advertisement (“the Ad”), for which Plaintiff paid the required fee as quoted.
17. The specific content of the Ad was “Reject Holcom and Hilton.”
18. The Representative designed the Ad as drafted by Plaintiff and added a phrase something like “Paid Advertisement,” which the Representative stated would conform to Oregon law and the policy of the newspaper.
19. The Ad then ran on the schedule agreed to by Plaintiff and the Representative.
20. On or about October 26, 2020, after the Ad had run, Plaintiff was informed by the Representative that the Ad was going to be withdrawn, effective immediately, *per* the order of the head of the Advertising Department.

21. The Advertising Department of “The Daily Astorian” is separate from the news and editorial departments; the head of the Advertising Department Astor reports to Ms. Borgen.
22. When Plaintiff inquired of the Representative to explain the reasoning which mandated the withdrawal of the Ad, the Representative replied that Mr. Holcom had objected.
23. Plaintiff then wrote an e-mail message to Ms. Borgen requesting further elucidation along with confirmation of the information provided by the Representative that the Ad was going to be withdrawn, effective immediately.
24. Ms. Borgen responded to Plaintiff’s e-mail message as follows: “... We would be glad to publish your ad as long as it meets the requirements of our political advertising policy, attached. ...”
25. The requirement that Ms. Borgen referred to in paragraph #24 above was that the policy of “The Daily Astorian” was “...Political advertising will include the name and address and/or phone number of the purchaser ... “
26. Plaintiff responded to Ms. Borgen with a citation of <https://www.doj.state.or.us/wp-content/uploads/2017/06/op8266.pdf> which is an Opinion rendered by the Attorney General of the State of Oregon that such a requirement was a violation of law in the State of Oregon as well as a violation of the First Amendment of the Constitution of the United States, to which the laws of the State of Oregon conformed.
27. Plaintiff then sought further discussion by e-mail with Ms. Borgen, to which Ms. Borgen did not reply.
28. On October 28, 2020, after Plaintiff confirmed that, in fact, the Ad had been withdrawn, Plaintiff informed Ms. Borgen of his intent to file this lawsuit; again, Ms. Borgen failed to respond.

VI.

CLAIM FOR RELIEF

(United States Constitution – 1st, 14th Amendments; 42 U.S.C. 1983)

29. Paragraphs #1 - #28 are hereby incorporated by reference.
30. In effect, as outlined in the foregoing paragraphs, Defendants, through their concerted or individual actions, denied Plaintiff his Constitutional and lawful right to freedom of expression.
31. Pursuant to clearly established First Amendment jurisprudence, the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.
32. Furthermore, Defendants have deprived Plaintiff of his right to engage in protected speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.
33. Plaintiff was subject to intentional violation of the First Amendment of the United States Constitution, as further interpreted by the Attorney General of the State of Oregon in Opinion # 8266, dated March 10, 1999, and directed to the Director of the Elections Division in the Office of the Oregon Secretary of State, which stated, in part, that anonymous political advertising in print may not be prohibited.
34. Plaintiff experienced not only the loss of the opportunity, which was within his rights, to express freely his opinion about a matter in a public election, but also significant pain and suffering due to the humiliation and intimidation that resulted as a consequence of Defendants' actions.

35. THEREFORE, Plaintiff is entitled to recovery of non-economic damages in an amount not less than two-hundred-fifty-thousand dollars (\$250,000.00).

PRAYER FOR RELIEF

WHEREFORE, in light of all the foregoing, Plaintiff prays that this Court:

- i) assumes jurisdiction over this matter;
- ii) awards Plaintiff non-economic damages in an amount of not less than two-hundred-fifty-thousand dollars (\$250,000.00) or such other amount as to be proven at trial;
- iii) awards Plaintiff his reasonable fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- iv) awards Plaintiff any other relief as this Court deems just and equitable.

Respectfully submitted on this 29th day of October, 2020.

By /s/ Barry L. Plotkin

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