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FILED
Los Angeles Superior Court

JAN 04 2013

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

5 Attorneys for PAT SOLEY
parent of, and guardian ad litem for
6 BENJAMIN NEIL SOLEY, a minor
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
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11 LEE CAPLIN, guardian ad litem for MINOR
CHILD; GITA CAPLIN, an individual; LEE
12 CAPLIN, an individual,

CASE NO.: BC332406

Judge: Honorable Ernest M. Hiroshige
Department : 54

13 Plaintiffs,

Hearing Date: January 24, 2013
Time: 8:30 a.m.

14 vs.

15 TERRY AND PAT SOLEY, parents of, and
guardian ad litem for BENJAMIN NEIL
16 SOLEY, a minor, et al

ANSWER OF DEFENDANTS TERRY AND
PAT SOLEY, parents of, and guardian ad
litem for BENJAMIN NEIL SOLEY, a minor

17 Defendants.
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LEA/DEF#
RECEIPT # 00165980119
DATE PAID 01/04/13 03:47 PM
PAYMENT: \$10.00
RECEIVED: \$10.00
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21 TO PLAINTIFFS LEE CAPLIN, guardian ad litem for MINOR CHILD, GITA CAPLIN,
22 an individual, LEE CAPLIN, an individual, AND TO THEIR ATTORNEY OF RECORD:

23 DEFENDANT PAT SOLEY, as parent of, and guardian ad litem for BENJAMIN NEIL
24 SOLEY, a minor ("DEFENDANTS"), and as successor in interest to the estate of TERRY
25 SOLEY, deceased, in answer to the Complaint of PLAINTIFFS on file herein, denies and
26 alleges as follows:

27 1. Under and pursuant to the provision of the California Code of Civil Procedure,
28 specifically section 431.30 thereof, this answering DEFENDANTS generally deny each and

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1 every allegation of said unverified Complaint and all of them, and the whole thereof, and each
2 and every allegation of each cause of action alleged therein, and further expressly denies that
3 as a direct or proximate result of any acts or omission on the part of these answering
4 DEFENDANTS have PLAINTIFFS herein sustained or suffered injury or damage in the
5 amount alleged in the Complaint, or in any amount or at all, or that PLAINTIFFS have suffered
6 injury or damages for any reason in the sums alleged in the Complaint, or in other sum or
7 sums, or at all.

8 **FIRST AFFIRMATIVE DEFENSE**

9 2. These answering DEFENDANTS allege that the PLAINTIFFS were careless and
10 negligent in and about the matters referred to in said Complaint and that such negligence
11 and carelessness on the part of said PLAINTIFFS proximately contributed to the cause of
12 injury and/or damages allegedly suffered by PLAINTIFFS if any there was.

13 **SECOND AFFIRMATIVE DEFENSE**

14 3. These answering DEFENDANTS allege that any and all alleged acts or
15 omissions, which allegedly created the condition at the time and place of the alleged
16 damages which are the subject of this action, were caused by PLAINTIFFS and/or third
17 parties, and therefore, these DEFENDANTS is/are not liable to PLAINTIFFS for any of the
18 alleged damages.

19 **THIRD AFFIRMATIVE DEFENSE**

20 4. These answering DEFENDANTS allege by the exercise of reasonable effort
21 PLAINTIFFS could have mitigated the amount of damages PLAINTIFFS suffered, if any
22 there were, by taking reasonable and diligent steps to mitigate damages, but PLAINTIFFS
23 failed to mitigate their damages.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 5. These answering DEFENDANTS allege that PLAINTIFFS herein failed to
26 comply with the applicable Statute of Limitations concerning filing of the lawsuit.

27 **FIFTH AFFIRMATIVE DEFENSE**

28 6. These answering DEFENDANTS allege that PLAINTIFF'S Complaint contains

1 insufficient factual allegations to state a cause of action against these responding
2 DEFENDANTS.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 7. These answering DEFENDANTS allege that if PLAINTIFFS sustained injury, loss
5 or damage in this action, PLAINTIFF'S right to recover as against these DEFENDANTS is
6 barred by the application of the doctrine of Unclean Hands.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 8. These answering DEFENDANTS allege that if PLAINTIFF sustained injury, loss
9 or damage in this action, PLAINTIFF' right to recover as against these DEFENDANTS is
10 barred by the application of the doctrine of Laches.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 9. The allegedly false and disparaging statements which form the subject matter of
13 the COMPLAINT concern a matter of general and public interest. The statements are
14 therefore privileged under the First and Fourteenth Amendments to the United States
15 Constitution and Article I, Section 2 of the Constitution of the State of California, and were
16 published, if at all, in the good faith and reasonable belief that they were true, without any
17 knowledge of falsity and without reckless disregard and any falsity. The recovery prayed
18 for by the PLAINTIFF'S would violate the constitutional rights of these answering
19 DEFENDANTS.

20 **NINTH AFFIRMATIVE DEFENSE**

21 10 The statements which form the subject matter of the COMPLAINT were
22 published, if at all, without malice and in good faith and were made in the reasonable belief
23 that the statements were to persons also interested therein, and are therefore privileged
24 under California Civil Code Section 47.

25 **TENTH AFFIRMATIVE DEFENSE**

26 11. The statements which form the subject matter of the COMPLAINT were
27 published, if at all, without malice and in good faith and were made in the reasonable belief
28 that the statements were to persons also interested therein, who stood in such relation to

1 these answering DEFENDANTS so as to afford a reasonable grounds to suppose the
2 motive of the communication to be innocent, and are therefore privileged under California
3 Civil Code Section 47.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 12. The statements which form the subject matter of the COMPLAINT were
6 published, if at all, without malice and in good faith and were made in the reasonable belief
7 that the statements were to persons also interested therein, who had requested that these
8 answering DEFENDANTS to give the information now complained of by the PLAINTIFFS
9 in their COMPLAINT, and are therefore privileged under California Civil Code Section 47.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 13. The statements which form the subject matter of the COMPLAINT were a fair
12 and true report in a public journal of a judicial and/or other public official proceeding, and
13 therefore privileged under California Civil Code Section 47.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 14. The statements which form the subject matter of the COMPLAINT were a fair
16 and true report of a matter concerning public benefit, and therefore privileged under
17 California Civil Code Section 47.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 15. The statements which form the subject matter of the COMPLAINT constitute
20 fair comment and therefore are privileged.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 16. The statements alleged in the COMPLAINT are statements of opinion and
23 therefore not actionable.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 17. Any statements of fact made by these answering DEFENDANTS were true
26 when made.

27 **SEVENTEENTH AFFIRMATIVE DEFENSE**

28 18. By reason of the provisions of the California Civil Code, Section 48 a.

CE 10/10/10

1 PLAINTIFFS are not entitled any damages with respect to said publication.

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EIGHTEENTH AFFIRMATIVE DEFENSE

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19. The allegedly offending statements are privileged because they constitute accurate and disinterested reports about a public figure.

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NINETEENTH AFFIRMATIVE DEFENSE

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20. The allegedly offending statements are privileged because they constitute accurate and disinterested reports about a limited public figure.

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TWENTIETH AFFIRMATIVE DEFENSE

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21. Upon information and belief, PLAINTIFFS have suffered no actual injury, by reason of the allegedly offending statements. Such statements were published if at all, without actual malice, and therefore are not actionable under the First and Fourteenth amendments of the United States Constitution and Article I, Section 2, of the California Constitution.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

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22. Upon information and belief, this action was filed as being maintained by PLAINTIFFS for the sole purpose of inhibiting and deterring these answering DEFENDANTS from exercising their constitutional right to engage in free speech and to report to the public and other interested parties about matters of public importance, interest and concern.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

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23. The alleged damages complained of by PLAINTIFFS if any, were proximately caused by the acts, errors and omissions of firms, persons, corporations, or entities other than these answering DEFENDANTS, and said acts, errors and omissions comparatively reduce the percentage of any liability, if it should be found these answering DEFENDANTS liable, which these answering DEFENDANTS expressly deny.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

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24. The injures and damages of which PLAINTIFFS complains, if any, were directly and proximately caused and contributed to by their own negligence, acts, and/or omissions. PLAINTIFF'S recovery herein, if any, should be diminished to the extent that their alleged

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1 injuries and damages are attributable to such negligence, acts, and/or omissions.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 25. DEFENDANTS are entitled to an offset against any damages recovered by the
4 PLAINTIFFS in amounts already recovered by other named DEFENDANTS in this action.

5 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

6 26. DEFENDANTS reserve the right to assert additional defenses based upon facts
7 and information they may discover during the course of discovery and investigation of the
8 matter about which PLAINTIFFS complains in the COMPLAINT.

9 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

10 27. These answering DEFENDANTS allege that the PLAINTIFF'S COMPLAINT
11 and each and every cause of action stated therein is barred by the statute of limitations as set
12 forth in California Code of Civil Procedure section 337.

13 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

14 28. These answering DEFENDANTS allege that the PLAINTIFFS' COMPLAINT
15 and each and every cause of action stated therein is barred by the statute of limitations as set
16 forth in California Code of Civil Procedure section 339.

17 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

18 29. These answering DEFENDANTS allege that the PLAINTIFFS' COMPLAINT
19 and each and every cause of action stated therein is barred by the statute of limitations as set
20 forth in California Code of Civil Procedure section 338.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 30. These answering DEFENDANTS allege that the PLAINTIFFS' COMPLAINT
23 and each and every cause of action stated therein is barred by the statute of limitations as set
24 forth in California Code of Civil Procedure sections 340 c; Civil Code Section 3425.3, and
25 *Strick v. Superior Court*, (1983) 143 Cal.App.3d 916..


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27 WHEREFORE, having fully answered, these responding DEFENDANTS pray that
28 PLAINTIFFS:

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1. Take nothing by reason of their Complaint on file herein;
2. For costs of suit incurred herein;
3. For judgment herein;
4. Recovery of Attorney's fees in the event there is an entitlement to same;
5. For such other and further relief as the court deems just and proper.

DATED: January 4, 2013

WRIGHT & MCGURK, LLP



BY: _____
ANDREW L. WRIGHT, ESQ, counsel for
Defendants, TERRY AND PAT SOLEY,
parents of, and guardian ad litem for
BENJAMIN NEIL SOLEY, a minor

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

I am employed in the County of Irvine, State of California. I am over the age of 18 and not a party to the within action; my business address is: 17500 Red Hill Avenue, Suite 100, Irvine, California 92614.

On January 4, 2013, I served the foregoing documents described as DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT on all parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows.

[SEE ATTACHED SERVICE LIST]

(X) BY MAIL. I deposited such envelope(s) in the mail at Irvine, California. The envelopes were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on the same day in the ordinary course of business. I am aware on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

() BY PERSONAL SERVICE. I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

() BY ELECTRONIC TRANSFER. I caused all of the pages of the above entitled document to be sent to the recipients noted on the attached service list via electronic transfer (FAX) at the respective FAX numbers.

() BY COURIER SERVICE

Executed on January 4, 2013 at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

By: [Signature]
John Hegedus

PROOF OF SERVICE MAILING LIST

Joseph A. Pertel, Esq.
Law Office of Joseph A. Pertel
1717 Fourth Street, Suite 300
Santa Monica, California 90401

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