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FILED

A. BUSE

JUL 13 2017

Superior Court of the
State of California
County of Nevada

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NEVADA

9 MARK E. SMITH, an Individual; and as
10 Assignee of Mark E. Smith Foundation (MESF)
11 and Nevada Wildlife Alliance (NWA)

Case No.

TCU17-6741

Dept. No. **A**

Plaintiff,

vs.

13 BRIAN WAKELING, an Individual; JOHN "JACK"
14 ROBB, an Individual; CARL LACKEY, an individual;
15 NEVADA DEPARTMENT OF WILDLIFE; ABC
16 CORPORATIONS, I through X; BLACK AND
17 WHITE COMPANIES, I through X, and JOHN
18 DOES I through X, inclusive,

Assigned to Judge Robert L. Tamietti
For All Purposes

Defendants.

COMPLAINT FOR DAMAGES

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

PARTIES

26 1. Plaintiff, MARK E. SMITH (hereinafter "SMITH"), is and at all times herein was a
27 resident of Washoe County, Nevada, with a part time seasonal residence in Nevada County,
28

1 California and is Assignee of the claims of Mark E. Smith Foundation and Nevada Wildlife
2 Alliance and hereinafter, "Plaintiff".

3 2. Plaintiff is informed and believes, and thereon alleges that Defendant, BRIAN
4 WAKELING (hereinafter "WAKELING"), is an individual who is and at all times herein is
5 believed to be a resident of Sparks, Washoe County, Nevada, from time to time availing himself,
6 having contacts with and doing business in Nevada County, California.

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

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

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

19 6. Plaintiff is informed, believes and thereon alleges that, at all times mentioned
20 herein, the Defendants and each of the Defendants unknown to Plaintiff who are therefore sued
21 by fictitious names herein, ABC CORPORATIONS 1-X Inclusive; BLACK & WHITE COMPANIES 1-
22 X inclusive; and JOHN DOES 1-X inclusive, in addition to acting for himself, herself, or itself and
23 on his, her, or its own behalf individually, is and was acting as the agent, servant, employee and
24 representative of, and with the knowledge, consent and permission of, and in conspiracy with,
25 each and all of the Defendants and within the course, scope and authority of that agency,
26 service, employment, representation, and conspiracy, and responsible for the events and
27 incidents set forth herein. Plaintiff further alleges on information and belief that the acts of
28 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 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.

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

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

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

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

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

23 20. Defendants' oral and written misrepresentations of fact regarding Plaintiff have
24 injured Plaintiff's reputation both generally and with respect to his businesses and the non-
25 profits he works with.

26 21. Plaintiff has also suffered substantial emotional distress as a result of the written
27 publishing of the PowerPoint slides and Defendants' oral false statements of fact that Plaintiff is
28 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.

1 whereby LACKEY presented a PowerPoint slide show to the private law enforcement audience
2 misrepresenting both orally and through the written slides that Plaintiff was "soliciting
3 harassment," that Plaintiff's wildlife advocacy amounted to "domestic terrorism," which is a
4 crime, and used both Plaintiff's name and photos of Plaintiff to make such false statements of
5 fact to Truckee law enforcement.

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

12 37. At all times herein, Defendants LACKEY, ROBB and WAKELING knew that
13 Plaintiff is not a "terrorist" and thus that their statements representing such were false, yet they
14 did and, upon information and belief, maliciously continues to make such factual false
15 statements of fact about Plaintiff to NDOW staff, employees and associates.

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

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

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

27 **THIRD CAUSE OF ACTION**
28 (Civil Conspiracy- ALL DEFENDANTS)

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

3 42. Actionable civil conspiracy consists of three elements: (1) the formation and
4 operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3)
5 damages arising from the wrongful conduct...The conspirators must agree to do some act which
6 is classified as a civil wrong. *Kidron v. Movie Acquisition Corp.*, 40 Cal.App.4th 1571 (1995).

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

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

16 45. Plaintiff has not "solicited harassment" and Plaintiff has unequivocally never
17 engaged in domestic terrorism or anything related thereto.

18 46. Upon information and belief, Defendants ROBB and WAKELING in their capacity
19 as NDOW officials, managers and supervisors, knew and/or reviewed LACKEY's Presentations
20 prior to its publication to the private Truckee law enforcement training meetings and
21 approved, condoned, allowed and encouraged LACKEY to include such false statements of fact
22 regarding Plaintiff that he is "soliciting harassment" and engaged in "Domestic Terrorism."

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

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

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

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

11 51. Plaintiff has also suffered substantial emotional distress as a result of the written
12 publishing of the PowerPoint slides and LACKEY's oral false statements of fact that Plaintiff is
13 engaged in "soliciting harassment," that Plaintiff's involvement with his wildlife advocacy non-
14 profits amounts to the crime of "Domestic Terrorism," and LACKEY, ROBB and WAKELING's
15 false statements that Plaintiff is a "terrorist."

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

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

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

25 **FOURTH CAUSE OF ACTION**

26 (Intentional Infliction of Emotional Distress- ALL DEFENDANTS)

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

1 56. Intentional infliction of emotional distress exists where the defendant engages in
2 extreme and outrageous conduct with the intent of causing, or reckless disregard of the
3 probability of causing, emotional distress, which actually causes the plaintiff severe or extreme
4 emotional distress. *Hughes v. Pair*, 46 Cal.4th 1035, 1050-1051 (2009).

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

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

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

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

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

23 **FIFTH CAUSE OF ACTION**

24 (Interference with Prospective Business Advantage- ALL DEFENDANTS)

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

27 63. As a result of Defendants' conduct, specifically the conspiratorial defamatory
28 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

1 and his businesses and investments, as well as his respective affiliated non-profits have
2 suffered a loss of reputation and lost compensation in the form of donors who, upon
3 information and belief, have revoked or reconsidered their decision to donate to the non-
4 profits as well as the loss of funding from others who would have donated and financially
5 supported the organizations in the future, but for the rumors and false information
6 disseminated by Defendants as set forth more fully herein.

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

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

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

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

24 68. Defendants' conduct as herein alleged was malicious and oppressive in that it
25 was carried out by Defendants in a willful and conscious disregard of Plaintiff's rights and
26 subjected him to cruel and unjust ridicule and other damages as set forth herein; and, as such,
27 Plaintiff is therefore entitled to an award of punitive damages against Defendants.
28

1 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

28 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

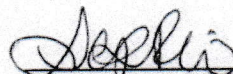
1 subjected him to cruel and unjust ridicule and other damages as set forth herein; and, as such,
2 Plaintiff is therefore entitled to an award of punitive damages against Defendants

3 **PRAYER FOR RELIEF**

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

- 6 1. For an award of money judgment for mental pain and anguish and severe emotional
7 distress, according to proof;
- 8 2. For an award of past and future general damages, according to proof;
- 9 3. For an award of past and future special damages, according to proof;
- 10 4. Punitive damages, according to proof;
- 11 5. For pre-judgment and post-judgment interest as allowed by law;
- 12 6. For an award of attorney's fees and costs incurred herein; and
- 13 7. For any and all other relief this Court may deem just and proper.

14 DATED this 13th day of July, 2017.

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17 STEPHANIE RICE, ESQ. (SBN 277076)
18 DEL HARDY, ESQ. (SBN 108926)
19 Attorneys for Plaintiff:
20 MARK E. SMITH
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