

Joseph Pilchesky,

Plaintiff,

v.

Judy Gatelli, as President of Scranton City Council; as Councilwoman; and, in her Individual capacity,

Defendant,

v.

Joanne Pilchesky, John Doe, a/k/a 1 Musketeer, John Doe, a/k/a 3blindrats, John Doe, a/k/a 666, John Doe, a/k/a 1935, John Doe, a/k/a A man named Jed, Jane Doe, a/k/a abbey, John Doe, a/k/a Adam, John Doe, a/k/a Anti oppression, John Doe, a/k/a Antisystemicmovements, John Doe, a/k/a aquamg, John Doe, a/k/a atty skeletor, John Doe, a/k/a baron, John Doe, a/k/a bigdaddy, John Doe, a/k/a Black helicopters, John Doe, a/k/a Black Lung, John Doe, a/k/a BoobyMcGoof, Jane Doe, a/k/a bo peep, John Doe, a/k/a Brainwashed, John Doe, a/k/a Chris, John Doe, a/k/a City Haul, John Doe, a/k/a clarks summit luv nest, John Doe, a/k/a commoner, John Doe, a/k/a Council rat, John Doe, a/k/a Crazy Otto, John Doe, a/k/a Crony watcher, John Doe, a/k/a cyberlion, John Doe, a/k/a DarthArt, John Doe, a/k/a DeerParkerLumber, John Doe, a/k/a Deleware, John Doe, a/k/a Dice Rolling 101, John Doe, a/k/a Don't fear government, John Doe, a/k/a Eye for an Eye, John Doe, a/k/a ezeddie, John Doe, a/k/a flower child, John Doe, a/k/a Freedom is not free, John Doe, a/k/a FRICKELLMOIE, Jane Doe, a/k/a Gatellis blue dress, John Doe, a/k/a Gimme a break, Jane Doe, Granma, John Doe, a/k/a Hammer, John Doe, a/k/a Hitlers downfall, John Doe, a/k/a History writer, John Doe, a/k/a Intelligent thinker, John Doe, a/k/a insider, John Doe, a/k/a Irish Eyes are not Shining, John Doe, a/k/a Isnt that lovely, John Doe, a/k/a jimbu15, Jane Doe, a/k/a Judy, Jane Doe, a/k/a June Cleaver, John Doe, a/k/a JustTheFacts, Jane Doe, a/k/a Katie, John Doe, a/k/a Liberty is expensive, Jane Doe, a/k/a Lipstick and lashes, John Doe, a/k/a

: IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY, PA

:  
:  
:  
: CIVIL ACTION  
: No. 2007-CV-1838

MARY F. RINALDI  
LACKAWANNA COUNTY  
2008 JUN -2 P 3:46  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION

Lobby cyst, John Doe, a/k/a methinks4myself, :  
 John Doe, a/k/a Milo Ferlicker, John Doe, a/k/a :  
 MistyMtTop, John Doe, a/k/a Money stalks, :  
 John Doe, a/k/a Moving Forward, John Doe, a/k/a :  
 Newsroom, Jane Doe, a/k/a newgirl, John Doe, a/k/a :  
 Nobody, John Doe, a/k/a NoRepresentation, :  
 Jane Doe, a/k/a NotADumbBlonde, Jane Doe, a/k/a :  
 Once upon a secretary, John Doe, a/k/a Paul, :  
 John Doe, a/k/a peewee, John Doe, a/k/a phoenix, :  
 John Doe, a/k/a Pilcheskytics, John Doe, a/k/a :  
 Logic, John Doe, a/k/a Political sex, John Doe, a/k/a :  
 powertothepeople, John Doe, a/k/a Sacred Heart of :  
 Elvis, Jane Doe, a/k/a Scranton Girl, Jane Doe, a/k/a :  
 Stacy, John Doe, a/k/a The Judge, John Doe, a/k/a :  
 The Mole, Jane Doe, a/k/a themom, John Doe, a/k/a :  
 The next generation, John Doe, a/k/a Traditional :  
 apathy, John Doe, a/k/a TwistedBrother, John Doe, :  
 a/k/a Unionman, John Doe, a/k/a watch and ward, :  
 John Doe, a/k/a/ Waterfalls, John Doe, a/k/a We are :  
 so screwed, John Doe, a/k/a wildabeast, John Doe, :  
 a/k/a Wolf pack, Jane Doe, a/k/a Working woman, :  
 John Doe, a/k/a XraYspX, John Doe One, John Doe :  
 Two, John Doe Three, John Doe Four, John Doe :  
 Five, John Doe Six, John Doe Seven, John Doe :  
 Eight, John Doe Nine, and John Doe Ten, :  
 :  
 :

Additional Defendants. :

MARY F. RINALDI  
 LACKAWANNA COUNTY  
 2008 JUN -2 P 3: 46  
 CLERK OF JUDICIAL  
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**PETITIONER JUDY GATELLI'S REPLY  
 TO OPPOSITION AND MOTION TO STRIKE**

Petitioner, Judy Gatelli ("Gatelli"), by her undersigned counsel, hereby files this Reply to Opposition filed on behalf of Additional Defendants "big daddy,," "bo peep," "Jimbu 15," "MistyMtTop," "Powertothepeople," and "aquamg" (collectively, the "Additional Defendants Represented by Counsel") and Motion to Strike same and in support thereof, states as follows:

**COUNTER-STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On May 24, 2007, Gatelli filed a Petition to Compel Disclosure of the Identity of the above-referenced Additional Defendants ("Petition"). By Order of Court dated October 10, 2007, this Court adopted the standards articulated in Polito v. AOL-Time Warner, Inc., 78 Pa. D

& C 4<sup>th</sup> 328 (Lacka. Cnty. 2004), and directed Gatelli to file an amended petition for disclosure in accordance therewith specifying: a) the pseudonym of each Additional Defendant; b) the complete message containing the actionable words posted by each Additional Defendant; c) the cause or causes of action that she alleges based on those words; d) evidence sufficient to establish a prima facie case against each Additional Defendant supported by affidavit; and e) an affidavit asserting that the information is sought in good faith and is unavailable by alternative means (“Order”). On March 20, 2008, Gatelli filed her Amended Petition (“Amended Petition”) and accompanying Affidavits in accordance with the Order seeking the identity of the following Additional Defendants: A Man Named Jed, Abbey, Adam, Antisystemicmovements, aquamg, bigdaddy, Booby McGoof, Bo peep, Brainwashed, City Haul, Clarks Summit luv nest, Commoner, Crazy Otto, Crony watcher, Dice Rolling 101, Don’t fear Government, Freedom is not free, FRICKELMOIE, Gatellis Blue Dress, Granma, History Writer, insider, Intelligent thinker, jimbu15, Joe Pilchesky, JustTheFacts, Lipstick and Lashes, Lobby cyst, Milo Ferlicker, MistyMtTop, Money stalks, Nobody, NoRepresentation, NotADumbBlonde, Political sex, Powertothepeople, The Mole, The next generation, Traditional apathy, TwistedBrother, Unionman, Watch and ward, Working woman, and We are so screwed (collectively, the “Additional Defendants”).

On March 28, 2007, Gatelli filed her Affidavit of Service of said Amended Petition pursuant to the Order. The Order then directed, Plaintiff Joseph Pilchesky (“Pilchesky”) to provide the Additional Defendants with notice of the Amended Petition filed against them within ten (10) days of the filing of the Affidavit of Service, on or before April 7, 2008. Each Additional Defendant was then required to file an objection to the disclosure of their identity with the Clerk of Judicial Records of Lackawanna County within thirty (30) days of the filing of

the Affidavit of Service, on or before May 7, 2008. Additional Defendant Joanne Pilchesky filed, albeit late and otherwise improper, a Certificate of Service on April 11, 2008, certifying that the Additional Defendants were provided notice of Gatelli's Amended Petition.<sup>1</sup> Even if the Court were to accept the late filing of the Certificate and otherwise recognize April 11<sup>th</sup> as a the proper objection due date, as opposed to the Court-ordered due date of April 7<sup>th</sup>, Additional Defendants were required to file objections to Gatelli's Amended Petition on or before May 12, 2008 -- a deadline Gatelli obviously disputes.

The Additional Defendants Represented by Counsel filed their Opposition to Gatelli's Amended Petition on May 12, 2008 ("Opposition"). The Opposition was purportedly filed on behalf of the Additional Defendants Represented by Counsel, however, said Opposition is replete with arguments asserted on behalf of all of the Additional Defendants.

On or about May 14, 2008, Additional Defendant Joanne Pilchesky and Pilchesky (collectively, the "Pilcheskys") filed untimely and otherwise improper objections to the Amended Petition ("Objections") purportedly on behalf of A Man Named Jed, Abbey, Adam, Antisystemicmovements, Booby McGoof, Brainwashed, City Haul, Clarks Summit luv nest, Commoner, Crazy Otto, Crony watcher, Dice Rolling 101, Don't fear Government, Freedom is not free, FRICKELLMOIE, Gatellis Blue Dress, Granma, History Writer, insider, Intelligent thinker, Joe Pilchesky, JustTheFacts, Lipstick and Lashes, Lobby cyst, Milo Ferlicker, Money stalks, Nobody, NoRepresentation, NotADumbBlonde, Political sex, The Mole, The next generation, Traditional apathy, TwistedBrother, Unionman, Watch and ward, Working woman, and We are so screwed (hereinafter the "Remaining Additional Defendants"). Significantly, Gatelli has yet to be served with said Objections. Gatelli intends to file, simultaneously herewith

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<sup>1</sup> The Certificate was untimely and otherwise improperly filed by Additional Defendant Joanne Pilchesky on April 11, 2008 in violation of the express provisions of the Order requiring Pilchesky to file same within ten (10) days of the filing of the Affidavit of Service.

a Motion to Strike the Objections filed on behalf of the Remaining Additional Defendants, and submits this Reply and Motion to Strike in response to the aforementioned Opposition filed by the Additional Defendants Represented by Counsel.

### REPLY

**I. Gatelli Has Demonstrated that She Is Entitled to Obtain the Identities of the Additional Defendants Represented by Counsel in Accordance with the Order and the Standard Articulated in Polito.**

This Court, in determining whether or not the First Amendment protects the anonymity of a person who anonymously publishes a defamatory statement on the Internet, adopted the standard articulated by this Court in Polito, supra. More specifically, at a hearing on this issue, this Court concluded that Gatelli was entitled to obtain the identities sought in the Amended Petition if she: complied with the Order and otherwise satisfactorily stated a cognizable claim under Pennsylvania law entitling her to some form of civil or criminal redress for the actionable speech of the unknown declarants; demonstrated the identifying information is directly related to her claim and fundamentally necessary to secure relief; sought the requested information in good faith and not for some improper purpose; and was unable to discover the identity of the anonymous speakers by alternative means. See, Polito, supra at \*20, 21. Gatelli has complied with the Order and otherwise stated cognizable claims for defamation, defamation per se, civil conspiracy and/or intentional infliction of emotional distress. She has also demonstrated that the identifying information is directly related to her claim and fundamentally necessary to secure relief, and that the requested information was sought in good faith. Gatelli has further shown that she is unable to otherwise discover the identities by alternative means. Consequently, Gatelli has met her burden and is therefore entitled to obtain said identities.

Despite the foregoing, the Additional Defendants represented by Counsel filed the instant

Opposition making no reference whatsoever to Polito or the standard specifically adopted therein which was expressly adopted by this Court and deemed applicable to the facts in the instant matter. Instead, the Opposition attempts to circumvent Polito by summarizing the “prevailing consensus” about the standard to be applied in cases of this nature citing to cases in California, New Jersey, North Carolina, North Dakota, and Pennsylvania which, by virtue of the aforementioned Order, have no application here. Accordingly, Gatelli considers the Opposition an improper attempt to hold her to a standard not required or otherwise ordered by this Court.

**A. Gatelli Has Stated Cognizable Claims for Defamation, Defamation Per Se, Civil Conspiracy, and/or Intentional Infliction of Emotional Distress.**

**Defamation/Defamation Per Se:**

Defamation is a communication which tends to harm an individual’s reputation so as to lower him or her in the estimation of the community or deter third persons from associating or dealing with him or her. Moore v. Carol Cobb-Nettleton, et al., 889 A.2d 1262, 1267 ((Pa. Super. 2005) (citing Elia v. Erie Insurance Exchange, 634 A.2d 657, 660 (Pa. Super 1993))). In a defamation case, the plaintiff must prove: (a) the defamatory character of the communication; (b) its publication by the defendant; (c) its application to the plaintiff; (d) the understanding by the recipient of its defamatory meaning; (e) the understanding of it as intended to be applied to the plaintiff; (f) special harm resulting to the plaintiff from its publication and (g) abuse of a conditionally privileged occasion. 42 Pa. C.S.A. §8343(a). Each of the statements made by the Additional Defendants Represented by Counsel and specifically identified in the Amended Petition are defamatory.

Similarly, certain of the statements made by the Additional Defendants Represented by Counsel are defamatory per se. Under Pennsylvania law, there are four (4) categories of words that constitute slander per se: words that impute (a) criminal offense; (b) loathsome disease; (c)

business misconduct; or (d) serious sexual misconduct. Flamm v. Sarner & Associates, P.C. et al., 2006 U.S. Dist. LEXIS 308, \*19 (E.D. Pa. 2006). See also, Keim v. County of Bucks et. al., 275 F.Supp.2d 628, 636 (E.D. Pa. 2003) (citing Syngy, Inc. v. Scott-Levin, Inc., 51 F.Supp.2d 570, 580 (E.D. Pa. 1999)). A statement constitutes slander per se as an accusation of criminality when it charges either directly or indirectly the commission of a criminal offense punishable by imprisonment. Keim, supra at 636. See also, Clemente v. Espinosa, 749 F.Supp. 672, 679 (E.D. Pa. 1990). Finally, referring to another as a “Naziphile” constitutes libel per se. O’Donnell v. Philadelphia Record, Co., 356 Pa. 307 (Pa. 1947). See also, Matson v. Margiotti, 88 A.2d 892, 895 (Pa. 1952) where the Pennsylvania Supreme Court determined that statements that another engages in communist activities are libel per se. Certain of the statements made by the Additional Defendants Represented by Counsel, as will appear hereafter, constitute defamation per se.<sup>2</sup>

### **Conspiracy:**

Likewise, each of the Additional Defendants Represented by Counsel, as will appear hereafter, engaged in civil conspiracy -- either to defame Gatelli or to inflict emotional distress upon her. To state a cause of action for civil conspiracy, a complaint must allege that two (2) or more persons combined or agreed to commit an unlawful act or to do an otherwise lawful act by unlawful means. Burnside v. Abbott Laboratories; 505 A.2d 973, 980 (Pa. Super. 1985). A civil conspiracy becomes actionable when some overt act is performed in pursuance of the common purpose or design held by the conspirators and actual damage results. Baker v. Rangos, 324 A.2d 498, 506 (Pa. Super. 1974).

Taking all facts asserted in Gatelli’s Amended Petition and the corresponding Affidavits as true, Gatelli has sufficiently stated that the Additional Defendants Represented by Counsel

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<sup>2</sup> Posts that are defamatory per se are not entitled to First Amendment protection.

\* \* \* Communication Result Report ( Jun. 2. 2008 4:39PM ) \* \* \*

1)  
2)

Date/Time: Jun. 2. 2008 4:37PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
4341	Memory TX	2782327	P. 3	OK	

## Reason for error

E. 1) Hang up or line fail  
 E. 3) No answer  
 E. 5) Exceeded max. E-mail size

E. 2) Busy  
 E. 4) No facsimile connection

**WRIGHT & REIHNER<sup>PC</sup>**  
 ATTORNEYS AT LAW

FACSIMILE COVER SHEET

To: Scott Quigg  
 Fax No.: (570) 278-2327  
 From: David J. Gromelski, Esquire  
 Date: June  
 Re: Pump-N-Pantry, Inc., et al. v. DEP  
 No. of Pages (inc. cover sheet): 3

Message:

THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS CONFIDENTIAL AND INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED. SUCH INFORMATION MAY BE PRIVILEGED AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS COMMUNICATION IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT THE REPRODUCTION, DISTRIBUTION OR DISCLOSURE OF ANY PART OF THIS COMMUNICATION, OTHER THAN TO THE INTENDED RECIPIENT, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL COMMUNICATION TO US BY UNITED STATES FIRST CLASS MAIL.



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defamed her or otherwise intentionally inflicted her with emotional distress, which conduct constitutes unlawful acts. In fact, even a cursory review of the subject lines to the statements -- "This is your Life, Judy Gatelli & it's open season on your character;" "Get back on Gatelli tonight;" "Need a little assist on Gatelli's lawsuit;" and "Gatelli melts down again" -- evidence the combined attempts to defame Gatelli and/or cause her emotional distress. In fact, Gatelli believes and has therefore averred that the express intent of the Dohertydeceit.com message board is to "kill political careers," and that the Additional Defendants Represented by Counsel have used the Dohertydeceit.com website and message board in a contrived effort to, inter alia, publish defamatory allegations about Gatelli or otherwise inflict emotional distress upon Gatelli, as will appear hereinafter. Accordingly, Gatelli has alleged that two (2) or more persons combined or agreed to commit unlawful acts thereby engaging in civil conspiracy.

**Intentional Infliction of Emotional Distress:**

Finally, numerous Additional Defendants have intentionally inflicted emotional distress upon Gatelli. To prove a claim of intentional infliction of emotional distress, the following elements must be established: (a) the conduct must be extreme and outrageous; (b) it must be intentional or reckless; (c) it must cause emotional distress; and (d) that distress must be severe. Hoy v. Angelone, et. al., 691 A.2d 496 (Pa. Super. 1997) (citing Hooten v. Penna. College of Optometry, 601 F. Supp. 1151, 1155 (E.D. Pa. 1984) and Section 46 of the Restatement (Second) of Torts). Gatelli believes and has therefore averred that the Additional Defendants Represented by Counsel knew Gatelli was susceptible or vulnerable to emotional distress due to her publicized sensitivity. In that regard, after Gatelli was reduced to tears at a public meeting of Scranton City Council and was visibly anxious and upset, Additional Defendants, acting in concert with Pilchesky, maliciously and intentionally intensified their unjustified and baseless

campaign of harassment and intimidation against Gatelli via the Dohertydeciet.com website and message board.

Therefore, for these and all other reasons not previously stated herein, Gatelli has established her claims for defamation and/or defamation per se, civil conspiracy and/or intentional infliction of emotional distress entitling to obtain the identities of the Additional Defendants Represented by Counsel. Specifically, Gatelli has established her claims for defamation and/or defamation per se and civil conspiracy against each of the Additional Defendants Represented by Counsel, as well as her claim for intentional infliction of emotional distress against “MistyMtTop” as hereinafter set forth.

1) “bigdaddy”

The statements made by “bigdaddy,” when read in context with the entire post pertaining specifically to McGoof, Gatelli, Fanucci and Doherty, -- “...the scumbags that are raping and pillaging our city...there is no excuse for what this fuc%\$#@ scum bags have done to the residents of Scranton...I would like to see the 3 rats on council, the head douche bag and his merry band of puppets stand up to the people and have a open meeting to debate the crisis in the city, then we can stone the fuc%\$#^ Nazis like the French did when paris was liberated...” -- are defamatory because: a) said statements are clearly capable of defamatory meaning; b) they were published via the internet and obviously apply to Gatelli; c) any reasonable recipient would understand the statements to be defamatory; and d) Gatelli has suffered damages. Moore, supra at 1267. See also, 42 Pa. C.S.A. §8343. Statements likening another to a “rat,” “scumbag,” and/or “Nazi” or statements imputing rape and/or pillaging are certainly capable of defamatory meaning and said statements certainly apply to Gatelli and were obviously published. Moreover, as previously stated in the Affidavits filed of record in this matter, Gatelli is not a racist, she has

never been convicted of a crime and is not a political puppet. Accordingly, the above-referenced statements are false. Finally, Gatelli has suffered damages as stated and sworn in the Amended Petition and Affidavits filed of record in this matter. Accordingly, Gatelli has stated a cognizable claim for defamation against “bigdaddy.”

Gatelli has also stated a cognizable claim for defamation per se against “bigdaddy.” Words charging another either directly or indirectly of a crime are slander per se. Clemente, *supra* at 679. Moreover, our Supreme Court has determined that referring to another as a “Naziphile” constitutes libel per se. O’Donnell, *supra* at 307. Therefore, accusations pertaining to rape or pillaging and/or those referring to Gatelli as a Nazi are defamatory per se. For these and all other reasons not specifically stated herein, Gatelli has stated a cognizable claim against “bigdaddy” for defamation per se.

2) “bo peep”

Likewise, the statements made by “bo peep,” when read in context with the entire post pertaining specifically to “Tonights Meeting is Officially Cancelled” are defamatory. In said post “bo peep” refers to Gatelli as “Judas” and otherwise insinuates that Gatelli engages in “prostitution.” “Prostitution” has been defined as the act or practice of engaging in sexual intercourse for money or the act or practice of engaging in sex acts for hire or the act or instance of offering or devoting one’s talent to an unworthy use or cause. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/prostitution> (accessed: May 21, 2008). Similarly, “Judas” has been defined as one who betrays another under the guise of friendship. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/Judas> (accessed: May 21, 2008). A

statement that another engages in betrayal and/or prostitution, is certainly capable of defamatory meaning. Moreover, the statements likening Gatelli to Judas and a prostitute were obviously published, and obviously apply to Gatelli, and any reasonable recipient would understand a connotation to Judas or prostitution as defamatory. In addition, Gatelli has sworn, by Affidavit, that these statements are false and that she has suffered damages as a result thereof. Therefore, Gatelli has met her burden of proving these statements are defamatory. For these and all other reasons not specifically stated herein, Gatelli has stated a cognizable claim against “bo peep” for defamation.

Gatelli has also proven that certain of these statements -- those likening her to a prostitute (whether or not pertaining specifically to sex) -- are defamatory per se. Again, words imputing business misconduct or serious sexual misconduct are considered slander per se. Flamm, supra at \*19. Similarly, words charging another either directly or indirectly of a crime are slander per se. Clemente, supra at 679. Accordingly, said statements by “bo peep” must be considered defamatory per se.

Finally, “bo peep” intentionally published these statements again after the initiation of this lawsuit.<sup>3</sup> As previously argued, the republication of a statement, after a defendant receives a complaint alleging the statement is defamatory, is relevant to the presence of malice in the initial publication. Weaver v. Lancaster Newspapers, Inc., et al., 2007 LEXIS 1365, \*18, 19 (Pa. 2007). While Gatelli is not -- despite Attorney Levy’s argument to the contrary -- required to prove malice at this early stage of the litigation, she has certainly provided proof of “bo peep’s” malice based upon this republication, thereby strengthening her claims for defamation and/or

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<sup>3</sup> The republication was made with the following additional statements pertaining to “Re: ‘This is your Life, Judy Gatelli’ & its open season on your character:” “Here’s my little contribution to Judas’ lawsuit. I guess Atty. Rino thought I said something wrong... an analogy nit wit and show me where I’m talking specifically about Judas...come & get it Atty. Dobe...Hey, Joe, maybe we should SHED a little light on our new Atty. Friend.”

defamation per se against “bo peep.” Weaver, *supra* at \*18, 19.<sup>4</sup>

3) “Jimbu 15”

“Jimbu 15” posted or otherwise caused to be published the following defamatory statements pertaining to “Re: Gatelli: I’ll give up my seat if my husband wins” and “Re: 16 reports no complaints were filed”: “the only way “Nazi” Gatelli {Sieg Hiel} is giving up her Council seat is when her fat, Nazi, A\$\$ doesn’t fit in it anymore!!! Hey Ursula, why don’t you shove another Cannoli down your fat pie-hole and decide whose rights you’re gonna violate this week!!!...Ursula is a Nazi, plain and simple!!!...” For the reasons previously stated herein, Gatelli has stated cognizable claims for defamation and/or defamation per se against “Jimbu 15.”<sup>5</sup>

4) MistyMtTop

“MistyMtTop” posted or otherwise published the following defamatory statements relating to “Why Gatelli does not have to resign:” “... She’s a liar... The only Judy we saw last week was an overmedicated one (& don’t say she wasn’t, her head was bobbing more than Fanny’s)... You can’t rob people blind, laugh in their faces & demand respect. It doesn’t work that way...” For the reasons previously stated herein -- relating to words imputing a criminal offense -- these statements by “MistyMtTop” are obviously defamatory and may be considered defamatory per se. See, Keim, *supra* at 636. See also, Clemente, *supra* at 679.

Additionally, Gatelli has set forth a cognizable claim against “MistyMtTop” for intentional infliction of emotional distress. “MistyMtTop” was obviously aware of Gatelli’s emotional state

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<sup>4</sup> Significantly, the Opposition fails to address Weaver in any manner whatsoever. In fact, the Opposition suggest, improperly, that Gatelli must prove malice but ultimately fails to address Gatelli’s arguments relating to Weaver and republication as proof of malice.

<sup>5</sup> Statements referring to another as a Nazi are defamatory and must be considered defamatory per se. See, Moore, *supra* at 1267. See also, O’Donnel, *supra* at 307.

and medical condition based upon the above-referenced statements made by her. Despite this fact, she proceeded to malign or otherwise defame Gatelli on Dohertydeceit.com. This conduct is not only extreme and outrageous but also intentional and reckless. The statements by “MistyMtTop” have caused Gatelli severe emotional distress. Statements relating to a plaintiff’s fragile mental state and other sensitive issues evince the declarant’s knowledge of the plaintiff’s susceptibility to emotional distress supporting a conceivable claim for intentional infliction of emotional distress. Polito, supra at \*31.

5) Powertothepeople

The following statements pertaining to “Re: Get back on Gatelli tonight” were published by “PowertothePeople:” “Fanucci, Gatelli and McGoff could wear Giorgio Armani every week and they would still be liars and thieves...” For the reasons previously stated herein Gatelli has stated cognizable claims against “Powertothepeople” for defamation and/or defamation per se.<sup>6</sup>

6) Aquamg

Finally, “aquamg” published the following statements relating to “Re: Inside Judy Gatelli’s brain:” “You asked what makes Judy Gatelli tick? Pure greed and not a moral fiber in her body. One day she will understand that money for herself and her family is not the end all. Especially when she received it by taking from us. Judy Gatelli is all greed and line thy pockets-period!!” For the reasons previously stated herein -- relating to words imputing a criminal offense -- these statements by “aquamg” are obviously defamatory and may be considered defamatory per se. See, Keim, supra at 636. See also, Clemente, supra at 679. Moreover, these statements were published after the initiation of this litigation. Therefore, these statements were published by “aquamg” with malice. Weaver, supra at \* 18, 19. Consequently, Gatelli has stated a cognizable

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<sup>6</sup> Statements imputing a criminal offense are defamatory and must be considered defamatory per se. See, Keim, supra at 636. See also, Clemente, supra at 679.

claim against “aquamg” for defamation and/or defamation per se.

**B. Gatelli Is Not Required To Prove Actual Harm at this Stage of the Litigation.**

Despite the baseless assertions to the contrary, Gatelli is not required to prove actual harm at this stage of the litigation. According to the standard articulated in Polito, Gatelli must articulate a prima facie basis for imposing civil liability upon the Additional Defendants Represented by Counsel. Polito, supra at 21. In fact, in Polito, the Court of Common Pleas of Lackawanna County ultimately ordered the disclosure of the identities of certain anonymous speakers after determining, inter alia, that the plaintiff may have had a viable claim for intentional infliction of emotional distress. Id. at 27. Significantly, there was no requirement that “Plaintiff show actual harm prior to the disclosure of the identities. In fact, the Court of Common Pleas of Lackawanna County provided an in-depth analysis for the growth of the internet, the proliferation of electronic communication and the right to speak with anonymity and ultimately determine that the Plaintiff need only offer testimony that will permit a jury to award damages. See also, Melvin v. Doe, 49 D.&C. 4<sup>th</sup> 419, 462 (Allegh. Cnty. 2000).

Moreover, even if this Court were to require a showing of actual harm at this stage of the litigation, Gatelli has made said showing. Actual harm is not limited to out-of-pocket loss. Agriss v. Roadway Express, Inc., 483 A. 2d 456, 467 (Pa. Super. 1984). The more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Id. (citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974)). According to the Amended Petition and the Affidavits filed in conjunction therewith, Gatelli’s reputation has been impaired and she has suffered personal humiliation and mental anguish. Accordingly, Gatelli has alleged and shown actual harm sufficient to compel the identities of the Additional Defendants Represented by

Counsel -- if said showing were in fact a prerequisite to disclosure which it is not. See, Agriss, supra at 467.

In addition, as previously stated herein, Gatelli has stated viable claims for defamation per se against the Additional Defendants Represented by Counsel. The general law of libel holds that published words are libel per se when they are such words as apparently, and on the face of them, import such defamation that injury follows as a matter of course. Munhall Homestead Housing Assn. v. Messinger Publishing Co., 1961 Pa. Dist. & Cnty. Dec. LEXIS 237, \*6. A statement that is considered libel per se is so obviously defamatory that the law presumes that injury or damages have resulted from its publication. Id. at 7. Such words are actionable without the pleading of special damages. (Emphasis Added). Id. Consequently, Gatelli is not required to plead special damages as against the Additional Defendants Represented by Counsel who are guilty of defamation per se.

In addition, despite the arguments to the contrary, this Court did not require Gatelli to specifically plead actual harm as applied to each and every statement identified in her Amended Petition. In fact, neither Polito nor the Order of this Court make reference to actual harm. Again, while actual harm is an element necessary to prevail on a claim of defamation, it is not a necessary prerequisite to the disclosure of the identities of anonymous publishers at this stage of the litigation. See, Polito supra at 47. See also, Melvin supra at 462 where the Court of Common Pleas of Allegheny County specifically stated that the threshold for disclosure at the discovery stage are met where, inter alia, the plaintiff testifies that the statements are untrue and she has experienced emotional distress as a result of the statements.

Similarly, despite the arguments to the contrary, Gatelli was not required -- by the Order or otherwise -- to specify which statements form the right for her identification with any level of

specificity. Moreover, if certain of the statements are found to be non-actionable, Gatelli will still be entitled to disclosure. It is not necessary that all of the alleged defamatory words set forth in the Amended Petition should be actionable, it being sufficient that some of them are actionable. *Id.* at \*4, 5 (citing Drebin v. Jewish World Publishing Company, 105 A. 58, 59 (Pa. 1918) and Klumph v. Dunn, 1871 Pa. LEXIS 1, \*7 (Pa. 1871)). “This is particularly so where the publications complained of are in a series of articles over a long period of time.” Munhall, supra at \*5 (Emphasis Added). In fact, the manner of the publication of the alleged libelous statements, the persistence of the publications on the subject and the coloring of the comments in the publications all have a bearing on the libelous quality of the words used. *Id.*

Finally, Gatelli was and continues to be harmed by the statements made by the Additional Defendants represented by Counsel on Dohertydeceit.com, and there is absolutely no reason whatsoever to question said harm or otherwise doubt the veracity of Gatelli’s Amended Petition or the Affidavits filed in support thereof. First, as previously asserted, Gatelli does not read the Dohertydeceit.com message board. This assertion does not mean that she has no knowledge of the statements contained therein or that she has not been harmed by said statements. Any argument in the regard is simply non-sensical. Second, just because a newspaper reports that Gatelli was reduced to tears at some point prior to certain publications does not mean that she was not reduced to tears or otherwise harmed by statements made by the Additional Defendants represented by Counsel some time thereafter. This argument is equally non-sensical.

Similarly, any assertion that Gatelli may have signed her Affidavits without regard for her oath is disingenuous and meritless, especially given the fact that said argument is based upon misrepresentations by the Additional Defendants represented by Counsel pertaining to averments made by Gatelli to date. In her Answers to the Interrogatories by Pilchesky, Gatelli specifically

responded, that the Interrogatory was vague, ambiguous and unintelligible and that subject to and without waiving said objections she is not currently taking any medications. Moreover, Gatelli has sought medical attention and currently takes medication for stress and anxiety as needed. Consequently, she is not on medication at all times and may very well be medicated on certain occasions while not medicated on others. Accordingly, Gatelli has been harmed by the statements made by the Additional Defendants represented by Counsel as outlined more specifically herein. The evidence of said harm submitted to date is sufficient to permit a jury to award damages, and said award will be supported by competent evidence at the appropriate time.

**C. The Additional Defendants Represented by Counsel Have No Right To Depose Gatelli At This Stage Of The Litigation.**

Pennsylvania Rule of Civil Procedure 4003.1 permits discovery of any matter, not privileged, which is relevant to the subject matter invoked in the pending litigation, subject to, inter alia, Rule 4011. See, Melvin, supra at 455. See also, Pa. R.C.P. 4003.1. Pursuant to Rule 4011, no discovery or deposition shall be permitted which: (a) is sought in bad faith; (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party; (c) is beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6; (d) is prohibited by any law barring disclosure of mediation communications and mediation documents; or (e) would require the making of an unreasonable investigation by the deponent or any party or witness. Pa. R.C.P. 4011. The request by the Additional Defendants Represented by Counsel to depose Gatelli is not only sought in bad faith, it would also cause Gatelli unreasonable annoyance, embarrassment, oppression, or burden.

The term “bad faith” is not defined in the Pennsylvania Rules of Civil Procedure, however, “bad faith” has taken on the connotation of addressing those situations in which the motives of the party seeking discovery are suspect and improper. Econ Marketing Inc. v. Side II

Associates Ltd., 17 Pa. D. & C. 4<sup>th</sup> 341, 345 (Monroe Cnty. 1992) (citing *Goodrich-Amram Standard Pennsylvania Practice* §4011(a): 1.1). According to the Opposition, the Additional Defendants Represented by Counsel seek to depose Gatelli with respect to her claims of falsity and actual harm. Gatelli has sworn, by Affidavit, that the statements made by the Additional Defendants Represented by Counsel are false, and that she has suffered harm as a result thereof. Consequently, there is absolutely no need to depose Gatelli on these issues. Moreover, and for the reasons previously stated herein, Gatelli is not required to delve any further or otherwise prove that the statements are false and have caused her harm. Therefore, any attempt to depose Gatelli on these issues is suspect and improper.

Similarly, for the same reasons, Gatelli contends that a deposition, at this stage of the litigation, will subject her to unreasonable annoyance, embarrassment, oppression, or burden. As previously stated, given the sworn averments in her Amended Petition and the sworn Affidavits filed in conjunction therewith, there is absolutely no need for her deposition at this time. Accordingly, subjecting her to a deposition on these issues would certainly cause her unreasonable annoyance, embarrassment, oppression, or burden. See, Snyder v. Snyder, 41 Pa. D. & C. 2d 547, 549 (Carbon Cnty. 1967) where the Court of Common Pleas of Carbon County entered a protective order after determining there was no need for depositions and that a deposition would cause unreasonable annoyance. For these and all other reasons not previously stated herein, the Additional Defendants Represented by Counsel have no right to depose Gatelli at this stage of the litigation.

## **II. Conclusion:**

In conclusion, Gatelli has complied with the Order of this Court and the standard articulated in Polito entitling her to the identities of the Additional Defendants Represented by

Counsel as well as the Remaining Additional Defendants as requested in her Amended Petition.

### MOTION TO STRIKE

1) According to the Order, all objections to the Amended Petition were to be filed of record with the Clerk of Judicial Records of Lackawanna County on or before May 7, 2008.

2) The Opposition was filed on May 12, 2008. Accordingly, the opposition is untimely and should be stricken.

3) In addition, although Attorney Levy purports to file the instant Opposition on behalf of the Additional Defendants Represented by Attorney Levy, he certainly presents arguments on behalf of the remaining Additional Defendants. In fact, in the opening paragraph of said Opposition, Attorney Levy boldly states that Gatelli has not made a sufficient showing to warrant an order that Joseph Pilchesky identify “any of the additional defendants’ in this case, and especially not the six additional defendants represented by the undersigned counsel on this brief.” See, Opposition, p.1. Moreover, Attorney Levy specifically states that “Not a single one of the statements of the six Does represented by undersigned counsel meets that standard, and very few of the other statements on which Gatelli seeks identifying information meet that standard either,” and that “A more general point that is applicable to all the defendants is that...” See, Opposition, p.5. Finally, and inexplicably, Attorney Levy devotes an entire section of his Opposition to the Remaining Additional Defendants -- **“GATELLI HAS NOT SHOWN ENTITLEMENT TO IDENTIFY MOST OF THE REMAINING DOE DEFENDANTS.”** See, Opposition, p.16.

4) Attorney Levy represents “bigdaddy”; “bo peep”; “Jimbu 15”; “MistyMtTop”; “Pwertothepeople”; and “aquamg”. It is believed and therefore averred that he has no

knowledge pertaining to the Remaining Additional Defendants.

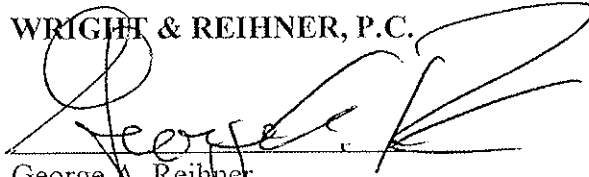
5) Accordingly, any and all arguments made in the Opposition specifically pertaining to the Remaining Additional Defendants are improper.

6) For any or all of the foregoing reasons, Gatelli respectfully requests that the portions of the pertaining to the Remaining Additional Defendants be stricken as improper.

WHEREFORE, Defendant Judy Gatelli respectfully requests that the Court issue an Order striking the Opposition as untimely. In the alternative, Gatelli respectfully requests that any and all arguments pertaining to the Remaining Additional Defendants be stricken as improper.

Respectfully submitted,

**WRIGHT & REIHNER, P.C.**



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Dated: June 2, 2008

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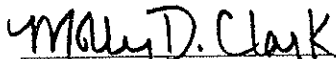
**CERTIFICATE OF SERVICE**

I, Molly D. Clark, hereby certify that on this day a true and correct copy of the foregoing Reply to Opposition and Motion to Strike was served upon parties and counsel of record by first class mail, postage prepaid as follows:

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