

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY,
PENNSYLVANIA

CONNIE JAVENS and
RENEE JAVENS ZUK
Plaintiffs,

vs.

JOHN DOES (1)-(6)
Defendants.

: CIVIL DIVISION
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: NO.: 10550-2016
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TYPE OF PLEADING:
**BRIEF IN OPPOSITION TO THE
MOTIONS TO QUASH SUBPEONA**

FILED ON BEHALF OF:
**CONNIE JAVENS and
RENEE JAVENS ZUK**

COUNSEL OF RECORD:
**PETER J. PIETRANDEA, ESQUIRE
PA I.D. NO. 42142**

LAW OFFICE OF:
PETER J. PIETRANDEA
1309 FREEDOM ROAD
CRANBERRY TWP., PA 16066
peteresq1@earthlink.net

(724) 772-2444
(724) 772-6940 (fax)

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NANCY WERME
PROTHONOTARY
BEAVER COUNTY, PA

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COMES NOW, the Plaintiffs, Connie Javens and Renee Javens, by and through their counsel, Peter J. Pietrandrea, Esquire and hereby files their Brief In Opposition To The Motions To Quash Subpoena, to-wit the following is a statement:

I. STATEMENT OF THE CASE:

The Plaintiff, Connie Javens, is currently the duly elected Treasurer of the County of Beaver, Pennsylvania. The Plaintiff, Renee Javens Zuk, is the natural daughter of Connie Javens and is a hairstylist by trade.

The BeaverCountian operates a website at *beavercountian.com* and states that it is “known for its investigative reporting. The BeaverCountian is your independent source for news and information about the happenings in Beaver County, Pennsylvania.”

On its website, The BeaverCountian hosts a comments section at the conclusion of its news articles, wherein individuals can post or submit their comments for online publication.

Throughout a several month period subject to this litigation, anonymous individuals have engaged in the publication of numerous defamatory comments. These individuals have shielded their identity through the use of an online aliases.

Because these individuals have carried out their defamatory campaigns against Plaintiffs by use of the Internet, their identities are presently unknown to Plaintiffs and, therefore, we will refer to them, as John Does (1)-(6).

So that Plaintiffs may commence formal suit against the John Does (1)-(6) to enjoin their improper activities and seek redress for the damages inflicted by them upon Plaintiffs' reputations, Plaintiffs sought the issuance of a subpoena in order to obtain this Court's permission to serve a subpoena on the BeaverCountian, the only source from which Plaintiffs can learn the John Does (1)-(6) true identity.

The following represents some of the defamatory remarks directed at the Plaintiff, Connie Javens, made by anonymous individuals under various alias names:

A. "thebigdigger"

- December 4, 2015 at 8:28 pm
- (i) I could tell you storys I have watched this women for years. Lets name a few why is there not any other demo company than Unis doing demo in beaver county rumor has it **Connie has been receiving brown bags of cash from unis in the office.** Lets see son Randy worked for turnpike lives in Darlington wife has a large contract with county in millions. Oh hugh house inground pool heated driveway movie theater. In fact they just just bought great grand son 80 thousand dollar land Rover hes 16. Next Dan he was in paper pulling a gun now nothing even happened never made paper after 1 time. Mark several homes no job health problems. Renee arrested by freedom police dui never made the paper. CONNIE SHE has, connections in beaver county times not writi g about her. Renee had the weatherization program at her house 3 days at her \$275,000. Dollar house jucuzzi inground pool that program is for low income even the guy installing it was, shock saying why are we doing this house. Its for sale no sign in yard in monaca 1280 center rd that in case connie gets caught they dump it but Connie got re-elected so they took it off the market.because Renee can't afford it with out mom. Come by the house

see all the expensive cars suvs, hummers, Mercedes, bmw, oh Renee's daughter drives a new x5 bmw in high school daughter 2 drives a newer Yukon to college and the boy a newer jeep liberty. I have watched this over 20 years she cuts hair 1 day a week at her house and Connie had to get her job at friendship ridge she lost most of her clientel. She would never be able to afford it with out Connie the Cash cow. You wanna know ask I am tired of this women actin like a queen bee.

- December 4, 2015 at 11:15 pm
- (ii) I contacted wpxi, wtae, & kdka to run this story hopefully, they pick this story up to impeach her the queen bee needs to be removed it would be a good Christmas present to Beaver County. **Wait until shes out of office they will find millions she stolen from the super bowl's of the steelers we paid for about 10 people to attend and fly to. To her condos in myrtle beach** and whys her house assesed at 40,000. Go look at it in Monaca height REALLY! HOW'S SHE AFFORDING THIS ON A SALARY OF \$60K SHOW US CONNIE! !!
- December 5, 2015 at 5:07 pm
- (iii) Also, did you know before Connie took office **I heard she worked for a dentist office and was stealing from there the cash** and was terminated how did she ever get elected????
- December 5, 2015 at 5:16 pm
- (iv) Check out there houses, cars, and even the grand kids special ordered LAND ROVER 16 years old. X3BMW 17 years old Cash cow Connie now, has to explain or be federally indited. **SHES THE QUEEN BEE DON'T QUESTION HER OR SHELL CONFRONT YOU PLEASE GRANNY CHECK YOUR DEPENDS YOUR OLD, CAUGHT, DONE, & SHE HAS PLENTY OF STOLEN MONEY SHE WILL NEED IT FOR THE ATTORNEY, MOST OF All connie you CAN'T buy God eternal fire waits very soon!!!!!!**
- December 6, 2015 at 11:12 am
- (v) **She will be paying the lawyers with the \$\$\$\$ stolen from the tax payers** or start liquidation of assets if she get desperate for cash. Watch you find out the kids, houses where paid by us but, they will be seized if they where paid for by illegal monies. Basically, like a drug dealer but her **drug money is the tax money & the bags of cash in her office** by unis's that, why they never paid property taxed on 50 properties and slipped through the crash plus, award all the demo in beaver county it allll fits the piece to puzzle now Connie's on the run gig is up!!!!!!
- December 10, 2015 at 8:37 pm
- (vi) Opps so I miss spelled a word or 2 on a cell phone but everyone on this site knows **Connie is stealing** now the state cops are involved hopefully

the feds will do a real audit and she will go to prison where she belongs. She withheld bank statements after the election released them late afterwards because she knew she would have never been elected. As for her daughter she's old, broke and broken. Now as for Eric Keefer my affiliates and I googled him and he runs a successful business. According to County records he just purchased a large property site and owns 2 houses. I like how this family or relative tries to play the blame game and switch the topic at hand. Read the majority of comments here and they are true people want old Ronald McDonald Cash cow Connie's old ass out.....Resign bitch enough said.....p.s. Had the times wrote the real story she wouldn't be in. Also, she needs to truly find other ways to steal from the tax payer all eyes are on Connie. Renee never explained why the weatherization program did her house??*?

(emphasis added)

B. "THE EXECUTIONER"

January 2, 2016 at 10:55 am

- (i) Lololo Bigdigger & Sally jo we know its RENEE JAVENS OR FAMILY MEMBER wake up read the comments here nice try to slam this guy Connie is the on topic at hand and the family for corruption. The walls of 2016 are starting to cave in on you and your just to dumb to see it. Or you know watch because the feds will come after you lol and you will lose everything. Those who get comfortable in high positions fall hard if they do fall. We all know the numbers don't add up you will be living in the ghetto where you belong. **THE FACT IS SHES STEALING AND YOU ARE TO.** It will all come one day. You will crash and burn in hell.

January 8, 2016 at 6:26 pm

- (ii) IT HAS MADE CHANNEL 11 NEWS YOU GO CONNIE JAVEN'S FINALLY MADE THE MAIN STREAM MEDIA ON A CODE VIOLATION NOW THE ELDERLY ARE EDUCATION. BTW WHERE'S THE BIG MOUTH FAMILY MEMBERS OR YOU NOW TRYING TO DEFEND YOUR ASS!!! IF I WAS THEM I WOULD BE CONCERNED OF LOSING EVERYTHING **FOR EMBEZZLEMENT OF TAXPAYER'S INDITE AND IMPEACH HER!!!!**

(emphasis added)

C. "John Q Taxpayer"

February 22, 2016 at 6:41 am

- (i) This fucking bitch **Connie Javens taking money on her own** and without authorization from anyone else and no record of it. Who the fuck does she think she is? I refuse to believe that there is nothing anyone can do to

remove her from office. WAKE UP PEOPLE! **SHE IS STEALING TAX MONEY!**

February 22, 2016 at 7:30 am

- (ii) There's your million dollars Mr. Sheriff. Vince LaValle gave it to Friendship Ridge. Myself and my family will die on the street before we would go to Friendship Ridge. I don't think anyone in this county would put a loved one in that place after knowing what a bunch of conniving thieves they are on top of everything else, I'll bet county is also paying them big time money to rent the morgue from them.

March 12, 2016 at 4:55 pm

- (iii) **Confiscating documents is a crime. It's tampering with public records or tampering with evidence.** Why is this big haired bitch not being arrested and why is she still in that courthouse? There is something really wrong going on here.

March 12, 2016 at 5:27 pm

- (iv) I just don't get it. This fucking **crooked bitch con artist Javens keeps on committing crimes and violating codes and gets away with it.** We have DA that refuses to charge anyone and worse yet, he wards off the state police from doing an investigation. What the fuck is going on here ???

March 20, 2016 at 9:03 am

- (v) The Sheriff is doing this on purpose in retaliation of his budget being cut. He is having a hissy fit like a little bitch and nobody is going to do a fucking thing about it, just like nothing is going to be done about Javens, Lavalle, Rabick, etc. **We have been robbed and are still getting robbed.** This fucking Lozier isn't going to do anything. He must be sitting in his office with his dress pulled up over his head. There is nobody in charge. They just want a big paycheck and any extra they can grab.

(emphasis added)

D. "Slicer"

March 11, 2016 at 6:17 pm

- (i) REALLY CONNIE HAVEN'T THEY FUCKIN FIRED YOU ALREADY YOU A FUCKN **OLD THEIVING BITCH** COM ON BEAVER COUNTY ARE YOU AFRAID OF THIS OLD HAG. SHE MAKES YOU ALL LOOK LIKE SILLY PUPPETS AT THE PUPPET PARADE in the court house !!!!! THE D.A. KISSN HER ASS NOW TO ASHAME !!!!!

(emphasis added)

E. "Courthouseconvicts"

March 20, 2016 at 11:53 am

- (i) @John q WHAT'S funny it's fucking penny's **on the dollar of what Connie and the family crew has screwed us out of.** Look she's in with the new d.a. they take the investigation over. Connie lawyers up and says nothing to the taxpayer's. She shuts Sandy and the crew down. **The woman is indestructible buys her 16 year old grand son a special ordered land rover for 80k, others x5 bmw plus more.** WHO DOES THAT SOMEONE THAT DOESN'T GIVE SHIT AND MAKES THE WHOLE COURT HOUSE ADMINISTRATION LOOK LIKE FOOLS THAT'S WHO. A BIG FUCK YOU TO THEM & AND TAXPAYERS!!!!

(emphasis added)

The following represents some of the defamatory remarks directed at the Plaintiff, Renee Javens Zuk, made by anonymous individuals under various alias names:

A. "thebigdigger"

December 10, 2015 at 9:08 pm

- (i) Jealous or what like I said lets not change or try to defuse the heat on Gramma cash cow Connie. Also, I stated before I don't know who Eric Keefer is but, is he related to Ray Charles or Stevie Wonder??? This old bitch **Renee that's broke needs botox any one that knows her has a ignorant mouth I doubt highly he would want her WHY unless he would want a STD.....**You are obviously a relative but, like I said state police are involved why did she have a lawyer present and not answer the questions for the tax payers???? Do you smell bacon I DO.....

December 13, 2015 at 11:12 pm

- (ii) Your so fuckn **stupid Renee Javens im not who you think I am. Beaver county knows you are a slut** and always will be. You're the loser that has no hair clients and about to lose your crib....How you going to pay for the house and expensive cars if mommy goes to jail at 52 lol. Hes your neighbor so he would drive by your house dumb ass he has a nice girl friend successful I know him personally I'm a contractor that buys products off him at his supply yard in Rochester. In fact, **I graduated with you where a slut then and a slut now** that's why you got a divorce from you husband caught you cheating many times. You tell everyone everything you don't know when to shut up lol. I doubt this is going to blow over btw you may find a desperate guy to date your sorry lonesome ass imfao when you selling the house I give it a fuckn month it will be sheriff sale want to bet after the out come of the investigation. Also read

the comments on here wake up no one likes you or what CONNIE'S REASONING (SINCE THERE IS NONE) TO THE TAXPAYERS QUIT TRYING TO BLAME THIS GUY FOR YOUR FAMILYS ACTIONS that's the topic at hand figure IT out. Better yet you should run for treasurer you will see how well you are liked Imfao steal some more.....

(emphasis added)

B. "ConnieintheSlammer"

March 12, 2016 at 12:01 am

- (i) Shut up Renee Javens mama is going down wait for it. **Your stealing from taxpayer's is done!!!!** Plus free money from mamma to you from the taxpayer's. Hopefully they will audit your personal bills we know you can't cover lol.....

(emphasis added)

C. "THE EXCUTIONER"

January 2, 2016 at 10:55 am

- (i) Lololo Bigdigger & Sally jo we know its RENEE JAVENS OR FAMILY MEMBER wake up read the comments here nice try to slam this guy Connie is the on topic at hand and the family for corruption. The walls of 2016 are starting to cave in on you and your just to dumb to see it. Or you know watch because the feds will come after you lol and you will lose everything. Those who get comfortable in high positions fall hard if they do fall. We all know the numbers don't add up you will be living In the gehetto where you belong. **THE FACT IS SHES STEALING AND YOU ARE TO.** It will all come one day. You will crash and burn in hell.

(emphasis added)

The Plaintiffs maintain for purposes of the litigation that, the Plaintiff, Connie Javens, would be considered a "public figure" and the Plaintiff, Renee Javens Zuk, would be a "private individual".

The elements of a cause of action for defamation include:

1. A false and defamatory statement concerning another;
2. The unprivileged publication of the statement to a third party;

3. Fault accounting to negligence for private individual and actual malice (knowing that the statements were false or reckless disregarding there falsity) for a public official; and
4. Actual injury or harm to the individuals.

Pennsylvania permits a cause of action for defamation *per se* where actual injury or harm is presumed.

There are four categories of defamation *per se*:

1. criminal offense;
2. loathsome disease;
3. matters non-compatible with a person's business trade, possession of office; and
4. serious sexual misconduct.

Clemente v. Espinosa, 749 F. Supp. 672 (E.D. Pa. 1990); *Restatement (Second) of Torts*, § 575.

All of the defamatory statements set forth herein constitute defamation *per se*.

Therefore, such defamatory speech is afforded no First Amendment protection and Plaintiffs should be permitted to conduct discovery to reveal the true identity of the anonymous speaker.

While the internet posters are undeniably entitled to First Amendment rights, the defamatory statements are not entitled to First Amendment protection.

Plaintiffs have reason to believe that The BeaverCountian, has evidence in its possession, custody, and/or control which can, and will, reveal the identity of John Does (1)-(6).

The subpoena Plaintiffs seek to serve on The BeaverCountian will undoubtedly lead to the discovery of admissible evidence in that it will help reveal the true identity of the anonymous individuals responsible for posting these defamatory statements.

Plaintiffs are innocent victims of an offensive and scandalous attack on their reputation by these John Does (1)-(6), assailants hiding behind an anonymous Internet identity.

Plaintiffs seek, by virtue of the instant Motion, to obtain evidence from the only source capable of revealing the true identities of John Does (1)-(6).

Plaintiffs are unable to obtain this evidence through any other source or means and, without it, Plaintiffs will be unable to stop the defamatory attacks on Plaintiffs' good names by John Does (1)-(6).

II. ARGUMENT:

A. The Commenters are not protected sources pursuant to 42 Pa.C.S. §5942, entitled confidential communications to news reporters and this Court should compel the BeaverCountian to disclose any identifying information.

42 Pa.C.S. §5942, entitled confidential communications to news reporters provides a privilege of the journalist against disclosure. It reads:

No person engaged on, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any government unit.

42 Pa. C.S. §5942 (a).

However, the law is clearly not applicable to blogger commentary. The anonymous individuals are clearly not a source to any news reporter.

B. For the purposes of the defamation action, Connie Javens is a public figure and Renee Javes Zuk is a private individual.

I believe all parties agree that Connie Javens is the duly elected Treasurer of Beaver County and is considered a public official, pursuant to *New York Times v. Sullivan*.

However, Renee Javens Zuk should be considered a private individual. She is neither a public official, nor is she a limited purpose public figure.

In the anticipated future litigation of this matter, public officials and public figures must prove "actual malice" in order to recover damages in a defamation action against the media, that is, "that the defamatory statements were made with knowledge of their falsity or with reckless disregard of the truth." *Avins v. White*, 627 F.2d 637, 646 (3d Cir. 1980), cert. denied, 449 U.S. 982, 101 S.Ct. 398, 66 L.Ed 2d 244 (1980). Subsequently, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed 2d 789 (1974), cert. denied, 459 U.S. 1226, 103 S.Ct. 1233, 75 L.Ed.2d 467 (1983), the Court identified two classes of public figures:

In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.

Id., 418 U.S. at 351, 94 S.Ct. 2997.

A person may become a limited purpose public figure if he "thrust[s] himself into the vortex of the discussion of pressing public concerns." *Rosenblatt v. Baer*, 383 U.S. 75, 86 n. 12, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966). Such a person uses "purposeful activity" to thrust "his personality" into a "public controversy." *Curtis Publishing Co.* 338 U.S. at 155, 87 S.Ct. 1975. He becomes a limited purpose public figure because he invites and merits "attention and comment." *Gertz*, 418 U.S. at 346, 94 S.Ct. 2997.

“A private individual,” however, “is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts a public attention.”

Wolston v. Reader's Digest Assoc., 443 U.S. 157, 167, 99 S.Ct. 2701, 61 L.Ed.2d 450 (1979).

It is the function of the court to ascertain in the first instance whether the plaintiff is a public or private figure. *Smith v. A Pocono Country Place Property Owners Assoc., Inc.*, 686 F.Supp. 1053, 1056 (M.D.Pa. 1987).

In order to classify Appellees as limited purpose public figures, it must be shown that Plaintiff “voluntarily thrust themselves into the vortex of the public controversy.” *Marcone v. Penthouse* 754 F.2d at 1072, 1083 (3rd Cir. 1985). From this voluntary act, we derive the notion that the person assumed the risk and there is consequent fairness in labeling the person a public figure. *Id.*, 754 F.2d at 1083

Mere newsworthiness alone does not create a public controversy. *Marcone*, 754 F.2d at 1083.

In the instant action, Renee Javens Zuk did nothing to enter any area of public controversy. She was a hairstylist, who was employed at a county run nursing facility. Her hire may have been somewhat newsworthy, but she simply did not use purposeful activity to thrust her personality into an area of public controversy.

C. Anonymous defamatory remarks are not protected by the First Amendment of The United States Constitution nor Article 1, Section 7 of the Pennsylvania Constitution.

While the Plaintiffs recognize that free speech is essential to our democratic system of government, this right is not absolute:

[W]ith regard to free speech generally, the States have justifiable interests in preventing certain evils. The Court has specifically stated that libel is one of those evils that the States have justifiable interests in guarding against:

The legitimate state interest underling the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for ... the individual's right to the protection of his own good name reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty.

Melvin v. Doe, 575 Pa.264, 836 A.2d 42, 49 (2003), quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) (internal quotation omitted). States may impose “some regulation of speech without infringing upon protected First Amendment rights.” *Id.*

The United States Supreme Court has defined core political speech as involving the “interchange of ideas for the bringing about of political and social changes desired by the people.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988) (quoting *Roth v. Grant*, 354 U.S. 476, 484 (1957)); *See also New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). Political speech includes “discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.” *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966). The Supreme Court has also described political change.” *Meyer*, 486 U.S. at 422.

The speech, involved in this instant action is not criticism of public officials, nor is it a debate on public issues which should be uninhibited and robust and which may include vehement, caustic and sharp attacks on public officials. Rather, the John Doe individuals have accused Plaintiffs of specific criminal conduct, theft of tax money, taking bribes, sexual misconduct and possessing a sexually transmitted disease.

These specific comments of alleged fact cannot be considered public criticism or part of open debate.

D. Connie Javens and Renee Javens Zuk have established a prima facie case for defamation.

The Pennsylvania Superior Court, in the case of *Pilchesky v. Gatelli*, 2011 Pa. Super. 3, 12 A.2d 430 (2011), has set forth a four part test to ensure the proper balance between the speakers right to remain anonymous and a defamation Plaintiff's right to seek redress. The four requirements are:

1. Notification;
2. Sufficiency of evidence;
3. Affidavit of Good Faith and Necessity; and
4. Balancing Test.

Id.

1. Notification:

The reviewing court must ensure that the John Doe defendant receives proper notification of a petition to disclose his identity and a reasonable opportunity to contest the petition. As our Supreme Court has stated, "the constitutional right to anonymous speech is ... deeply rooted in public policy," and once an identity is disclosed, that right "is irreparably lost." *Pilchesky*, 12 A.2d at 442, quoting *Melvin*, 836 A.2d at 50.

In the present action, the BeaverCountian was ordered to provide notice to each of the John Doe Defendants and each of the John Doe Defendants has retained counsel.

2. Sufficiency Of The Evidence:

Every plaintiff who petitions the court to disclose the identity of an anonymous or pseudonymous communicator must present sufficient evidence to establish a prima facie case for all elements of a defamation claim, within the plaintiff's control, such as would survive a motion for summary judgment. *Pilchesky*, 12 A.2d at 442-443.

Also, it should be noted that a public figure plaintiff need not provide evidence of actual malice in a petition to disclose because “[w]ithout discovery of the defendant’s identity, satisfying this element may be... impossible.”) *Pilchesky*, 12 A.2d at 443, quoting *Doe No. 1 v. Cahill*, 884 A.2d 451, 464 (2005).

Regardless of which label is attached to the requirement, the objective is to properly balance a defendant’s First Amendment right to speak anonymously against an injured plaintiff’s right to seek redress. *Pilchesky*, 12 A.2d at 443. The summary judgment standard properly achieves this balance. It ensures that a plaintiff does not present a frivolous claim or one intended merely to harass or silence a vocal critic. On the other hand, requiring this modest amount of evidence and interpreting such evidence in the light most favorable to the plaintiff ensures that the right to redress is not unduly burdened. *Id.*

The reference point for the evaluation of the sufficiency of evidence of a defamation action is 42 Pa. C.S.A. §8343, which sets forth the elements of the cause of action. *See also, Maier v. Maretti*, 671 A.2d 701 (Pa.Super. 1995). A plaintiff asserting a claim based on libel need not establish “special damages.” *Walker v. Grand Cent. Sanitation, Inc.*, 634 A.2d 237, 248 (Pa. Super. 1993), citing *Agriss v. Roadway Express, Inc.*, 483 A.2d 456 (Pa. Super. 1984). The term “special damages” is defined as “actual economic harm” or “pecuniary loss.” *Brinich v. Jencka*, 757 A.2d 388, 398 (Pa. Super. 2000).

Defamation *per se* can be either “words imputing (1) criminal offense, (2) loathsome disease, (3) business misconduct, or (4) serious sexual misconduct.” *Clemente*, 749 F. Supp. At 677. A statement is defamatory *per se* as an accusation of business misconduct if it “ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business.” *Id.* at 677-78 (quoting *Restatement (Second) of Torts*

§573 (1977)). The statement must be more than mere general disparagement. It must be of the type that would be particularly harmful to an individual engaged in the plaintiff's business or profession. *Id.* at 678.

However, every defamation plaintiff must prove "special harm" or "actual harm." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); 42 Pa. C.S.A. §8343 (a) (6). Injury to reputation, impairment of standing in the community, personal humiliation and mental anguish are types of actual harm "not limited to out-of-pocket loss" compensable for defamation. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

Here, to establish damages, the Plaintiffs need only prove actual harm, e.g., personal humiliation, mental anguish, injury to reputation.

Here, the following are some of the verbatim defamatory comments directed at the Plaintiff, Connie Javens:

"thebigdigger"

- a. Connie has been receiving brown bags of cash from unis in the office.
- b. Wait until shes out of office they will find millions she stolen from the super bowl's of the steelers we paid for about 10 people to attend and fly to. To her condos in myrtle beach.
- c. I heard she worked for a dentist office and was stealing from there the cash.
- e. SHE HAS PLENTY OF STOLEN MONEY.
- f. She will be paying the lawyers with the \$\$\$\$ stolen from the tax payers.
- g. drug money is the tax money & the bags of cash in her office.
- h. Connie is stealing.

“THE EXECUTIONER”

- a. THE FACT IS SHES STEALING.
- b. FOR EMBEZZLEMENT OF TAXPAYER’S INDITE AND IMPEACH HER!!!!

“John Q Taxpayer”

- a. Connie Javens taking money on her own.
- b. SHE IS STEALING TAX MONEY!
- c. Confiscating documents is a crime. It’s tampering with public records or tampering with evidence.
- d. crooked bitch con artist Javens keeps on committing crimes and violating codes and gets away with it.
- e. We have been robbed and are still getting robbed.

“Slicer”

- a. OLD THEIVING BITCH.

“Courthouseconvicts”

- a. on the dollar of what Connie and the family crew has screwed us out of.
- b. The woman is indestructible buys her 16 year old grand son a special ordered land rover for 80k, others x5 bmw plus more.

Here, the following are some of the defamatory comments directed at the Plaintiff,

Renee Javens Zuk:

“the bigdigger”

- a. Renee that’s broke needs botox any one that knows her has a ignorant mouth I doubt highly he would want her WHY unless he would want a STD.....

- b. stupid Renee Javens im not who you think I am. Beaver county knows you are a slut.
- c. I graduated with you where a slut then and a slut now.

“ConnieintheSlammer”

- a. Your stealing from taxpayer’s is done!!!!

“THE EXCUTIONER”

- a. THE FACT IS SHES STEALING AND YOU ARE TO.

Surely, these *per se* defamatory comments would reasonably cause the emotional and reputational harm set forth in Plaintiffs’ Petition.

3. Affidavit of Good Faith and Necessity:

A petitioner must submit an affidavit asserting that the requested information is sought in good faith, is unavailable by other means, is directly related to the claim and is fundamentally necessary to secure relief. *Pilchesky*, 12 A.2d at 445-446.

This requirement is well-founded:

In the present case, all of the actionable comments were allegations of fact consisting of specific criminal conduct, serious sexual conduct or loathsome disease. The anonymous speaker did not express an unpopular idea. The anonymous speaker did not criticize the ideas of others.

Herein, the asserted affidavit of good faith and necessity is well founded.

4. Balancing Test:

Finally, the reviewing court must conduct the *Dendrite* balancing test. The court must expressly balance the defendant’s First Amendment rights against the strength of the plaintiff’s prima facie case. *Pilchesky*, 12 A.2d at 445 citing *Dendrite*, 775 A.2d at 760-761.

In balancing the equities, the reviewing court should examine the defamatory nature of the comments, the quantity and quality of evidence presented, and whether the comments were privileged. *See, e.g., Dendrite*, 772. The court should also consider the forum in which the actionable comments arose. For example, comments on matters of public importance or those which criticize public officials are entitled to robust protection, for it is in the public forum that the First Amendment right of speech is strongest. *See New York Times v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) (recognizing our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”).

The purpose of defamation law is to nurture the proper balance between an individual’s right to speak freely and an injured plaintiff’s right to redress.

In the Motion filed by John Does (1) (2) (4) (5) & (6), James Talman, Esquire asserts applicable law as follows:

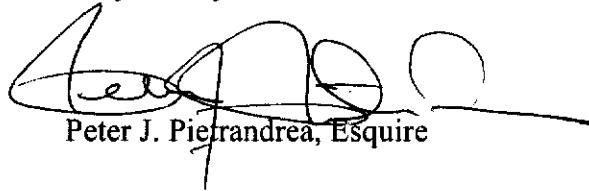
Statements that are too vague to be capable of being proven true or false or that have no generally accepted meaning cannot be defamatory. *See, e.g., Seeling v. Infinity Broadcasting*, 97 Cal. App. 4th 798 (Cal. Ct. App. 2002) (holding that statements that plaintiff was a “local loser” and a “big skank” were not defamatory.

Of course in the instant action, these type of insults or opinions are not part of Plaintiffs’ cause of action. The Plaintiffs are not seeking redress because someone called them a “skank”, “loser”, “old” or “ugly”. Rather, these comments included specific acts of crimes, loathsome diseases, matters non-compatible with the person’s office and serious sexual misconduct.

III. CONCLUSION:

For the reasons cited above, the Plaintiffs respectfully request this Honorable Court to dismiss and deny the three Motions To Quash Subpeonas.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. Pierandrea", with a long horizontal line extending to the right.

Peter J. Pierandrea, Esquire

CERTIFICATE OF SERVICE

I, Peter J. Pietrandrea, Esquire, hereby certify that the foregoing, Brief In Opposition To The Motion To Quash Subpeona has been forwarded via first-class mail postage prepaid this 5th day of October, 2016 to:

ORIGINAL:

NANCY WERME, PROTHONOTARY
BEAVER COUNTY COURTHOUSE
810 THIRD STREET
BEAVER, PA 15009

COPIES:

WILLIAM R. HARE, ESQUIRE
DEPUTY DISTRICT COURT ADMINISTRATOR
COURT ADMINISTRATOR'S OFFICE
BEAVER COUNTY COURTHOUSE
810 THIRD STREET
BEAVER, PA 15009

GERALD V. BENYO, ESQUIRE
330 DRAVO AVENUE
BEAVER, PA 15009

JAMES TALLMAN, ESQUIRE
425 FIRST AVENUE
PITTSBURGH, PA 15219

BRIAN M. COLLINS, ESQUIRE
TEN PENN CENTER
SUITE 2300
1801 MARKET STREET
PHILADELPHIA, PA 19103

Dated: 10/05/2016


PETER J. PIETRANDREA, ESQUIRE
ATTORNEY FOR PLAINTIFFS

NANCY WERME
PROTHONOTARY
BEAVER COUNTY, PA

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