

IN THE COURT OF COMMON PLEAS  
ERIE COUNTY, OHIO

**KEVIN BAXTER**  
1630 Willow Drive  
Sandusky, Ohio 44870

Plaintiff,

vs.

**SANDUSKY NEWSPAPERS, INC.**  
dba Sandusky Register and  
dba SanduskyRegister.com  
c/o Peter W. Vogt, Statutory Agent  
23 Bell Street, Suite 2  
Chagrin Falls, Ohio 44022

and

**DOUGLAS PHARES**  
314 West Market Street  
Sandusky, Ohio 44870

and

**JASON SINGER**  
314 West Market Street  
Sandusky, Ohio 44870

and

**MATT WESTERHOLD**  
314 West Market Street  
Sandusky, Ohio 44870

and

**JOHN DOE(S) 1-10**  
name(s) and address(es) currently  
unknown

Defendants.

Case No **2009 CV D2P**

Judge

**TYGH TONE**

BARBARA J. JOHNSON  
CLERK OF COURTS

2009 APR -2 AM 9:10

FILED  
COMMON PLEAS COURT  
ERIE COUNTY, OHIO

COMPLAINT WITH DISCOVERY

(JURY DEMANDED)

Now comes Plaintiff Kevin Baxter, by and through counsel, and for his Complaint states and alleges as follows:

## **SUMMARY OF THE ACTION**

1. For the past 10 months, the Sandusky Register has spun a salacious and sensational tale of scandal: A cocaine-abusing county prosecutor lies to government investigators and abuses his power to falsify public records. Register readers have been led to believe a high-ranking narcotics agent even testified under oath about the prosecutor's criminal activity.

2. In truth, the Register's storyline is a complete fabrication built upon invented testimony, the distortion of innocuous facts, and the knowing re-publication of long-discredited defamatory statements. Driven by the actual malice of Managing Editor Matt Westerhold, the Register has perpetrated an unlawful campaign of defamation intended to destroy the reputation of Erie County Prosecutor Kevin Baxter.

## **BACKGROUND**

### ***Parties and Relationships***

3. Plaintiff Kevin Baxter ("Plaintiff" or "Baxter") is the duly elected Erie County Prosecuting Attorney, and a resident of the City of Sandusky at the address set forth on the caption hereon.

4. Defendant Sandusky Newspapers Incorporated (the "Company") is a privately held news organization headquartered in Erie County at 314 West Market Street, Sandusky, Ohio 44870. The Company owns and operates media properties, including the Sandusky Register and SanduskyRegister.com (the "Publications") and does business under those names. (Throughout this Complaint, the Company and its Publications, both in print and online, are referred to collectively as the "Register.")

5. Defendant Douglas Phares ("Phares") is the publisher of the Publications and is employed by the Company.

6. Defendant Jason Singer (“Singer”) works as a news reporter for the Publications and is employed by the Company.

7. Defendant Matt Westerhold (“Westerhold”) is the Managing Editor of the Publications and is employed by the Company. He makes editorial decisions regarding the news content of the Publications and copy edits news reports prior to publication in print and online. Westerhold writes regular columns that appear in both Publications. He also reports the news on his web blog at SanduskyRegister.com.

8. The John Doe Defendant(s) are such natural persons and/or business entities who exercise ownership or control over any of the aforementioned Defendants, or who were involved in the publication of the defamatory statements described in this Complaint, but whose names and addresses are currently unknown, despite reasonable efforts by Plaintiff and counsel to discover their identities. Plaintiff will personally serve Defendants John Doe(s) 1-10 if/when their identities become known through discovery, within 6 months from the date of this filing, and will seek to amend this Complaint accordingly. (To the extent any John Doe was responsible or vicariously responsible for the Publications, that John Doe defendant is included in the term “Register” as it is employed in this Complaint.)

9. At all times relevant to this Complaint, Defendants Phares, Singer, Westerhold, and John Doe(s) 1-10 were each practicing their professional duties and/or obligations, within the course and scope of their employment and/or in furtherance of their agency relationship with the Company and/or John Doe(s) 1-10.

10. The Company and/or John Doe(s) 1-5 is responsible for Phares, Singer, Westerhold, and all Publications, by virtue of the doctrine of respondeat superior, and have ratified, approved and/or acquiesced to the tortious conduct described in this Complaint.

(Throughout this Complaint, the Company, Phares, Singer, Westerhold, and John Doe(s) 1-5 are referred to collectively as the “Defendants.”)

***Westerhold’s Animus and the Register’s Knowledge***

11. Register employees are well aware of editor Westerhold’s contempt for Plaintiff Baxter. In a March 19, 2009, blog published on SanduskyRegister.com, reporter Singer described editor Westerhold’s “rage” towards Baxter: *“He [Westerhold] believes Baxter dodges hard questions, hides from the truth, participates in shady dealings and is basically the Lord Voldemort of Erie County.”* In the same article, SanduskyRegister.com provided readers with a hyperlink to a description of Voldemort’s (and presumably Baxter’s) personal attributes, describing him as a *“raging psychopath, devoid of the normal human responses to other people’s suffering . . . Like most archetypical villains (particularly the evil genius archetype), [his] arrogance inevitably leads to his downfall.”*

***The Register Takes a Side in “Nuesse-Gate,” Portraying Baxter as a Villain***

12. Kimberly Nuesse (“Nuesse”) is the former Chief of Police for the City of Sandusky. Last year, after internal police problems were brought to the attention of City Manager Matthew Kline (“Kline”), he appointed Cleveland-based attorney Michael Murman (“Murman”)—assisted by two former FBI agents, Patrick Foran and Martin McCann (the “Investigators”)—to conduct an independent investigation and produce a report (the “Murman Report”). The Investigators interviewed 52 people involved in Sandusky law enforcement, including Baxter in his official capacity as Erie County Prosecutor. Murman did not attend Baxter’s interview. Foran and McCann took notes during an interview with Baxter and provided those notes to Murman, who developed them into a narrative to include in the Murman Report.

13. After the 224-page Murman Report was made public, Baxter contacted City of Sandusky Law Director Donald Icsman (“Icsman”) to inform him that there were several minor

inaccuracies in the four-page section of the Murman Report summarizing Baxter's comments to the Investigators. City Manager Kline then instructed Baxter to make hand-written corrections to these mistakes.

14. Chief Nuesse was ultimately terminated and she appealed the decision before the Sandusky Civil Service Commission, which conducted hearings on the matter. The Register portrayed the internal police department problems, the Murman investigation, Nuesse's termination, and her appeal as a major public controversy, dubbing it "Nuesse-gate." Westerhold had used Nuesse as a source for news stories that would run in the Register, and the Register took Nuesse's side after her position as Police Chief was threatened.

15. Driven by Westerhold, the Register cast Baxter as a villain in its "Nuesse-gate" drama, and published defamatory statements that claimed Baxter lied to Investigators and falsified the Murman Report. The Register reported: *"Nuesse-gate is all about comfort for Baxter . . . the Murman Report is deceptive from word one."*

16. To further defame Baxter, the Register invented testimony by Bureau of Criminal Investigation and Identification ("BCI") agent Michael Masterson ("Masterson"), claiming that Masterson *"testified"* during one of Nuesse's appellate hearings *"about Baxter's alleged cocaine use."* Westerhold even encouraged readers to *"Wake up and snort the cocaine."*

### ***The Origin of the Discredited Cocaine Allegation***

17. Edward J. Baxter ("Ejay") is one of Kevin Baxter's siblings. On April 1, 2003, Ejay pled no contest to two counts of obstruction of justice in a plea agreement reached with special prosecutor James Gutierrez in Erie County Common Pleas Court. Ejay was facing an 81 count felony indictment. In fact, the Register published an accurate front-page article on April 2, 2003, describing the court proceedings:

The 81 charges included counts of extortion, intimidation and falsification for allegedly spreading false and malicious information about Kevin Baxter.

**Edward Baxter was accused of sending letters to businesses, the media, and government agencies, including the FBI and disciplinary counsel for the Ohio Supreme Court, alleging drug abuse, case fixing, and other criminal acts by Kevin Baxter.**

\* \* \*

A no contest plea is an admission of the factual basis of the charges, and admitting responsibility for the actions.

\* \* \*

In a brief statement to [Judge] Patton, Edward Baxter said he agreed not to continue the behavior or assist others in attempting to **defame** Kevin Baxter. Edward Baxter said he **admitted he “facilitated the communication” of “false information regarding my brother, Kevin Baxter, to other individuals.”**

(Emphasis added.)

### **FACTUAL ALLEGATIONS**

#### ***The Register Invents Testimony to Support False Accusations About Baxter’s Alleged Cocaine Use***

18. On February 26, 2009, an appellate hearing in the case of *Kimberly Nuesse v. City of Sandusky* was held before the City of Sandusky Municipal Civil Service Commission under retired Judge Joseph Cirigliano.

19. During the hearing, Chief Nuesse’s attorney, K. Ron Bailey (“Bailey”), attempted to discredit Baxter’s earlier testimony on behalf of the City of Sandusky. Bailey questioned agent Masterson about a BCI investigation into an allegation that Baxter had abused cocaine. The BCI investigation had been closed in 2001 with a finding of no probable cause.

20. According to the transcript of the proceeding, Agent Masterson answered only two questions related to the investigation:

BAILEY: You're aware of that investigation, right?

ANSWER: I'm aware of it, but was not a part of it.

\* \* \*

BAILEY: Did you advise Kim Nuesse that that investigation was dropped?

ANSWER: I do not believe so.

That was the full extent of agent Masterson's testimony related to Baxter. He did not make any statements about the alleged cocaine use, the credibility of witnesses, or whether the allegation was substantiated.

21. Beginning on February 26, 2009, the Register printed an article falsely claiming Masterson had "*testifie[d] about Baxter's alleged cocaine use.*" In truth, the record of the hearing is clear: Masterson did not testify about Baxter's alleged cocaine use.

22. On February 27, 2009, the Register reported on a document that attorney Bailey attempted to have admitted into evidence at Chief Nuesse's hearing. Singer wrote: "*According to a document from [BCI] . . . the government had a 'credible witness' who confirmed Baxter's cocaine use.*" In truth, the BCI document that was read aloud in open court by Bailey stated, "Only one witness in the myriad of names provided to the [BCI] investigators has provided reliable information regarding the subject's drug use."

23. On February 28, 2009, Singer actually merged these two fabrications to invent yet another false claim. He wrote that Masterson "***testified*** *there was a 'credible witness' who could substantiate the accusations*" (emphasis added). In truth, Masterson did not testify about any witnesses, their credibility, or whether they could substantiate anything.

24. In this same article, Singer continued his description of this fantasy testimony, claiming Masterson "*said BCI decided not to pursue charges because the alleged cocaine abuse occurred several years earlier.*" There is simply no truth to this reporting.

25. Singer was present at the hearing during Masterson's testimony, the hearing was a matter of public record, and Singer actually knew Masterson had offered none of the testimony described in the articles. Despite this knowledge, the Register published Defamatory Statements Nos. 5-8, and 10 as detailed in Count One below.

***Baxter Corrects Minor Inaccuracies in the Murman Report and the Register Calls Him a Liar and Falsifier***

26. On March 20, 2008, Investigators Foran and McCann interviewed Baxter about his interactions with Chief Nuesse in his role as Prosecutor. Baxter did not provide a written or recorded statement, an affidavit, or sworn testimony. The Investigators simply took notes during the interview. Murman was not present for Baxter's interview but later used the Investigators' notes to draft a narrative describing Baxter's comments. Baxter was not given the opportunity to review Murman's narrative prior to its public release.

27. On May 28, 2008, the 224-page Murman Report became public record. Pages 128 through 132 summarize the Investigators' interview with Baxter.

28. On June 2, 2008, after reading the Murman Report, Baxter called Law Director Icsman to inform him of minor inaccuracies in the Murman Report's description of Baxter's comments.

29. The next day, Baxter sent a follow-up letter to Icsman offering to review the narrative, but making clear the "general context of the narrative would not change." Despite this, after a June 6, 2008, conversation with Baxter, editor Westerhold published a headline, "*Baxter Blasts Murman Report.*"

30. On June 9, 2008, City Manager Kline instructed Baxter to make handwritten changes to the Murman Report correcting the inaccuracies, and these changes became part of the public record. Baxter made 9 minor corrections to the narrative describing his original comments to Investigators:

- a. Murman Report, page 128: Murman wrote, “Shortly after her appointment, Chief Nuesse started avoiding discussions relating to the continuation of the Task Force. Based on this fact, Baxter offered to re-vamp the Task Force and as a result, former FBI Agent, George Steinbeck, conducted a study.”

Baxter’s Correction: The study was actually conducted in 1996 (long before Chief Nuesse was appointed).

- b. Murman Report, page 129: Murman wrote, “Steinbeck’s ideas were implemented”

Baxter’s Correction: Baxter approximated the ideas were actually implemented in 1996.

- c. Murman Report, page 129: Murman wrote, “Chief Nuesse was quoted in the local media as being opposed to the levy.”

Baxter’s Correction: Baxter wrote, “Nuesse said that the sheriff had said the Task Force was defunct.”

- d. Murman Report, page 129: Murman wrote, “Chief Nuesse ... never told [Baxter] or Sheriff Lyons that they were going to be making a large number of arrests, in spite of the fact that the Erie County Prosecutor’s office would have to process those that were arrested the morning after the raids and the Sheriff’s Office would be required to house those who were arrested.

Baxter’s Correction: Baxter eliminated the reference that his office “would have to process those that were arrested the morning after the raids.”

- e. Murman Report, page 130: Murman referenced City “Commissioner Dennis Miller.”

Baxter’s Correction: Baxter indicated the City Commissioner in question was actually “Dennis Murray.”

- f. Murman Report, page 130: Murman referenced, “child abuse prosecutions being taken to the U.S. Attorney’s office.”

Baxter’s Correction: It should have read, “drug prosecutions.”

- g. Murman Report, page 130: Murman wrote, “Baxter advised Nuesse that she should not conduct [high school] searches without first coordinating with the High Schools Administrators.”

Baxter’s Correction: “Chris Parrin and I advised . . .”

- h. Murman Report, page 130: Murman described a meeting in which “Judge Delimiter [sic] asked Chief Nuesse [at the beginning of the meeting] what exactly they were meeting about. It is Baxter’s recollection that she told the judge “I don’t know.”

Baxter’s Correction: Baxter scratched out the last line and wrote, “She told me she did not know what it was about.”

- i. Murman Report, p 131: Murman wrote that Baxter advised, “Mary Ann Barylsky is considered to be an expert on gang activities in Ohio.”

Baxter’s Correction: Baxter crossed this line out.

31. After making the handwritten corrections to the Murman Report narrative, Baxter signed and dated page 132.

32. The Register manufactured a controversy out of Baxter’s corrections to the Murman Report. In a January 13, 2009, column headlined “*Baxter needs integrity probe,*” Westerhold falsely claimed: “*The good prosecutor acknowledged 11 ‘inaccuracies’ after the Register began questioning him about discrepancies in his statement back in June.*”

33. In several articles, the Register reported that Baxter lied to Murman investigators and then later tried to cover up his lies by “correcting” them as mere “inaccuracies.” The Register calls Baxter’s corrections “*straight out lies*” and goes so far as to accuse Baxter of falsification under the Ohio Revised Code. Despite the clear public record of Baxter’s corrections to minor errors in the summary made by Murman, the Register published Defamatory Statements Nos. 1 through 3 as detailed in Count One below.

## **COUNT ONE**

### **Defamation**

34. Plaintiff incorporates paragraphs 1 through 33 as if fully rewritten herein.

#### ***Defamatory Statement No. 1***

35. On January 13, 2009, the Register published a column written by Westerhold that contained the following statement of fact:

### Baxter Needs Integrity Probe

*The good prosecutor acknowledged 11 ‘inaccuracies’ after the Register began questioning him about discrepancies in his statement back in June . . . And the inaccuracies—as Baxter calls them—aren’t really inaccuracies; **they are straight out lies.***

(Emphasis added.)

36. This statement of fact is false. Baxter did not try to cover up his “lies” by portraying them as mere “inaccuracies.” In truth, the Investigators interviewed Baxter and took their own notes. Baxter was neither under oath, nor recorded, nor did he give a written statement. The Investigators’ notes were provided to Murman, who interpreted them to produce the Murman Report in a narrative style. Baxter did not have an opportunity to review the Murman Report prior to its publication. After the Murman Report was published, Baxter read the portion of the Report that referenced him, and found there were 9 (not 11) minor inaccuracies as detailed in paragraph 30 above. Baxter reported these to Law Director Icsman—prior to any Register involvement—and was later instructed by City Manager Kline to make hand-written corrections in the margins of the Murman Report to make clear the public record.

37. Baxter did not lie to Investigators. The Murman Report simply inaccurately reflected minor details in Baxter’s comments to Investigators, which Baxter brought to the attention of the City Manager, who asked him to make corrections. Baxter indicated that these corrections did not change the overall character of his statement to Investigators, because the inaccuracies were so minor as to be inconsequential to the general tenor of the Report (e.g., that a City Commissioner’s name is Dennis Murray and not Dennis Miller).

38. Despite Westerhold’s knowledge of the foregoing, the Register published a false statement claiming that the inaccuracies in the Murman Report were actually Baxter’s “*straight out lies.*”

39. Statement No. 1 is defamatory in character.

40. Statement No. 1 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., lying to Investigators) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for credibility and veracity are necessary.

41. Defendants also published Statement No. 1 online at SanduskyRegister.com, where it continues to be broadcast to the public.

***Defamatory Statement No. 2***

42. On January 13, 2009, the Register published a column written by Westerhold entitled “*Baxter Needs Integrity Probe.*” In it, Westerhold set up Baxter as a liar, by falsely claiming a Baxter statement to Investigators was later contradicted by U.S. Marshall Pete Elliott.

43. The subject of the contrived controversy was a law enforcement meeting involving Nuesse. According to Westerhold, the Murman Report states that Baxter told Investigators he and federal officials “***educated Chief Nuesse on proper procedures during the meeting***” (emphasis added). Westerhold claimed Baxter “*lied to the Murman investigators.*” Westerhold’s supposed proof: “*Elliott told the Register Nuesse was not the target of that meeting, ‘We met so we could better coordinate our efforts.’*”

44. In truth, the Murman Report does not attribute to Baxter any statement that he “educated Chief Nuesse.” Nor was there any discrepancy between the statements of Baxter and Elliott. According to the Murman Report, Baxter gave a description of the meeting similar to the one Elliott later gave to Westerhold: “Baxter arranged for [the] meeting . . . to work out the problems that developed.”

45. Despite the foregoing, the Register’s January 13, 2009, Westerhold column contained the following statement of fact:

Baxter Needs Integrity Probe

*Baxter's problem here, in my opinion, is that **he lied to the Murman investigators**, which resulted in his inaccurate statements.*

(Emphasis added.)

46. This statement of fact is false. Westerhold's report not only falsely claimed Baxter "*lied to Murman investigators*," it also falsely claimed Baxter "*scratched out that part of his statement*" which related to the purpose of the meeting. In truth, Baxter did not make any corrections to the Murman Report related to the purpose of the meeting with Nuesse. This claim was fabricated from whole cloth by Westerhold.

47. Statement No. 2 is defamatory in character.

48. Statement No. 2 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., lying to Investigators) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for credibility and veracity are necessary.

49. The truth of the matter was plainly stated in the public record, about which Defendants were purportedly reporting. In reality, Defendants invented facts and falsely attributed them to Baxter.

50. Defendants also published Statement No. 2 online at SanduskyRegister.com, where it continues to be broadcast to the public.

***Defamatory Statement No. 3***

51. On January 13, 2009, the Register published a column written by Westerhold calling for a criminal investigation into Baxter's supposed falsification of records and lying to Investigators. The column contained the following statements of fact:

Baxter Needs Integrity Probe

*In most parts of the state, **giving false statements to an investigator** is illegal under the Ohio Revised Code. That state*

*law does not appear to apply in Erie County, however, because not a single public official has expressed outrage concerning Baxter's "inaccurate" statements.*

\* \* \*

*It's troubling when the de-facto top law enforcement officer in the county is not held accountable for misstatements and falsifications.*

(Emphasis added.)

52. These statements of fact are false. Baxter did not lie to Investigators. In truth, Baxter answered the Investigators' questions honestly. Baxter was one of 52 people interviewed by investigators. The Investigators' notes were summarized in a narrative drafted by Murman. After the Murman Report was published, Baxter notified City officials of minor inaccuracies (e.g., the last name of a City Commissioner) in the four pages describing his interview. Baxter was instructed by City Manager Kline to make hand-written corrections.

53. The news report that Baxter gave "*false statements*" to Investigators, "*illegal under the Ohio Revised Code,*" and "*falsified*" the Murman Report is complete fabrication.

54. Statement No. 3 is defamatory in character.

55. Statement No. 3 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., lying to Investigators and falsification under the Revised Code) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for credibility, veracity, and freedom from criminality are necessary.

56. Defendants also published Statement No. 3 online at SanduskyRegister.com, where it continues to be broadcast to the public.

#### ***Defamatory Statement No. 4***

57. On February 26, 2009, the Register published an article online, without attribution to a specific reporter, that contained the following statement of fact:

JUST IN: BCI Agent Testifies  
About Baxter's Alleged Cocaine Use

*An undercover narcotics agent from the Ohio Bureau of Criminal Investigation & Identification testified about Erie County prosecutor Kevin Baxter's alleged cocaine use, but it was stricken from the record.*

58. This statement of fact is false. BCI agent Masterson did not testify about Baxter's alleged cocaine use while under oath. In truth, during a hearing in Nuesse's Civil Service Commission appeal of her termination as Chief of Police, her attorney, K. Ron Bailey, asked agent Masterson about a long-closed BCI investigation into an allegation that Baxter had abused cocaine. The following exchange then followed on the record:

BAILEY: You're aware of that investigation, right?

ANSWER: I'm aware of it, but was not a part of it.

\* \* \*

BAILEY: Did you advise Kim Nuesse that that investigation was dropped?

ANSWER: I do not believe so.

This was the full extent of Agent Masterson's testimony related to Kevin Baxter. He uttered just two sentences. Masterson never said anything about Baxter's alleged cocaine use.

59. Statement No. 4 is defamatory in character.

60. Statement No. 4 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation of freedom from criminality and substance abuse is necessary.

61. The Register bolstered this defamatory and/or libelous per se statement by falsely attributing the accusation to an allegedly "*high-ranking BCI agent.*"

***Defamatory Statement No. 5***

62. On February 27, 2009, the Register published a front-page, above-the-fold news report written by Singer that contained the following statement of fact:

Baxter's Credibility Attacked

*A high ranking undercover narcotics agent from the Ohio Bureau of Criminal Investigation and Identification testified about Erie County Prosecutor Kevin Baxter's alleged cocaine use.*

63. This statement of fact is false for the reasons set forth in paragraph 58 above. In truth, agent Masterson did not testify about Baxter's alleged cocaine use. He merely testified that he was aware of, but not involved in, an investigation some years ago.

64. Statement No. 5 is defamatory in character.

65. Statement No. 5 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for freedom from criminality and substance abuse is necessary.

66. Defendants also published Statement No. 5 online at SanduskyRegister.com, where it continues to be broadcast to the public.

***Defamatory Statement No. 6***

67. On February 27, 2009, the Register published a front-page, above-the-fold news report written by Singer that contained the following statement of fact:

Baxter's Credibility Attacked

*According to a document from [BCI] . . . the government had a 'credible witness' who **confirmed Baxter's cocaine use.***"

(Emphasis added.)

68. This statement of fact is false. The BCI investigation did not find a “*credible witness*” who “*confirmed*” Baxter’s cocaine use, and the referenced document says no such thing. In truth, the document, which was read into the record by attorney Bailey, states:

Only one witness in the myriad of names provided to the investigators has provided reliable information regarding the subject’s drug use.

There is no mention of a “*credible witness*” anywhere in the document. Singer invented that quote out of thin air. The government did not claim to have a “credible witness.” In fact, it only had “one witness in the myriad of names given to investigators.”

69. Nor does the document indicate the witness “*confirmed Baxter’s cocaine use.*” It simply indicates a witness had unspecified “reliable information.”

70. On March 2, 2009, Ohio Attorney General Richard Cordray issued the following public statement, which was faxed to the Register:

More than seven years ago, the Attorney General’s office investigated allegations made against Kevin Baxter. The investigation **did not substantiate that there was any probable cause** to proceed. Therefore, the investigation was closed.

(Emphasis added.)

71. Statement No. 6 is defamatory in character.

72. Statement No. 6 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for freedom from criminality and substance abuse is necessary.

73. Defendants also published Statement No. 6 online at SanduskyRegister.com, where it continues to be broadcast to the public through the date of filing, despite Ohio Attorney General Richard Cordray’s March 2, 2009, written public statement that “[t]he investigation did not substantiate that there was any probable cause to proceed.”

***Defamatory Statement No. 7***

74. On March 3, 2009, the Register published a front-page news report written by Singer that contained the following statement of fact:

AG Office to Decide on Baxter Report

*A high-ranking undercover narcotics agent . . . testified there was a 'credible witness' who could substantiate the accusations.*

75. This statement is utter fabrication, and false in its entirety. Whether agent Masterson qualifies as a “high-ranking” agent aside, he did not testify to a single word Singer ascribed to him. Masterson testified that he was aware of an investigation, but not involved in it. He made no statements whatsoever about witnesses, their credibility, or whether the accusations could be substantiated.

76. Statement No. 7 is defamatory in character.

77. Statement No. 7 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for freedom from criminality and substance abuse is necessary.

78. Defendants also published Statement No. 7 online at SanduskyRegister.com, where it continues to be broadcast to the public.

***Defamatory Statement No. 8***

79. On March 3, 2009, the Register published a front-page news report written by Singer that contained the following statement of fact:

AG Office to Decide on Baxter Report

*The agent said BCI decided not to pursue charges because the alleged cocaine abuse occurred several years earlier.*

80. This statement is utter fabrication, and false in its entirety. Agent Masterson did not testify to a single word Singer ascribed to him. Masterson testified that he was aware of an investigation, but not involved in it.

81. Statement No. 8 is defamatory in character.

82. Statement No. 8 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for freedom from criminality and substance abuse is necessary.

83. Defendants also published Statement No. 8 online at SanduskyRegister.com, where it continues to be broadcast to the public.

***Defamatory Statement No. 9***

84. On March 3, 2009, the Register published a front-page news report written by Singer that contained the following statement of fact:

AG Office to Decide on Baxter Report

*Baxter's brother, Ejay Baxter, contends his brother regularly abused cocaine and the power of his office during the estate case and other cases.*

85. At the time of publication, Defendants knew that Ejay Baxter had admitted, in Case No. 2002 CR 265, that these allegations were false. In Ejay Baxter's criminal prosecution for disseminating these same allegations, he eventually confessed:

I facilitated the communication of **false** information regarding my brother, Kevin J. Baxter to other individuals. I am sorry that this situation has occurred and I promise not to engage in this type of behavior or assist others in this type of behavior in the future.

(Emphasis added.)

86. Statement No. 9 is defamatory in character.

87. Statement No. 9 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for freedom from criminality and substance abuse is necessary.

88. Defendants also published Statement No. 9 online at SanduskyRegister.com, where it continues to be broadcast to the public.

***Defamatory Statement No. 10***

89. On March 5, 2009, the Register published a front-page news report written by reporter Singer that contained the following statement of fact:

Attorney General Rejects  
Register's Report Request

*In his letter [to officials identifying the Register's alleged false publications], however, Baxter did not mention that **the lack of probable cause was that BCI agents could only confirm his cocaine use from several years earlier**, which is what the BCI report said when it was submitted for evidence in the Nuesse Civil Service hearing.*

(Emphasis added.)

90. This statement of fact is utterly false and complete fabrication. The BCI investigation did not “confirm his [Baxter's] cocaine use.” In truth, the BCI investigation did not confirm any cocaine use.

91. Statement No. 10 is defamatory in character.

92. Statement No. 10 constitutes **libel per se** because it falsely reports Baxter committed a crime (i.e., cocaine abuse) and/or is injurious to his occupation as a lawyer and prosecuting attorney, for whom a reputation for freedom from criminality and substance abuse is necessary.

***Defamatory Statements Nos. 1-10***

93. *Defamatory Statements Nos. 1-10* were published by Defendants with actual malice; that is, with actual knowledge that each statement was false and/or with reckless disregard as to whether each was false.

94. As a direct and proximate result of *Defamatory Statements Nos. 1-10*, Plaintiff Baxter has suffered injuries of a personal, pecuniary, and permanent nature, including (but not limited to) loss of reputation, professional esteem, loss of earning power, mental anguish, and emotional distress, and such other damages as may be proved at the trial of this matter.

## **COUNT TWO**

### **Injunctive Relief**

95. Plaintiff incorporates paragraphs 1 through 90 as if fully rewritten herein.

96. As a direct and proximate result of the defamatory acts described in Count One of this Complaint, Plaintiff has suffered and continues to suffer injury to his reputation.

97. Defendants continue to publish, and re-publish online, defamatory statements about Plaintiff.

98. Defendants have available to them a mechanism for removing the defamatory statements published online, a system to prevent future defamation of Plaintiff, and a method for the publication of corrections regarding past false statements made about Plaintiff.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Baxter demands judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 for compensatory damages, and in an amount in excess of \$25,000 for punitive damages against the Register, and individually against Defendants Singer, Westerhold, Phares, and John Does 1-10, on Count One of the Complaint. On Count Two, Plaintiff seeks an order for injunctive relief compelling Defendants to remove all defamatory statements from their websites and blogs as set forth herein or hereafter, to cease

and desist from issuing further statements defaming Plaintiff, and to publish a retraction of its previously published defamatory statements. On all Counts, Plaintiff seeks attorney's fees, costs of litigation, pre- and post-judgment interest, and any other relief this Court deems just and appropriate.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

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Tom Merriman (0040906)  
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*Counsel for Plaintiff*

**TO THE CLERK:**

PLEASE SERVE EACH DEFENDANT AT THE ADDRESSES SET FORTH ON THE CAPTION HEREON BY CERTIFIED MAIL.