

KERN COUNTY SUPERIOR COURT
FILED by FAX

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15 PATRICIA HEDLUND

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF KERN

18 DAVID LEE SEIDNER,
19 Plaintiff,
20 vs.
21 HOMETOWN PUBLISHING LLC, dba The
22 Mountain Enterprise and dba The Mountain
23 Pioneer, PATRICIA HEDLUND, aka Patric
24 Hedlund, JACK THROCKMORTON, and
25 DOES 1-100, inclusive,
26 Defendants.

27 Case No. S-1500-CV 258273
28 ANSWER OF DEFENDANTS HOMETOWN
PUBLISHING LLC AND PATRICIA
HEDLUND TO PLAINTIFF'S COMPLAINT
Judge: Hon. Sidney P. Chapin
Dept.: 4
Action Filed: May 26, 2006

29 Pursuant to California Code of Civil Procedure § 431.30(d), defendants Hometown
30 Publishing LLC and Patricia Hedlund (collectively, "Hometown"), answering for themselves and
31 no others, in response to the unverified complaint of plaintiff David Lee Seidner ("Complaint"),
32 deny each and every allegation contained in the Complaint, and each purported cause of action
33 alleged in the Complaint, except that Hometown admits that Hometown Publishing LLC is a
34 California limited liability company, with its headquarters and principal place of business in Kern
35 County, California, and publishes and circulates the newspapers, *The Mountain Enterprise*, and *The*

1 *Mountain Pioneer*. Hometown also admits that Patricia Hedlund is an individual who resides in
2 Kern County, California.

3 **SEPARATE AND ADDITIONAL DEFENSES**

4 By alleging the following Separate and Additional Defenses, Hometown is not in any way
5 agreeing or conceding that it has the burden of proof or the burden of persuasion on any of these
6 issues.

7 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

8 1. The Complaint fails to state facts sufficient to constitute a cause of action against
9 Hometown.

10 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

11 2. Plaintiff's claims against Hometown arise from Hometown's acts in furtherance of
12 its free speech rights in connection with a public issue or an issue of public interest, and thus fall
13 within the scope of California Code of Civil Procedure § 425.16. Because plaintiff cannot present
14 competent and admissible evidence establishing a probability that he will prevail on any of his
15 causes of action, those causes of action must be stricken pursuant to Section 425.16, and
16 Hometown must be awarded its attorneys' fees and costs incurred in defending this action.

17 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

18 3. Plaintiff's claims for relief against Hometown are barred by the First and Fourteenth
19 Amendments to the United States Constitution and Article 1, Section 2 of the California
20 Constitution.

21 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

22 4. The allegedly defamatory statement, statements, or alleged implications published
23 by Hometown are not reasonably susceptible to a defamatory meaning, and thus cannot give rise to
24 any claim against Hometown.

25 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

26 5. Some or all of the allegedly defamatory statements or alleged implications published
27 by Hometown are true or substantially true, and thus cannot give rise to any claim against
28 Hometown.

1 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 13. The allegedly defamatory statement, statements, or alleged implications complained
3 of by plaintiff are protected by the doctrine of fair comment, and therefore cannot provide a basis
4 for any recovery by plaintiff.

5 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

6 14. Plaintiff's claims for relief against Hometown are barred because the alleged actions
7 undertaken by Hometown were privileged under California law and common law.

8 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

9 15. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
10 because the damages allegedly suffered by plaintiff, if any, were not proximately caused by
11 Hometown.

12 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

13 16. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
14 because of plaintiff's failure to mitigate his alleged damages, if any.

15 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 17. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
17 because any damages allegedly suffered by plaintiff were the result, in whole or in part, of
18 plaintiff's own legal fault, and any recovery by plaintiff should be reduced in proportion to
19 plaintiff's fault.

20 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

21 18. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
22 because any damages allegedly suffered by plaintiff were either wholly or in part the legal fault of
23 persons, firms, corporations, or entities other than Hometown, and that legal fault reduces the
24 percentage of responsibility, if any, which is to be borne by Hometown.

25 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

26 19. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
27 because all or some of the statements published or alleged implications by Hometown were not
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1 | defamatory on their face and plaintiff did not allege any special damages within the requirements of
2 | California Civil Code §§ 45, 45a, and 48a.

3 | **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

4 | 20. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
5 | because plaintiff did not demand a correction in accordance with the requirements of California
6 | Civil Code § 48a.

7 | **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

8 | 21. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
9 | because plaintiff has not pleaded special damages with sufficient particularity.

10 | **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

11 | 22. Plaintiff's third cause of action for preliminary and permanent injunction against
12 | Hometown is barred because any such injunction would be a prior restraint in violation of the First
13 | Amendment to the United States Constitution.

14 | **TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

15 | 23. Plaintiff's claim for common law conspiracy is barred because it is duplicative of the
16 | defamation claim.

17 | **TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

18 | 24. Plaintiff's claim for common law conspiracy fails to state a cause of action because
19 | it fails to allege the required elements of conspiracy with sufficient specificity.

20 | **TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

21 | 25. Plaintiff's duplicative conspiracy claim is barred by the Uniform Single Publication
22 | Act, Civil Code § 3425.3, which holds that a plaintiff suing a mass media defendant based on the
23 | alleged falsity of the defendant's publication, is limited to a single cause of action.

24 | **TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

25 | 26. Plaintiff's conspiracy claim is barred because Hometown did not owe a duty to
26 | plaintiff.

1 **TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

2 27. Plaintiff's claims for relief against Hometown are barred, in whole or in part,
3 because plaintiff has failed to state a claim upon which punitive damages can be awarded against
4 Hometown.

5 **TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

6 28. Plaintiff is not entitled to recover punitive damages because the statement or
7 statements complained of involved a matter of public concern and no statement was made with
8 actual malice.

9 **TWENTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**

10 29. The Complaint, to the extent that it seeks punitive damages against Hometown,
11 violates Hometown's right to procedural and substantive due process under the Fourteenth
12 Amendment to the United States Constitution and Article I, Section 7 of the California Constitution
13 because, among other things, of the vagueness and uncertainty of the criteria for the imposition of
14 punitive damages and the lack of fair notice of what conduct will result in the imposition of such
15 damages. Therefore, plaintiff cannot recover punitive damages against Hometown in this case.

16 **THIRTIETH SEPARATE AND ADDITIONAL DEFENSE**

17 30. The Complaint, to the extent that it seeks punitive damages against Hometown,
18 violates Hometown's right to procedural and substantive due process under the Fifth and
19 Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the California
20 Constitution because, among other things, there is no legitimate state interest in punishing
21 Hometown's allegedly unlawful conduct at issue here, or in deterring its possible repetition.
22 Therefore, plaintiff cannot recover punitive damages against Hometown in this case.

23 **THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

24 31. The Complaint, to the extent that it seeks punitive damages against Hometown,
25 violates Hometown's right to procedural and substantive due process under the Fifth and
26 Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the California
27 Constitution because, among other things, the alleged wrongful conduct at issue here is not
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1 sufficiently reprehensible to warrant any punitive damage recovery. Therefore, plaintiff cannot
2 recover punitive damages against Hometown in this case.

3 **THIRTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

4 32. The Complaint, to the extent that it seeks punitive damages against Hometown,
5 violates Hometown's right to procedural and substantive due process under the Fifth and
6 Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the California
7 Constitution because, among other things, any punitive damage award would be grossly out of
8 proportion to the alleged wrongful conduct at issue here. Therefore, plaintiff cannot recover
9 punitive damages against Hometown in this case.

10 **THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

11 33. To the extent that the Complaint seeks punitive damages against Hometown, it
12 violates Hometown's right to protection from "excessive fines" under Article 1, Section 17 of the
13 California Constitution, and it violates Hometown's right to substantive due process as provided in
14 the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 7 of
15 the California Constitution. To the extent that the Complaint seeks punitive damages authorized
16 under California Civil Code § 3294 or any other California law, no punitive damages may
17 constitutionally be awarded because that statute is unconstitutional under the Fifth and Fourteenth
18 Amendments to the United States Constitution and Article 1, Section 7 and Article IV, Section 16
19 of the California Constitution because neither it, nor any other law of California, establishes the
20 maximum punitive damages award which may be imposed in this case. Therefore, plaintiffs cannot
21 recover punitive damages against Hometown in this case.

22 **THIRTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

23 34. The imposition of punitive damages against Hometown would deny equal protection
24 of the laws, in violation of the Fifth and Fourteenth Amendments to the United States Constitution
25 and Article 1, Section 7 and Article IV, Section 16 of the California Constitution. Therefore,
26 plaintiff cannot recover punitive damages against Hometown.

1 **THIRTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

2 35. Plaintiff's claims against Hometown are barred, in whole or in part, because
3 plaintiff's damages, if any, are vague, uncertain, imaginary, and speculative.

4 **THIRTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

5 36. Plaintiff's claims against Hometown are barred, in whole or in part, because
6 Hometown's conduct was reasonable, justified, and in good faith.

7 **THIRTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

8 37. Plaintiff's claims against Hometown are barred, in whole or in part, by the doctrine
9 of laches.

10 **THIRTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

11 38. Plaintiff's claims against Hometown are barred, in whole or in part, by the doctrine
12 of waiver.

13 **THIRTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**

14 39. Plaintiff's claims against Hometown are barred, in whole or in part, by the doctrine
15 of estoppel.

16 **FORTIETH SEPARATE AND ADDITIONAL DEFENSE**

17 40. Plaintiff's claims against Hometown are barred, in whole or in part, by the doctrine
18 of unclean hands.

19 **FORTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

20 41. Plaintiff's claims against Hometown are barred, in whole or in part, by the statute of
21 limitations.

22 **FORTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

23 42. Plaintiff's claims against Hometown are barred, in whole or in part, because any
24 award of damages would unjustly enrich plaintiff.

25 **FORTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

26 43. Hometown has insufficient knowledge or information upon which to form a belief as
27 to whether it may have additional, as yet unstated, separate defenses available to it. Hometown
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1 reserves its right to assert additional separate defenses in the event discovery indicates that such
2 defenses would be appropriate.

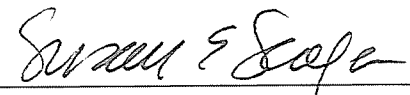
3
4 THEREFORE, Hometown prays for judgment as follows:

- 5 1. That the plaintiff take nothing by this action;
- 6 2. That judgment be entered in favor of Hometown and against plaintiff;
- 7 3. That Hometown recovers its costs and attorneys' fees in this action; and
- 8 4. For such other relief as the Court deems just and proper.

9 DATED: September 15, 2006

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
SUSAN E. SEAGER

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By: 
Susan E. Seager

Attorneys for Defendants
HOMETOWN PUBLISHING LLC and
PATRICIA HEDLUND

1 **PROOF OF SERVICE BY MAIL**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite
2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

4 On September 15, 2006, I served the foregoing document(s) described as: **ANSWER OF**
5 **DEFENDANTS HOMETOWN PUBLISHING LLC AND PATRICIA HEDLUND TO**
6 **PLAINTIFF'S COMPLAINT** by placing a **true copy** of said document(s) enclosed in a sealed
envelope(s) for each addressee named below, with the name and address of the person served
shown on the envelope as follows:

7 **Attorney for Plaintiff David Lee Seidner**
8 **Jack A. Draper II, Esq.**
9 **Law Offices of Jack A. Draper, P.C.**
10 **Office Park Plaza**
11 **5301 Office Park Drive, Suite 205**
12 **Bakersfield, CA 93309**

13 **Attorney for Defendant Jack Throckmorton**
14 **Andrew R. Haut**
15 **Attorney at Law**
16 **4664 American Avenue**
17 **Bakersfield, CA 93309**

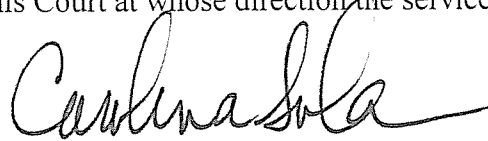
18 I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States
19 Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and
20 processing correspondence for mailing with the United States Postal Service. I am familiar with
21 the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence
22 for mailing with the United States Postal Service, which practice is that when correspondence is
23 deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering
24 correspondence to the United States Postal Service, such correspondence is delivered to the United
25 States Postal Service that same day in the ordinary course of business.

26 Executed on September 15, 2006, at Los Angeles, California.

- 27 State I declare under penalty of perjury, under the laws of the State of California,
28 that the foregoing is true and correct.
- Federal I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct and that I am employed in the
office of a member of the bar of this Court at whose direction the service was
made.

29 _____
30 CAROLINA P. SOLANO

31 Print Name

32 

33 Signature