

ORIGINAL

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FILED
LOS ANGELES SUPERIOR COURT

JUN 22 2005

John A. Clarke, Executive Officer/Clerk
By E. Nolan Deputy
Eliria Nolan

7 KELLI L. SAGER (State Bar No. 120162)
8 ALONZO WICKERS IV (State Bar No. 169454)
9 KAVITA AMAR (State Bar No. 205968)
10 Attorneys for Defendant
11 ANDREW LEFT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 DON DANKS,

12 Plaintiff,

13 vs.

14 BILL HARRIS, an individual; ALEX
15 KHACHATURYAN, an individual; ALEX
16 VAYNBERG, an individual; ANDREW
17 LEFT, an individual; STOCKLEMON.COM,
18 and DOES 1 through 50, inclusive,

19 Defendant.

) Case No. BC330676

D-69

) ANSWER OF DEFENDANT ANDREW
) LEFT TO PLAINTIFF'S UNVERIFIED
) COMPLAINT

) Assigned to the Hon. Edward A. Ferns

) Action Filed: March 22, 2005

19 Defendant Andrew Left ("Defendant"), answering for himself and no others, in response to
20 the unverified Complaint ("Complaint") of plaintiff Don Danks ("Plaintiff") admits, denies and
21 alleges as follows:

22 1. Pursuant to California Code of Civil Procedure § 431.30(d), Defendant denies
23 generally and specifically each and every allegation contained in the Complaint, and each purported
24 cause of action alleged there, except that he admits and alleges that Andrew Left resides in the
25 County of Los Angeles. Defendant further denies that Plaintiff suffered damage in the amount
26 alleged, or in any other amount, or at all.

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1 **SEPARATE AND ADDITIONAL DEFENSES**

2 2. By alleging the following Separate and Additional Defenses, Defendant does not in
3 any way agree or concede that he has the burden of proof or burden of persuasion on any of these
4 issues.

5 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

6 3. The Complaint fails to state facts sufficient to constitute a cause of action against
7 Defendant.

8 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

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

15 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

16 5. Plaintiff fails to allege a single false statement of fact with the requisite specificity to
17 state a cause of action for defamation.

18 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

19 6. Assuming that Plaintiff had alleged any false statement of fact with the requisite
20 specificity, which he did not, such statement(s) are not "of and concerning" Plaintiff, and thus
21 cannot give rise to any claim by Plaintiff.

22 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

23 7. Assuming that Plaintiff had alleged any false statement of fact with the requisite
24 specificity, which he did not, he lacks standing to assert any claim against Defendant based on such
25 statement(s).
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SIXTH SEPARATE AND ADDITIONAL DEFENSE

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2 8. Assuming that Plaintiff had alleged any false statement of fact with the requisite
3 specificity, which he did not, such statement(s) are not reasonably susceptible to a defamatory
4 meaning, and thus cannot give rise to any claim against Defendant.

SEVENTH SEPARATE AND ADDITIONAL DEFENSE

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6 9. Assuming that Plaintiff had alleged any false statement of fact with the requisite
7 specificity, which he did not, such statement(s) are true or substantially true, and thus cannot give
8 rise to any claim against Defendant.

EIGHTH SEPARATE AND ADDITIONAL DEFENSE

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10 10. Assuming that Plaintiff had alleged any false statement of fact with the requisite
11 specificity, which he did not, such statement(s) constitute statement(s) of opinion and/or rhetorical
12 hyperbole rather than statement(s) of fact capable of being proven true or false, and thus cannot
13 give rise to any claim against Defendant.

NINTH SEPARATE AND ADDITIONAL DEFENSE

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15 11. Assuming that Plaintiff had alleged any false statement of fact with the requisite
16 specificity, which he did not, such statement(s) are absolutely privileged under California Civil
17 Code § 47(d), and thus cannot give rise to any claim against Defendant.

TENTH SEPARATE AND ADDITIONAL DEFENSE

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19 12. Assuming that Plaintiff had alleged any false statement of fact with the requisite
20 specificity, which he did not, such statement(s) are privileged under the First Amendment to the
21 United States Constitution as fair and accurate reports of official government proceedings and/or
22 records.

ELEVENTH SEPARATE AND ADDITIONAL DEFENSE

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24 13. Assuming that Plaintiff had alleged any false statement of fact with the requisite
25 specificity, which he did not, such statement(s) were published without the degree of fault required
26 by the First and Fourteenth Amendments to the United States Constitution and Article I, § 2 of the
27 California Constitution, and thus cannot give rise to any claim against Defendant.
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1 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

2 14. Plaintiff's claims for relief against Defendant are barred by the doctrine of neutral
3 reportage.

4 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

5 15. Defendant's articles cannot reasonably be interpreted as giving rise to any allegedly
6 defamatory implications about Plaintiff.

7 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

8 16. Plaintiff's Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action are
9 based on the same allegations as his First Cause of Action for Defamation, and are barred by the
10 same defenses that bar the First Cause of Action.

11 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

12 17. Plaintiff's Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action are
13 based on the same allegations as his First Cause of Action for Defamation, and are barred as
14 surplusage.

15 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 18. Plaintiff's Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action are
17 based on the same allegations as his First Cause of Action for Defamation, and are barred because
18 they seek duplicative relief for a single purported harm or set of harms in violation of Defendant's
19 right to due process of law.

20 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

21 19. Plaintiff's Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action are
22 based on the same allegations as his First Cause of Action for Defamation, and are barred by the
23 Uniform Single Publication Act.

24 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

25 20. Defendant did not have actual or constructive knowledge of any economic
26 relationship between Plaintiff and any other entity, and thus cannot be liable to Plaintiff for
27 intentional interference with prospective economic advantage.
28

NINETEENTH SEPARATE AND ADDITIONAL DEFENSE

21. Defendant did not undertake any action to disrupt any purported economic relationship between Plaintiff and any other entity, and thus cannot be liable to Plaintiff for intentional interference with prospective economic advantage.

TWENTIETH SEPARATE AND ADDITIONAL DEFENSE

22. To the extent Plaintiff seeks punitive damages for his claim under California Corporations Code § 25400(c), punitive damages are not available under California Corporations Code § 25500.

TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE

23. Plaintiff's cause of action for violations of "15 USC 101 ET SEQ" fails to state a claim because no such statutory provision exists.

TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE

24. To the extent Plaintiff alleges a cognizable cause of action under a federal securities statute, which he does not, Plaintiff's claim would be barred, in whole or in part, because there is no private right of action.

TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE

25. To the extent Plaintiff alleges a recognizable cause of action under a federal securities statute, which he does not, Plaintiff's claim would be barred, in whole or in part, because this Court would lacks jurisdiction to hear such a claim.

TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE

26. Plaintiff's cause of action for conspiracy fails to state a claim because California does not recognize an independent tort of conspiracy.

TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE

27. Plaintiff cannot seek a permanent injunction against Defendant because it would constitute an unlawful prior restraint in violation of the First Amendment to the United States Constitution and Article I, § 2 of the California Constitution.

TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE

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2 28. Plaintiff is not entitled to injunctive relief because he has adequate remedies at law
3 for the claims and injuries alleged in his Complaint.

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

5 29. Plaintiff's cause of action for intentional infliction of emotional distress is barred, in
6 whole or in part, because at all time the actions of Defendant were not extreme or outrageous, or
7 offensive to a reasonable person.

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

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

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

12 31. Plaintiff's claims for relief against Defendant are barred, in whole or in part, because
13 of Plaintiff's failure to mitigate his alleged damages, if any.

14 **THIRTIETH SEPARATE AND ADDITIONAL DEFENSE**

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

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

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

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

24 34. Plaintiff's claims for relief against Defendant are barred, in whole or in part, because
25 Plaintiff fails to state a claim upon which exemplary and punitive damages can be awarded against
26 Defendant.
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1 **THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

2 35. Any award of punitive or exemplary damages to Plaintiff would violate Defendant's
3 right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the
4 United States Constitution and Article I, § 7 of the California Constitution because, among other
5 things, of the vagueness and uncertainty of the criteria for the imposition of punitive damages and
6 the lack of fair notice of what conduct will result in the imposition of such damages. Therefore,
7 Plaintiff cannot recover punitive damages against Defendant in this case.

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

9 36. Any award of punitive or exemplary damages to Plaintiff would violate Defendant's
10 right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the
11 United States Constitution and Article I, § 7 of the California Constitution because, among other
12 things, there is no legitimate state interest in punishing Defendant's allegedly unlawful conduct at
13 issue here, or in deterring its possible repetition. Therefore, Plaintiff cannot recover punitive
14 damages against Defendant in this case.

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

16 37. Any award of punitive or exemplary damages to Plaintiff would violate Defendant's
17 right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the
18 United States Constitution and Article I, § 7 of the California Constitution because, among other
19 things, the alleged wrongful conduct at issue here is not sufficiently reprehensible to warrant any
20 punitive damage recovery. Therefore, Plaintiff cannot recover punitive damages against Defendant
21 in this case.

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

23 38. Any award of punitive or exemplary damages to Plaintiff would violate Defendant's
24 right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the
25 United States Constitution and Article I, § 7 of the California Constitution because, among other
26 things, any punitive damage award would be grossly out of proportion to the alleged wrongful
27 conduct at issue here. Therefore, Plaintiff cannot recover punitive damages against Defendant in
28 this case.

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

2 39. Plaintiff is not entitled to recover punitive or exemplary damages because the
3 publications at issue involved a matter of public concern and Defendant did not publish said matters
4 with actual malice.

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

6 40. Plaintiff is not entitled to recover punitive or exemplary damages because the
7 statements complained of by Plaintiff were published in good faith without any sort of malice or
8 degree of fault required by the First and Fourteenth Amendments to the United States Constitution
9 or Article 1, § 2 of the California Constitution, or California Civil Code §§ 48a and 3294.

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

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

22 **FORTIETH SEPARATE AND ADDITIONAL DEFENSE**

23 42. The imposition of punitive damages against Defendant 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, § 7 and Article IV, § 16 of the California Constitution. Therefore, Plaintiff cannot
26 recover punitive damages against Defendant.

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THEREFORE, Defendant prays for judgment as follows:

1. That the Plaintiff take nothing by this action;
2. That judgment be entered in favor of Defendant and against Plaintiff;
3. That Defendant recover his costs and attorneys' fees in this action; and
4. For such other relief as the Court deems just and proper.

DATED: June 21, 2005

DAVIS WRIGHT TREMAINE LLP
KELLI L. SAGER
ALONZO WICKERS IV
KAVITA AMAR

By: 
Alonzo Wickers IV

Attorneys for Defendant
ANDREW LEFT

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 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.

On June 22, 2005, I served the foregoing document(s) described as: **ANSWER OF DEFENDANT ANDREW LEFT TO PLAINTIFF'S UNVERIFIED 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:

Barry K. Rothman
Law Offices of Barry K. Rothman
1901 Avenue of the Stars
Suite 370
Los Angeles, CA 90067
Tel: (310) 557-0062
Fax: (310) 557-9080

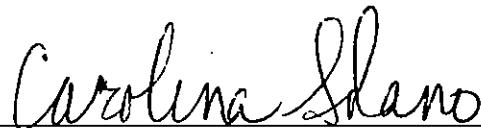
I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice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

Executed on June 22, 2005, at Los Angeles, California.

- State I declare under penalty of perjury, under the laws of the State of California, 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.

CAROLINA P. SOLANO

Print Name



Signature