

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

GUILFORD COUNTY

17 CVS 3273

2017 OCT -5 P 2:19

LOUIS M. BOUVIER, JR., KAREN
ANDREA NIEHANS, SAMUEL R.
NIEHANS,

BY _____

Plaintiffs,

v.

WILLIAM CLARK PORTER, IV,

Defendant.

UNCONTESTED MOTION FOR
LEAVE TO FILE
AMENDED COMPLAINT

NOW COME Plaintiffs Louis M. Bouvier, Jr., Karen Andrea Niehans, and Samuel R. Niehans ("Plaintiffs"), by and through their undersigned counsel, and move the Court pursuant to Rule 15 of the North Carolina Rules of Civil Procedure for leave to amend their Complaint (attached hereto as Exhibit A). Pursuant to Local Rule 5.9, counsel for Plaintiffs has conferred with Defendant's Counsel, who indicates that he will neither consent to nor oppose this Motion. In support of this Motion, Plaintiffs state as follows:

Plaintiffs, a group of duly registered Guilford County voters, filed this action against Defendant for defamation on February 8, 2017, contending that they were falsely accused of committing felony voter fraud in the November 2016 general election. On May 10, 2017, Defendant filed an Amended Motion to Dismiss which asserted that the alleged defamatory statements were "made to a quasi-judicial agency or body of the State" and were therefore "absolutely privileged or qualifiedly privileged, barring any claim asserted by Plaintiffs." (Amended Mot. to Dism. at p. 1.) On June 7, 2017, this Court heard Defendant's Motion to Dismiss which was denied by Order entered June 8, 2017, and filed on June 9, 2017. Thereafter,

Plaintiffs obtained certain written discovery from Defendant and took Defendant's deposition on July 24, 2017.

As a result of the information obtained from Defendant, Plaintiffs file this Motion for Leave to Amend in order to file an Amended Complaint which seeks to add one additional plaintiff, six additional defendants and assert one additional claim, in addition to treating the case as a class action on behalf of all North Carolina voters falsely accused by defendants of committing felony voter fraud in connection with the 2016 general election in North Carolina. Pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." "[L]eave to amend should be freely granted. The decision to allow a motion to amend under Rule 15(a) is directed to the sound discretion of the superior court and is accorded great deference." *Rone v. Winston-Salem*, 207 N.C. App. 618, 624; 701 S.E.2d 284, 289 (2010).

Plaintiffs seek to add six additional Defendants through their Amended Complaint: Holtzman Vogel Josefiak Torchinsky, PLLC ("Holtzman Vogel"), Steven Roberts, Erin Clark, Gabriella Fallon, Steven Saxe, and the Pat McCrory Committee Legal Defense Fund. Based on information obtained through discovery, Plaintiffs believe that these entities and individuals were responsible for facilitating a statewide scheme to invalidate the results of the 2016 Gubernatorial Election, and maliciously or recklessly defamed voters across the state to achieve that end. Plaintiffs therefore additionally seek to assert an additional based on the relationships uncovered in the discovery process. Plaintiffs seek to add a claim for civil conspiracy against all original and new Defendants to establish that each is jointly and severally liable for the harms that resulted to Plaintiffs from the publication of defamatory information. The information obtained

in discovery have led Plaintiffs to believe that both the original Defendant and proposed additional Defendants were part of a scheme that resulted in the defamation of numerous voters all across the state of North Carolina, such that it would be impracticable to join each individual voter as a Plaintiff in this action. For this reason, Plaintiffs seek to join only one additional named Plaintiff and to, together with these additional named Plaintiffs, act as representatives for all similarly situated individuals in the state.

Though “the burden is upon the opposing party to establish that that party would be prejudiced by the amendment,” *Mauney v. Morris*, 316 N.C. 67, 72; 340 S.E.2d 397, 400 (1983), it is apparent that no such prejudice exists here. Plaintiffs motion is timely, as the statute of limitations for the underlying claim of defamation has not yet run and Plaintiffs move to file their Amended Complaint in the earliest possible stage of this litigation, as the information necessitating amendment was only recently ascertained, and no trial date has yet been set. Therefore, no undue delay or prejudice will result should this Court allow Plaintiffs leave to amend. Additionally, granting this Motion would be in the interest of justice, allowing Plaintiffs to hold accountable all individuals and entities responsible for the harms that they have suffered. Further, allowing Plaintiffs to amend their Complaint would “promote[] judicial economy by avoiding the necessity for separate trials or for plaintiffs to file first a separate complaint and then a motion to join the two.” *Id.*

For the foregoing reasons, and for such other reasons as may appear of record, Plaintiffs pray this Court grant their Motion for Leave to Amend Complaint and that they be permitted to file the proposed Amended Complaint attached hereto as Exhibit A.

This the 30th day of October, 2017.

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EXHIBIT A

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS

LOUIS M. BOUVIER, JR., KAREN)
ANDREA NIEHANS, SAMUEL R.)
NIEHANS, and JOSEPH D. GOLDEN,)

Plaintiffs,)

v.)

AMENDED COMPLAINT

WILLIAM CLARK PORTER, IV,)
HOLTZMAN VOGEL JOSEFIK)
TORCHINSKY PLLC, STEVE)
ROBERTS, ERIN CLARK,)
GABRIELLA FALLON, STEVEN)
SAXE, and the PAT MCCRORY)
COMMITTEE LEGAL DEFENSE FUND,)

Defendants.)

Plaintiffs Louis M. Bouvier, Jr., Karen Andrea Niehans, Samuel R. Niehans, and Joseph D. Golden, by and through their undersigned counsel, complain of Defendants as follows:

SUMMARY OF THE ACTION

1. This is a class action suit for defamation and civil conspiracy brought by a group of duly registered North Carolina voters who were falsely accused by some, if not all, Defendants, of illegal voting during the 2016 General Election. Plaintiffs are seeking, in addition to damages resulting from the defamation, to enjoin Defendants from further interference with the voting rights of Plaintiffs and other duly registered voters.

PARTIES

2. Plaintiff Louis M. Bouvier, Jr., is a resident of Greensboro, North Carolina, and a registered voter in Guilford County. He is registered as unaffiliated with any political party and,

in past election seasons, has voted in both Republican and Democratic primaries. He is 74 years old and has voted in Guilford County since at least as early as 1988.

3. Plaintiffs Karen Andrea Niehans and Samuel R. Niehans are residents of Jamestown, North Carolina, and registered voters in Guilford County. They are registered Democrats who moved to North Carolina from Wisconsin in 2016 and voted in North Carolina for the first time in the 2016 General Election.

4. Plaintiff Joseph D. Golden is a resident of Southport, North Carolina, and a registered voter in Brunswick County. He is a registered Democrat who moved to North Carolina from Maryland in 2016 and voted in North Carolina for the first time in the 2016 General Election.

5. Defendant William Clark Porter, IV, is, on information and belief, a resident of Greensboro, North Carolina.

6. Defendant Holtzman Vogel Josefiak Torchinsky PLLC ("Holtzman Vogel") is a law firm organized under the laws of Virginia, with offices in Warrenton, Virginia, and Washington, D.C.

7. Defendant Steve Roberts is an attorney employed by Holtzman Vogel and, on information and belief, is a resident of Virginia.

8. Defendant Erin Clark is an attorney employed by Holtzman Vogel and, on information and belief, is a resident of Virginia.

9. Defendant Gabrielle Fallon is an attorney employed by Holtzman Vogel and, on information and belief, is a resident of Virginia.

10. Defendant Steven Saxe is an attorney employed by Holtzman Vogel and, on information and belief, is a resident of Virginia.

11. Defendant the Pat McCrory Committee Legal Defense Fund is an entity formed under North Carolina election law for the purposes of funding legal action taken by the then-Governor, Pat McCrory, as part of his campaign for re-election in 2016. Its appointed treasurer is Jon Massachi, who is subject to duties, responsibilities, penalties, and sanctions established in Subchapter VIII, Regulation of Election Campaigns, of Chapter 163 of the North Carolina General Statutes.

JURISDICTION AND VENUE

12. This is a class action for defamation and civil conspiracy under North Carolina law. This Court has jurisdiction over Plaintiffs and Defendants pursuant to N.C. Gen. Stat. § 1-75.4. All Plaintiffs are natural persons domiciled in North Carolina, Defendant Porter is a natural person domiciled in North Carolina, Defendant the Pat McCrory Committee Legal Defense Fund is organized under North Carolina election law and its officers are domiciled in North Carolina, and Defendants Holtzman Vogel, Roberts, Clark, Fallon, and Saxe are engaged in substantial activity within North Carolina. Furthermore, the claims arise out of acts that occurred within North Carolina. The amount in controversy is in excess of \$25,000 under N.C. Gen. Stat. § 7A-243.

13. Venue is proper in this County under N.C.G.S. § 1-82.

FACTS

A. The 2016 General Election

14. The 2016 General Election took place on November 8, 2016. In the weeks prior to November 8, 2016, for the 17-day period beginning October 19 and ending on November 5, 2016, voters were able to cast their ballots early using one-stop absentee voting.

15. Each of the Guilford County Plaintiffs in this case took advantage of one-stop absentee voting and voted in the 2016 General Election prior to Election Day.

16. Plaintiff Golden likewise took advantage of one-stop absentee voting in Brunswick County and voted in the 2016 General Election prior to Election Day.

B. The Defendants Libel The Plaintiffs

17. After Election Day, on November 7, 2016, in the wake of a close race for governor, then-Governor Pat McCrory trailed now-Governor Roy Cooper by approximately 5,000 votes. Then-Governor McCrory refused to concede the election.

18. On or about November 9, 2016, paperwork was filed with the North Carolina State Board of Elections to create the Pat McCrory Committee Legal Defense Fund.

19. The law firm of Holtzman Vogel was hired as legal counsel to the Pat McCrory Committee Legal Defense Fund.

20. In the days and weeks after Election Day, election protests were filed in excess of 50 of North Carolina's 100 counties, each alleging that registered voters had committed felony voter fraud when voting while ineligible to vote. These accusations included ones of double voting, voting while ineligible because of a felony conviction, and voting in the name of dead voters. Double voting, voting while ineligible because of a felony conviction, and voting in the name of dead voters are all prohibited by N.C. Gen. Stat. § 163-275, and such conduct is punishable as a felony under North Carolina law.

21. Attorneys with the Holtzman Vogel law firm, in representing the Pat McCrory Committee Legal Defense Fund, arranged for individuals to file those election protests in each of those counties in which an election protest was filed.

22. On November 17, 2016, Defendant Porter filed two documents with the Guilford County Board of Elections which are at issue here. Both documents were filed on a form styled "Election Protest." On each form, Defendant is listed as the "person filing the protest" and both forms state that he is a "[r]egistered voter" eligible to vote in the protested election. Both forms also list Defendant as the sole witness "to any misconduct alleged by you in this protest."

23. Both forms answer "[y]es" to the question "[h]ave you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests." Both forms, in a line designated "Signature of Protester," also contain a signature of "William Porter" with the added words "authorized by /spr." Upon information and belief, "spr" is Defendant Steve Roberts.

24. In one of the "Elections Protests," it states that:

Upon review of early voting files from other states, it appears that nine (9) individuals cast ballots in both North Carolina and another state. Casting a ballot in more than one state is a clear violation of North Carolina and federal elections laws.

The form does not state the source of the "early voting files from other states."

25. That same form goes on to state that "[i]n violation of the statutes provided for above, invalid ballots were cast by the following persons known to have voted in multiple states." Among nine voters alleged to have votes in multiple states are Plaintiffs Bouvier and Mr. and Ms. Niehans who are listed in the document filed by both name and street address.

26. Contrary to the allegations made by Defendant Porter in his first "Election Protest," Plaintiffs Bouvier and Mr. and Ms. Niehans voted only in North Carolina during the 2016 General Election and did not vote in any other state.

27. On November 17, 2016, Defendant Erin Clark, employed by the Holtzman Vogel law firm, filed another document with the Brunswick County Board of Elections which is also at issue here. The document was likewise on a form styled "Election Protest." On each form, Joe Agovino is listed as the "person filing the protest" and both forms state that he is a "[r]egistered voter" eligible to vote in the protested election. The form also states that Mr. Agovino is the sole witness "to any misconduct alleged by you in this protest."

28. On the submitted form, the protestor again answered "[y]es" to the question "[h]ave you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests." Mr. Agovino signed the form, but it was submitted to the Brunswick County Board of Elections on his behalf by Attorney Erin Clark. Upon information and belief, the protest was drafted by, and based on information in the possession of, Defendant Clark and Defendant Holtzman Vogel.

29. That same form goes on to state that "[i]n violation of the statutes provided for above, invalid ballots were cast by the following persons known to have voted in multiple states." The form then names Plaintiff Golden, who is listed in the document filed by both name and street address.

30. Upon information and belief, because Defendants Clark and Holtzman Vogel would not provide Mr. Agovino with any information to support the claims made in the "Election Protest," Mr. Agovino withdrew his protest on the day of the hearing on the "Election Protest" before the Brunswick County Board of Elections.

31. Contrary to the allegations made by Mr. Agovino in his "Election Protest," as drafted and submitted by Defendants Clark and Holtzman Vogel, Plaintiff Golden voted only in North Carolina during the 2016 General Election and did not vote in any other state.

32. Defendants Holtzman Vogel, Roberts, Clark, Fallon, and Saxe conspired with Defendant the Pat McCrory Committee Legal Defense Fund and Defendant Porter, among others, to defame Plaintiffs, accusing them wrongly of committing felony conduct of double voting, of voting while ineligible because of a felony conviction, or of voting in the name of dead voters, and causing them injury to their reputations and emotional distress and harm.

33. Defendant Steve Roberts also submitted election protests on behalf of protestors, or otherwise caused protests to be submitted, in Granville, Forsyth, Moore, Northampton, Halifax, and Wayne Counties in North Carolina.

34. Defendant Erin Clark also submitted election protests on behalf of protestors, or otherwise caused protests to be submitted, in Beaufort, Johnston, Mecklenburg, Cumberland, and Stokes Counties in North Carolina.

35. Defendant Gabriella Fallon submitted an election protest on behalf of a protestor in Wake County, North Carolina.

36. Defendant Steven Saxe submitted election protests on behalf of protestors, or otherwise caused protests to be submitted, in Orange, Lee, and Buncombe Counties in North Carolina.

37. Defendants' false accusations against Plaintiffs subjected them to adverse publicity locally, state-wide, and even nationally, as various media reported the allegations and then elaborated on them. This embarrassment and harm to their reputations was compounded by the fact that public hearings were noticed and held to consider Defendants' accusations, which

was further reported in the media. Each of the Defendants' "Elections Protests" were ultimately dismissed as meritless or withdrawn.

CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this action on behalf of themselves and all others similarly situated (the "Proposed Class"), pursuant to Rule 23 of the North Carolina Rules of Civil Procedure. The Proposed Class is defined as follows:

All registered North Carolina voters who were wrongly identified as having engaged in voting irregularities in connection with the 2016 General Election in putative Election Protests filed by Defendants. Excluded from the Proposed Class are any and all judges, justices, chambers' staff, jurors assigned to hear or adjudicate any aspect of this litigation, and members of their immediate families.

39. Based upon the number of putative Election Protests filed by Defendants, there are, on information and belief, over 100 Proposed Class members. Joinder of all members of the Class, therefore, is not practicable.

40. The questions of law and fact common to the Proposed Class include but are not limited to:

a. whether accusations made by Defendants in the context of one or more improperly filed Election Protests against Plaintiffs and members of the Proposed Class, alleging that they committed felony voter fraud, constitute defamation per se;

b. whether Defendants made the statements and took the actions described above with malice or reckless disregard of their falsity in order to harm Plaintiffs and members of the Proposed Class;

c. whether Defendants acted in conspiracy to so defame Plaintiffs and members of the proposed class;

d. the type and measure of damages suffered by Plaintiffs and the Proposed Class.

41. These and other questions of law and fact are common to the Proposed Class, and predominate over any questions affecting only individual members of the Proposed Class.

42. Plaintiffs' claims are typical of the claims of the Proposed Class.

43. Plaintiffs will fairly and adequately represent the interests of the Proposed Class and they have no conflict with the interests of the Proposed Class.

44. Defendants have acted on grounds generally applicable to the Proposed Class, thereby making final injunctive relief appropriate with respect to the Proposed Class as a whole.

45. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. There will be no material difficulty in the management of this action as a class action. Prosecution as a class action will eliminate the possibility of repetitive, duplicative, and potentially inconsistent litigation that would waste the resources of the parties and the courts.

FIRST CLAIM FOR RELIEF – LIBEL

46. The allegations of Paragraphs 1 through 45 are realleged and incorporated herein by this reference.

47. The statements made by Defendants concerning Plaintiffs in "Election Protests" filed across the state were false publications wrongly accusing Plaintiffs of a crime, namely illegal voting. Defendants' false statements also tended to subject Plaintiffs to ridicule, contempt, or disgrace. Those libelous statements were false when made, were made without regard to their truth and falsity, were made without justification, and were made for the purpose

and with the intent of damaging the reputations of Plaintiffs or with reckless disregard of their affect on the reputations of Plaintiffs.

48. Those statements have impeached, injured, and damaged Plaintiffs.

49. As an actual and proximate cause of Defendants' conduct in making such false statements, Plaintiffs have sustained harm, including damages in an amount to be determined at trial but reasonably believed to be in excess of \$25,000.

SECOND CLAIM FOR RELIEF—CIVIL CONSPIRACY

50. Paragraphs 1 through 49 of this Complaint are realleged and incorporated herein by this reference.

51. Defendants conspired together to make the statements and take the actions described above—overt and wrongful acts—as part of a common scheme, among other goals, to delay certification of the election and suggest that voter fraud affected the election results.

52. Plaintiffs and the entire class were injured as a result of that conspiracy.

THIRD CLAIM FOR RELIEF – PUNITIVE DAMAGES

53. Paragraphs 1 through 52 of this Complaint are realleged and incorporated herein by this reference.

54. Defendants made the statements and took the actions described above with malice or reckless disregard of their falsity in order to harm Plaintiffs.

55. Defendants acted willfully and/or wantonly in making the statements described above.

56. Pursuant to N.C. Gen. Stat. § 1D-1, Plaintiffs are entitled to punitive damages for Defendants' conduct.

WHEREFORE, Plaintiffs pray to the Court that:

A. A preliminary and permanent injunction enter against Defendants and any and all persons in active concert or participation with them forbidding any further filing of Election Protests containing false and defamatory statements concerning these Plaintiffs or any other registered North Carolina voter;

B. Plaintiffs receive actual damages in an amount sufficient to compensate them for their damages resulting from Defendants' conduct;

C. Plaintiffs be allowed recovery of punitive damages pursuant to Chapter 1D of the North Carolina General Statutes;

D. Plaintiff be allowed recovery from Defendants the costs and expenses incurred in this action, including attorney's fees;

E. Plaintiffs receive trial by jury of all issues so triable; and

F. Plaintiffs obtain such other and further relief as may be just and proper.

This, the ___th day of _____, 2017.

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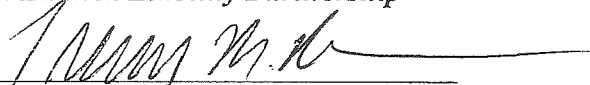
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing document upon the attorney listed below by first-class mail, postage prepaid:

Marshall Hurley, Esq.
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This the ___ day of October, 2017.

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