

GARY RINGS/Tribune photo

... from Tampa, Clearwater-St. Petersburg and Kennedy Space
... laze at Tampa International as part of their FAA certification.

n hearing begins

... the federal court's supervi-
... courtroom observer said she
... think so.
... el that the court should continue
... vision because that's the only
... feel we would be dealt with fair-
... Ruby Williams, a black woman
... 14 grandchildren and two great-
... dren in the district's schools.
... family does not want it to go
... segregated schools again," the
... old said. "They continue to build
... in white neighborhoods. That's a

Even if the judge decides to release
the school board from court oversight,
it's unclear how that would affect the
lives of the district's 144,000 students.
A majority of school board members
have said they don't intend to immedi-
ately slam the brakes on busing for integra-
tion.
As the hearing began, lawyers from
both sides lugged in boxes of documents.
They said they expect to question wit-
nesses until sometime next week in the
case, originally filed in 1958.

See SCHOOLS, Page 5 ▶

bitter about candidate

SUMMARY: Senate candidate John Dicks has been
sued by former clients, including retirees, after they
lost money in investment deals.

By MARGARET TALEV
of The Tampa Tribune

Read

PLANT CITY — Joann Chandler was approach-
ing retirement age in 1989 when she attended a
financial seminar led by John Dicks in Tampa. She
had sold her house and come into a modest inheri-
tance and wanted to prepare for the future.

The seminar was sponsored by Delta First Fi-
nancial, an investment firm tied closely to multimil-
lionaire financial adviser Charles J.
Givens' Altamonte Springs-based
educational organization. Givens'
company was known nationwide in
the 1980s and early 1990s for its
infomercials, seminars, books and,
later, scandals.

Dicks, who is running for state
Senate in eastern Hillsborough
County, was "very convincing,"
Chandler, now 64, recalls.

"I said to myself, 'I've never
trusted anybody; you've got to
trust these guys.'" So she gave
Dicks \$70,000 to invest in a se-
ries of limited partnerships.

The partnerships failed. Chan-
dler sued Givens and Delta to get
the money back, but she could not
comment about any settlement.
She also filed a complaint against
Dicks, who she says convinced her
she could not lose.

"I blame him," she says.
"He's made my life hell."

Chandler isn't alone in her sentiments. At least
four other investors filed complaints against Dicks
between 1986, when he got his securities license,
and last year, when records show he did not renew
it. The former clients alleged he was negligent, mis-
represented investments, omitted facts and, in some
cases, was fraudulent.

They named Dicks in suits against Delta and, in

See INVESTORS, Page 2 ▶



Dicks



Givens

ree crime fight al responsibility

... should tell local communities how to solve their



Where
they
Stand



INVESTORS / Former clients upset with candidate

From Page 1

some cases, Dicks' brother, Jack, and Givens. According to the Florida Division of Securities database, in 1993, a client named Carol Palley sought \$133,000 for lost investments. In 1994, client Joe Kennedy said he lost \$48,000. The same year, Ed and Shirley Karelson asked for \$26,500. Also in 1994, Giri and Thana Giridhar said they had lost \$55,000. Most of the cases went to arbitration.

Dicks says the disgruntled investors were in the minority. "I think it's unfortunate they lost some money," Dicks says. "Of those people who chose to invest, there were many who made investments from the consultation that did fine.

"Of those who lost money, there were never any guarantees made. That's just one of the inherent factors of any investment. People can lose money, and I did, just like they did. And I didn't have anybody to sue."

Dicks, 43, a Plant City Democrat worth \$2.3 million, is running for the state Senate District 23 seat, which covers east Hillsborough and west Polk counties and is held by retiring state Sen. Malcolm Beard, R-Seffner. Dicks faces Republican Tom Lee, a developer from Brandon, in the Nov. 5 election.

According to the securities division, only the Giridhars' case is pending. The settlements have not been disclosed.

DICKS WAS 35, a young lawyer, real estate instructor and freelance speaker in 1988 when his older brother, Jack, asked him to do some speaking and investment counseling for Delta First Financial.

The Longwood brokerage firm had been started five years before by Jack Dicks, Givens and Charles "Buddy" Smith. According to records and published accounts, the group set up limited partnerships and culled investors through members of Givens' educational organization, many of whom would attend seminars to listen to traveling speakers whose ranks eventually included Dicks.

John Dicks was qualified to do more than just talk. He was a registered securities dealer, licensed to do business through Delta First. Former investors, including Chandler, say after Dicks gave a speech for Delta, he would offer consultations. If they liked what they heard, they would give Dicks money to invest in what he had recommended.

Givens eventually pulled out of Delta First Financial after criticism that Delta and some of Givens' other involvements were too closely tied. But Delta continued to take investors from the Givens organization.

Dicks says he stopped doing work for Delta in 1990 and went to work giving speeches for Givens' educational group. That didn't involve making investments for people, he says.

In the late 1980s and early

1990s, the educational group could barely take in new members as fast as they were lining up. But eventually, the Charles J. Givens Organization was plagued by thousands of client complaints and nationwide lawsuits, investigations and settlements. One lawsuit came from the Florida Attorney General's Office. The legal troubles finally pushed the organization to file for bankruptcy and reorganize earlier this year.

The Attorney General's Office charged that Givens' group made it difficult or impossible for clients to get full refunds for educational materials they tried to return, some of which cost several hundred dollars.

THE OFFICE ALSO charged that Givens' organization misrepresented how some financial strategies worked. The office reached close to a \$400,000 settlement with Givens last year, which covered about 250 Florida citizen complaints.

Earlier this year, a California jury awarded a \$14.1 million judgment in a class-action suit against Givens that included 29,000 former California members between 1986 and 1993. There also have been complaints and some settlements in Wisconsin, Maryland and North Dakota.

Dicks says while the organization may have ended in a cloud of scandal, he should not be considered a part of those problems nor should they compromise his candidacy.

He was contracted by Givens only as a speaker and was never on the employee payroll, he says. He was responsible only for presenting Givens' strategies at the seminars.

"It's an incredible stretch to try to attach me to a guy who may have had bad business practices," Dicks says. "I wasn't a partner, wasn't an employee. I wasn't anything. I wasn't involved in the day-to-day strategies of the business."

Dicks points out most of the complaints against Givens revolved around refund problems, not bad advice.

BUT THERE HAVE been a few tragic cases as well. The most infamous was the 1993 settlement in the case of Sally and Ron Beadle of Cedar Rapids, Iowa. Sally Beadle charged that a Givens speaker had advised her husband to drop uninsured motorist coverage. Ron Beadle was killed soon after in a car crash with an uninsured driver, leaving his wife without money.

"In none of these things ... I was never involved," Dicks says. "Never was I called. Never was I deposed. I was surprised. I thought I'd make a pretty good witness (on behalf of Givens)."

"I would never be involved in anything that was unethical, illegal or immoral. The product I sold was very good."

"It would be different for me if I had done something wrong. But I had not done anything remotely questionable."

Dicks talks about only a loose connection to Givens. But in addition to Dicks' relationship with Givens through Delta as well as the educational group, Dicks was involved in publishing deals with the guru.

Givens was the author of the 1988 bestseller "Wealth Without Risk" and other financial books written for the masses. Dicks had penned a few financial advice books himself. Givens sold Dicks' books and Dicks sold Givens' books.

And in 1991, the two co-authored a book and audio cassette program, "Business Power Strategies."

Dicks says he stopped working for Givens after 1993 when he returned to Plant City to get involved with his community, spend time with his wife and sons and market his own financial strategies. But he did not sever all Givens ties.

In March, Givens' wife contributed \$500 to Dicks campaign, state election records show. Dicks says Givens is an enthusiastic contributor to the Republican Party for national races.

And Dicks' marketing company, Synergy Communications, formed in 1994, did most of its business in its

first year with two financial advice companies, Success Institutes at the National Strategic Alliance Network out of Longwood. The president of both was Joseph Sgarlata, former Givens speaker and later executive for Givens. Success Institutes and NSAN are no longer active.

"I'VE KNOWN JOHN for 10 years," Sgarlata, who runs an Internet marketing group, said in a telephone interview last week. "I think John's a real professional with lots of integrity. John has done everything ethically."

"Any time you're dealing in the investment world, you're going to have some enemies — and some people who think you walk on water."

Ed Karelson of Seattle, whose \$26,500 suit has been settled, fell into the first category. Like Chandler, Karelson and his wife invested in an oil pumping limited partnership that went down the tubes when the oil and gas company filed for bankruptcy months later.

Karelson is angry at Dicks for himself. "It was my own stupidity for letting some guy sell me a bait like that," Karelson says. "It was dumb. I should have put the money in a savings account. You live and learn."

Dicks says he lost between \$2,000 and \$4,000 in the same deal and that the 1990 bankruptcy was something he never could have predicted.

"It's hard to fathom any anger with me," he says. "I was truly doing what I thought was best for them in their situation."

But Joann Chandler maintains Dicks never told her the limited partnerships were risky. "He had told me that with the money I had invested in these, I'd have an income of about \$43,000 a year," she says.

"I could have been independent for the rest of my life," she says. "Now I may have to go live with my children."

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NEWSLETTERS:

Blogs: The Political Whore

Rays \$450 million ballpark faces afternoon vote

June 5th, 2008 by Wayne Garcia

There's still time to attend the St. Petersburg City Council session on the Rays. Council members announced this morning that it would hear the matter starting at 1:15 p.m.

Oh, and anyone wondering just how far in the tank for the Rays the *Times* would be, look no further than today's editorial page for a slap-down of "upstart" Councilman Karl Nurse, who wants to put a competing referendum on the ballot with the Rays boondoggle. (Full disclosure: Before joining CL, I was a consultant to Nurse's unsuccessful bid for mayor against Rick Baker.)

I'm still waiting for the edit board's take on the *Times* extensive marketing/sponsorship relationships with the Rays and how that impacts the newspaper's objectivity and/or credibility.

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Congressional 9: the race to face Bilirakis

June 5th, 2008 by Wayne Garcia

I spent some PoHo ink in this week's CL issue writing about the Congressional District 9 race, in which three Democrats are running for the right to face Republican first-termer Gus Bilirakis in November. I'm intrigued by the Democratic Party's recent victories in Mississippi, Illinois and Louisiana in turning formerly Red stronghold seats into Blue. Some Tampa Bay Democrats think Congressional 9 can be in play because of Bilirakis' low "power" rankings, as a freshman. I wrote:

Florida has a remarkably un-powerful congressional delegation. Because it is so packed with Republicans, and the Democrats are now in control of Congress, Florida's influence in Washington lies — according to Congress.org's power rankings — somewhere below that of Alabama and West Virginia. For now, however, the Democratic Congressional Campaign Committee has targeted just two Red-to-Blue districts in Florida for financial support: Christine Jennings' rematch with Vern Buchanan in Sarasota and an effort to unseat Republican Tom Feeney in Orlando.



For now, that list doesn't include District 9, where three Democrats are vying for the nomination. It is a wildly gerrymandered district that stretches from Plant City across northern Hillsborough, through Palm Harbor, Clearwater, Safety Harbor and East Lake in Pinellas (while excluding Dunedin), north through Tarpon Springs and into part of Pasco County along the Gulf coast. In addition to Dicks and Mitchell, Anita de Palma, a former Florida state director for the League of United Latin American Citizens from Clearwater, is also running in the Democratic primary. (Another Democratic candidate, Michael van Hoek, dropped out and endorsed Dicks.)

You can read the whole story here.

Bonus Cuts: As I have limited space in CL, I will start putting all the news that's fit to print but doesn't fit the print here. Instead.

I didn't get to get into one issue that some politicians point to as a vulnerability for Dicks: a 1996 article in the *Tampa Tribune* that detailed how a few people who took an investment seminar from him in the 1990s claimed they had been ripped off and lost money:

PLANT CITY - Joann Chandler was approaching retirement age in 1989 when she attended a financial seminar led by John Dicks in Tampa. She had sold her house and come into a modest inheritance and wanted to prepare for the future.

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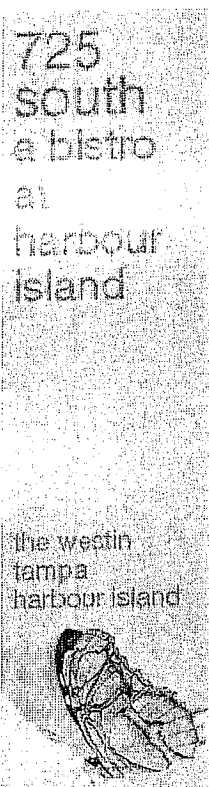
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Dicks, who is running for state Senate in eastern Hillsborough County, was "very convincing," Chandler, now 64, recalls.

"I said to myself, 'I've never trusted anybody; you've got to trust these guys.'" So she gave Dicks \$ 70,000 to invest in a series of limited partnerships.

The partnerships failed. Chandler sued Givens and Delta to get the money back, but she could not comment about any settlement. She also filed a complaint against Dicks, who she says convinced her she could not lose.

"I blame him," she says. "He's made my life hell."

Chandler and four others filed complaints about Dicks and some eventually filed lawsuits. The cases were settled in arbitration, according to the account, which is no longer available online except through paid archiving services.

Some Dicks supporters say they've been mailed anonymous packages containing the stories and allegations.

"I have seen parts of the court file," Mitchell told me in an interview. "Some of the bloggers have raised that issue. To the effect, he is going to have a very tough time because the Republicans have that issue and [they can raise questions about whether voters] are going to put someone in Congress who has swindled seniors. That is something that Democratic voters need to take into account."

Dicks has steadfastly denied "swindling" anyone, saying that only six investors out of hundreds became disgruntled during his time giving investment advice. He told the Trib in 1996 that "of those who lost money, there were never any guarantees made. That's just one of the inherent factors of any investment. People can lose money, and I did, just like they did. And I didn't have anybody to sue."

Dicks told me when I asked him about the matter that all the cases were settled amicably. "While a lot of people were successful, there were six who lost money," he told me last week. "I learned from that. It has actually helped me be a better public servant."

In an interesting possible preview of things to come, Dicks was attacked by the National Republican Senatorial Campaign over the seminar controversy during his unsuccessful 1996 Florida Senate run. (Full disclosure: I represented his opponent, Tom Lee, during Lee's Republican primary in that election. I was unaware of the national political attacks against him in the general election.) Dicks, a lawyer, sued for libel and settled the case. "They definitely paid out some money," he said last week. "Mine all went to charity."

Another aspect of the race that didn't fit in print was a quick overview of where Dicks stands on some of the issues. Dicks:

- Wouldn't support opening new oil drilling leases off Florida's Gulf coast — at least yet. He calls them "our ultimate strategic reserve" but touts new technologies to extract oil in other parts of the nation first. He feels likewise about drilling in the Alaska National Wildlife Refuge but would support that before allowing more Florida Gulf coast drilling. "I want to protect the environment," he said of the ANWR, "but that is a remote and desolate place." (His opponent Mitchell, a former Federal Trade Commission attorney who worked on litigation against Big Oil, questions Dicks position and said he opposes more drilling in the Gulf and ANWR as producing too little oil to be worth the environmental risk.)
- Parses his answers to fall on both sides of divisive social issues. On gay marriage and pending constitutional amendments: "I concur with Jeb Bush that it's not necessary [to amend the constitution], and I'm against gay marriage." On abortion: "I'm very definitely against abortion, but I'm respectful of Roe v. Wade. It's settled law."

Bookmark It



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The Short List — Thurs., June 5

June 5th, 2008 by Joe Bardi

In case you always wondered what a boulder made of legos would look like rolling down a hill ...

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For families with autism, 'a very proud day' | Main | Obama on Cuba, then and now »

May 20, 2008

Lotsa support for Bilirakis foe

Former Plant City Mayor John Dicks has to get past Anita de Palma and Bill Mitchell in a Democratic primary before taking on Gus Bilirakis, but he's lined up a load of Democratic establishment endorsements: Arthenia Joyner, Les Miller, Peter Rudy Wallace, Sandy Freedman, Rev. Thomas Scott, John Dingfelder, Gwen Miller, Mary Mulhern, Nadine Nickeson, Linda Saul-Sena, Tampa City Councilman, April Griffin, Susan Valdes, Julianne Holt, Janee Murphy, Mike Suarez, Carrie Wadlinger, Phyllis Busansky, Mike Hamby.

Posted by Adam Smith at 11:34:43 AM on May 20, 2008
in Democrats, Endorsements, Gus Bilirakis, U.S. House | Permalink

Comments

Talk about a list of DINO losers... Good Lord.

Posted by: | May 20, 2008 at 11:37 AM

No doubt. Also, its interesting that the Times is leaving out the part that Bilirakis has ridiculous name recognition and approval polling numbers just like his dad did. No agenda here.

Posted by: | May 20, 2008 at 11:45 AM

Just another carefully orchestrated insider deal by the Republican consultant (Thurman) and her ilk... ala: Busanski/Gus.

If Dicks pulls this off, about 1/2 hour after the Primary, the Republicans will release a video that will end it for him and lock it up for Gus... exactly as planned.

It's never a good idea to swindle senior citizens out of their life's savings, John...

Thurman will get a raise from the GOP after this one.

Posted by: Jim G. | May 20, 2008 at 12:00 PM

I can see the bumper sticker now: Lick Dicks In '08.

Posted by: Ike Turner | May 20, 2008 at 12:07 PM

"Democratic establishment endorsements"... Buahahahahaaaaa, whooooo, that's rich... hahahahahahaaaaaa... oh yeah, thems some biggins in the d-party alright... hahahahahahaaaaa... establishment endorsements... hahahahahahaaaaa... what a freaking hoot... hahahahahahaaaaa... who's next; jim davis... Hhahahahahahaaaaa...

Posted by: | May 20, 2008 at 01:06 PM

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 - [Solicits funds, goods or services, or advertises](#)
- The St. Petersburg Times does not edit posts but reserves the right to delete comments that violate our policy.

No candidate in the Democratic Primary has a snow ball's chance in hell of defeating Congressman Bilirakis.

His name ID alone can win the race. And when people get to know him, they like him...he's a nice, hardworking, honest family man.

The 9th Congressional district is lucky to have such good representation in Washington.

Keep up the good work Gus!

Posted by: | [May 20, 2008 at 02:26 PM](#)

I agree completely with my mom, err... I mean 2:26!

Love,

Epstein's Mother

Posted by: | [May 20, 2008 at 02:40 PM](#)

Quit picking on the waterhead! It aint his fault he's a d.d.deeee!

Posted by: Larry the Cable Guy | [May 20, 2008 at 02:47 PM](#)

Gus has a lock on this seat. Thurman and the dinks listed above will see to that!

Posted by: Howard D. | [May 20, 2008 at 02:48 PM](#)

Keep laughing. Gus is in the minority now and not that likely to get anything done. A quick look at his website shows that the only thing he's introduced that actually made it into law (signed by Bush) was two no-brainers having to do with rail security that show up twice (HR1 and HR1401); in the business world we call that "inflating a resume". Just about everything else is add-ons or special resolutions (and that's only counting the seven things that made it through the house - just about everything else looks like he's been spoon-fed bills from the leadership.

Posted by: Chris W | [May 20, 2008 at 03:18 PM](#)

Gus is just another heirloom political hack... the Dems have theirs too!

All these Repuppetcan and Demopap poop riders need to go.

Posted by: | [May 20, 2008 at 03:26 PM](#)

Cong. Bilirakis is a laughingstock. He has no legislative achievements and he will be defeated.

Posted by: | [May 20, 2008 at 06:24 PM](#)

It doesn't matter who the opponent is because Gus will beat any of them. He is the nicest guy in Congress- end of story, end of discussion, its already over. Congratulations Congressman Bilirakis.

Posted by: | [May 20, 2008 at 08:48 PM](#)

What are Kathy Castor's legislative achievements as a first term Congresswoman? She was elected, like Obama to the Senate in Illinois, with only token opposition; and like Bilirakis, she trades on a well known name and a general likeability. What great legislative achievement is one member of congress supposed to accrue after one term, anyway?

Posted by: Zhombre | [May 20, 2008 at 09:12 PM](#)

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Page 283

- (1) Could you please tell me what your current
- (2) employment is.
- (3) A I do research on financial markets and some
- (4) public speaking.
- (5) Q Do you work for a company in connection with
- (6) either your public speaking or your research on financial
- (7) markets?
- (8) A It's all self-employed.
- (9) Q Do you have your own company or a name of an
- (10) entity that you work with?
- (11) I know at one point in the last deposition you
- (12) mentioned Synergy Communications. Are you still working for
- (13) Synergy Communications?
- (14) A No. We dissolved that company. That was
- (15) mentioned in the deposition.
- (16) Q I also understand that you have, for the last
- (17) couple of years, been a Commissioner, is it?
- (18) A Uh-huh. (Indicating affirmatively).
- (19) Q Is it for Plant City?
- (20) A Correct. City Commissioner.
- (21) Q City Commissioner for Plant City. And when were
- (22) you first - how did you come to be a Commissioner, a City
- (23) Commissioner, for Plant City?
- (24) A Through an election in June of 1998.
- (25) Q I also understand that at some point within the

Page 284

- (1) last two years, through your service as a City Commissioner
- (2) of Plant City, you were selected to be Mayor of Plant City;
- (3) is that right?
- (4) A That's right.
- (5) Q And how did that selection occur?
- (6) A It is done amongst the commissioners. We hold an
- (7) election, there's five commissioners, and each year the
- (8) commissioners choose, amongst ourselves, someone to
- serve
- (9) as Mayor.
- (10) Q Approximately what is the population of Plant
- (11) City?
- (12) A 30,000.
- (13) Q When you were running for election as City
- (14) Commissioner, my understanding is that you were unopposed;
- (15) is that right?
- (16) A That's correct.
- (17) Q Is it also correct that during the time you were
- (18) running for City Commissioner, for election as City
- (19) Commissioner, that there were no references, so far as you
- (20) know, to the advertisement by the National Republican
- (21) Senatorial Committee that is at issue in this case?
- (22) A I know of none.
- (23) Q Approximately what was the duration, the time
- (24) period, from the time you announced your candidacy for City
- (25) Commissioner to the time the election was held?

Page 285

- (1) A Well, there was no election. I filed - you file
- (2) for qualification to run, and then the qualification period
- (3) ends, and there was no opposition.
- (4) Q How long between the time you filed and the time
- (5) that you were sworn in?
- (6) A Oh, well, the qualification period ended, I
- (7) believe, in April, and I was sworn in in June.
- (8) Q So during that several month period there was not
- (9) any reference, that you know of, at least, to the
- (10) advertisements at issue in this case?
- (11) A None that I know of.
- (12) Q And that would have been April through June of
- (13) 1998?
- (14) A Approximately, yes.
- (15) Q So about a year and a half after the 1996
- (16) election?
- (17) A I believe that would be correct.
- (18) Q Now, at the time you were considered by your
- (19) fellow commissioners for selection as Mayor of Plant City,
- (20) was there, to your knowledge, any reference to the National
- (21) Republican Senatorial Committee's advertisement during that
- (22) process?
- (23) A Not that I know of.
- (24) Q Approximately when did that consideration occur?
- (25) A June of '99.

Page 286

- (1) Q And would it be fair to say that during the
- (2) entire time, from June 1998 through the present, in your
- (3) current service, public service, the advertisements by the
- (4) National Republican Senatorial Committee have not been used
- (5) against you by your opponents?
- (6) A I haven't had any opponents.
- (7) Q And it would be fair to say that, to the best of
- (8) your knowledge, there has been no reference to the National
- (9) Republican Senatorial Committee's advertisements in
- (10) connection with your current endeavor into politics?
- (11) A No, I'd have to disagree with that.
- (12) Q Okay. What references have there been to the
- (13) NRSC's advertisements during the time since you've filed to
- (14) become a City Commissioner of Plant City?
- (15) A People continue to make reference to the ads that
- (16) were run.
- (17) Q Which people?
- (18) A No one in particular.
- (19) Q Can you name me one individual?
- (20) A Not at this particular moment.
- (21) Q Were these references oral or in writing?
- (22) A They're all spoken.
- (23) Q Is there anything you can think of, as you sit
- (24) here right now, that we could go to for confirmation of
- (25) these statements?

Page 291

- (1) serve as Mayor?
- (2) A That's purely speculation, but I would suspect
- (3) so.
- (4) Q Had you announced it to anyone, either privately
- (5) or publicly, that you intended to seek the position as
- (6) Mayor?
- (7) A Not the -- not the commissioners themselves,
- (8) you're talking friends.
- (9) Q So there were people who knew in advance of that
- (10) meeting that you were desiring to be Mayor?
- (11) A Yes.
- (12) MR. BURCHFIELD: Let me ask the reporter to mark
- (13) as Dicks' Exhibit 10, a letter dated July 17, 1997, from
- (14) Mr. Dicks to Ms. Brenda Boyd. A copy for counsel.
- (15) (Defendant's Exhibit 10 was marked for
- (16) identification.)
- (17) BY MR. BURCHFIELD:
- (18) Q Mr. Dicks, I'm handing you Dicks' Exhibit 10.
- (19) A Thank you.
- (20) Q Take whatever time you'd like to review that
- (21) letter. My question for you is whether you recognize it as
- (22) a letter that you sent to Ms. Brenda Boyd of the Division
- (23) of Securities and Investor Protection of the Department of
- (24) Banking and Finance of the State of Florida, on or about
- (25) July 17, 1997.

Page 292

- (1) A Yes.
- (2) Q What was the occasion for writing this letter,
- (3) Mr. Dicks?
- (4) A I don't really recall.
- (5) Q Have you written other similar letters to the
- (6) Florida Division of Securities and Investor Protection --
- (7) A No.
- (8) Q -- that you recall?
- (9) A No, not that I recall.
- (10) Q Am I correct that the Florida Division of
- (11) Securities and Investor Protection is charged with the
- (12) enforcement of various investor protection laws in the
- (13) State of Florida?
- (14) A I would presume that they're in charge of
- (15) licensure.
- (16) Q Well, isn't one aspect of your responsibilities
- (17) to enforce the securities laws through, among other means,
- (18) review of licensure?
- (19) A I would suspect.
- (20) Q Was the occasion of this letter, Mr. Dicks, that
- (21) the Florida Division of Securities and Investor Protection
- (22) had raised some issues with you?
- (23) A I don't recall that.
- (24) Q Do you recall something different?
- (25) A No.

Page 293

- (1) Q In the first line of letter you say "Thank you --
- (2) Thank you for the opportunity to explain the situations
- (3) involving complaints/arbitration on my U-4 forms."
- (4) Do you see that?
- (5) A Sure.
- (6) Q Does that refresh your recollection that Ms.
- (7) Boyd, or someone else, from the Division of Securities and
- (8) Investor Protection had contacted you with questions about
- (9) the number of complaints and arbitrations listed on your
- (10) U-4 forms?
- (11) A No, it doesn't help me recall that.
- (12) Q Do you recall whether the Division of Securities
- (13) and Investor Protection had contacted you concerning your
- (14) prior relationship with Charles Givens?
- (15) A No.
- (16) Q Do you recall that that was not the subject of
- (17) the call?
- (18) A I don't think it was. I don't think -- I don't
- (19) recall it either way.
- (20) Q In this letter, Mr. Dicks, there are listed seven
- (21) numbered items. Do you see those?
- (22) A Yes.
- (23) Q And am I correct that those are seven customer
- (24) complaints that were filed against you during the period of
- (25) time you worked as an investment adviser?

Page 294

- (1) A They are seven different matters. Yes, I
- (2) think -- I was looking through here, I think six were
- (3) requests or statements of claim on arbitration and one was
- (4) a lawsuit.
- (5) Q All right. But all of them were customer
- (6) complaints?
- (7) A Well, I don't know they were complaints in the
- (8) technical sense, but they were -- they were from people on
- (9) arbitrations and lawsuits, yes.
- (10) Q They were from investors that at least believed
- (11) that you were responsible for putting them in unsuccessful
- (12) investment vehicles; is that right?
- (13) A They were from investors who thought that I was
- (14) part of or involved in investments in which they were
- (15) placed in, yes.
- (16) Q Now, I understand that one of these complaints
- (17) was dismissed because you were mistaken for your brother,
- (18) Jack; is that right?
- (19) A I believe two of them were, I think.
- (20) Q Which two, do you recall?
- (21) A If I can look through here.
- (22) Q Absolutely. Take whatever time you want.
- (23) A Sure. I believe that in this exhibit it would be
- (24) number 6 and number 7, Eugene and Jean Trifilio, and
- (25) and Florence Brown.

Page 299

- (1) represent some or all of the defendants or the respondents
- (2) in these matters?
- (3) A I don't know.
- (4) Q Do you recall if your brother, Jack, might have a
- (5) full set of the settlement agreements relating to these
- (6) matters?
- (7) A Possibly.
- (8) Q Mr. Dicks, I'm going to ask you to look at a U-4
- (9) form which bears the date March 1, 1995, which was marked
- (10) as Dicks' Exhibit 1 at the prior sitting of the deposition.
- (11) Now, Mr. Dicks, I believe the last time you were
- (12) asked questions about whether this was - whether there was
- (13) any U-4 form that you filed between March 1, 1995 and the
- (14) next U-4 form that we have, which is dated January 1, 1997,
- (15) January 7 - 16, 1997. I'm sorry. And I believe you
- (16) testified that there was not. Is that still your
- (17) recollection?
- (18) A To my knowledge.
- (19) Q I don't know that the January 17 U-4 - January
- (20) 16, 1997 U-4 has been previously marked. And in the event
- (21) it has not, let's mark it again. This will be Dicks'
- (22) Exhibit 13 - 12. I'm sorry. Dicks' Exhibit 12 will be
- (23) the January 14, 1997 U-4. It actually bears the date of
- (24) January 14.
- (25) MR. WAGNER: Could you check to see if that's the

Page 300

- (1) same one I handed you this morning. We didn't - we
- (2) weren't sure what you had and what you didn't have.
- (3) MR. BURCHFIELD: No, the one you handed me this
- (4) morning was October 27, 1997.
- (5) MR. WAGNER: Okay.
- (6) MR. BURCHFIELD: And that was marked as an
- (7) exhibit last time, I believe.
- (8) MR. WAGNER: That's what I thought, too, and I
- (9) couldn't figure it out.
- (10) (Defendant's Exhibit 12 was marked for
- (11) identification.)
- (12) BY MR. BURCHFIELD:
- (13) Q Mr. Dicks, I'm handing you Dicks' Exhibit 12, and
- (14) I will just ask you if you could confirm that that is, in
- (15) fact, a U-4 that you filed on or about January 14, 1997?
- (16) MR. WAGNER: It's getting cooler in here.
- (17) THE WITNESS: It certainly appears so. I'm
- (18) sorry, I was responding to, I think the air conditioner
- (19) came on, so that brought a slight smile to my face.
- (20) MR. WAGNER: Can we go off the record for a
- (21) moment, please.
- (22) THE VIDEOGRAPHER: One moment, please. We're off
- (23) the record at 12:20.
- (24) (Discussion off the record.)
- (25) THE VIDEOGRAPHER: Back on the record at

Page 301

- (1) 12:21 p.m.
- (2) BY MR. BURCHFIELD:
- (3) Q Mr. Dicks, am I correct that a form U-4 is part
- (4) of an application to become an investment adviser?
- (5) A I think that's my understanding.
- (6) Q And is it the case that there are periodic
- (7) amendments necessary to form U-4s whenever situations
- (8) change?
- (9) A I would presume.
- (10) Q Have you endeavored to make such amendments as
- (11) situations have changed in your career as an investment
- (12) adviser?
- (13) A Yes.
- (14) Q And do you understand that form U-4s are publicly
- (15) available so the investing public can find out information
- (16) about a particular investment adviser?
- (17) A Yes.
- (18) Q To your knowledge, Mr. Dicks, is there any other
- (19) publicly available source that would indicate the existence
- (20) of claims or complaints against an investment adviser
- (21) besides a U-4?
- (22) A I believe they're posted on the Internet.
- (23) Q Well, is that posting on the Internet derived
- (24) from the U-4 -
- (25) A I don't know.

Page 302

- (1) Q - to your understanding?
- (2) A I don't know.
- (3) Q Do you consider - do you consider a U-4 to be a
- (4) reliable source of information about a particular
- (5) investment adviser?
- (6) A I would presume.
- (7) Q Dicks' Exhibit 1, which we looked at a minute
- (8) ago, it's the March 1995 U-4, was filed or is dated
- (9) approximately 22 months before Dicks' Exhibit 12, which is
- (10) dated January 14, 1997 -
- (11) A Okay.
- (12) Q - is that about right?
- (13) Now, I just want to make sure the record is
- (14) clear, and I apologize if this is a bit redundant, but this
- (15) is important. I just want to make sure the record is clear
- (16) that, to your knowledge, you did not file a U-4 or an
- (17) amendment to a U-4 between March 1995, when Dicks' Exhibit
- (18) 1 was filed, and January 14, 1997, when Dicks' Exhibit 12
- (19) was filed?
- (20) A Not that I know of.
- (21) Q So that if someone were to look at your
- (22) background as a securities investment adviser as of October
- (23) 1996, what they would see is Dicks' Exhibit 1, the U-4
- (24) dated March 1995, right?
- (25) A Uh-huh. (Indicating affirmatively).

- (1) identification.)
- (2) BY MR. BURCHFIELD:
- (3) Q Mr. Dicks, I'm handing you Dicks' Exhibits 19 and
- (4) 20, the exhibits I just described. Do you recall sometime
- (5) during late October 1996, within a couple of weeks, three
- (6) weeks of the election, that the Tampa Tribune published
- (7) this article?
- (8) A Yes.
- (9) Q And the picture here is a little blurred, but do
- (10) you recall that it had a picture of you right there?
- (11) A It looks like that, yes.
- (12) Q And I take it this article was not particularly
- (13) helpful to your election campaign?
- (14) A I don't know whether it was or wasn't -- or
- (15) wasn't.
- (16) Q Well, let me ask you relatively. Do you consider
- (17) this article, by the Tampa Tribune, to be more or less, or
- (18) about the same in terms of its damage to your election
- (19) campaign, as the ad that the National Republican Senatorial
- (20) Committee ran?
- (21) A Well, it's certainly less damaging than the ad.
- (22) Q And on what do you base that?
- (23) A Because the ad was not correct.
- (24) Q Well, Mr. Dicks, I think I understand what you're
- (25) saying, but I'm not sure, I want the record to be clear, of

- (1) the premise you're using.
- (2) Are you saying that it is always the case that
- (3) inaccurate facts are -- I'm sorry. Are you saying that it
- (4) is always the case that an inaccurate report is more
- (5) damaging to a reputation than an accurate report?
- (6) A An inaccurate report is always more damaging than
- (7) an accurate report?
- (8) Q Right.
- (9) A Well, it depends on the slant and the focus of
- (10) the inaccurate report.
- (11) Q I would assume that's true. Someone could say
- (12) you were a Metal of Honor winner and that would be a pretty
- (13) helpful fact, wouldn't it?
- (14) A Absolutely. It's purely hypothetical, but it's
- (15) true.
- (16) Q And it's also true that if someone were to
- (17) correctly report that a person was a mass murderer, that
- (18) could be pretty damaging, right?
- (19) A That's correct.
- (20) Q Now, do you see -- let's look at the Westlaw
- (21) version, which is the computer printout, it's much easier
- (22) to read.
- (23) Do you see there in the first -- in the summary
- (24) it says, "Senate candidate John Dicks has been sued by
- (25) former clients and retirees, after they lost money in

- (1) investment deals."
- (2) Do you see that?
- (3) A Uh-huh. (Indicating affirmatively).
- (4) Q Is that a "yes"?
- (5) A Yes.
- (6) Q Are there a fair number of senior citizens who
- (7) live in Plant City and the Senate district in which you
- (8) were running?
- (9) A I don't know what you mean by a fair number, but
- (10) there's certainly senior citizens.
- (11) Q More than 25 percent of the electorate, you
- (12) think?
- (13) A I don't know that that's true.
- (14) Q You think it's less than 25 percent or you just
- (15) don't know?
- (16) A I don't know.
- (17) Q But it's generally the case down here in Florida,
- (18) isn't it, Mr. Dicks, that the senior citizens' vote is
- (19) considered a very important vote?
- (20) A Yes.
- (21) Q And an article that reported that you had been
- (22) sued by former clients, including retirees, after they lost
- (23) money in investment deals, that's not a helpful report, is
- (24) it?
- (25) A It's not helpful.

- (1) Q In fact, they quote, if you look down, they
- (2) quote, "Ms. Chandler," they give her age, "as now 64
- (3) said" -- they quoted her as saying, "I said to myself I've
- (4) never trusted anybody. You've got to trust these guys."
- (5) So she gave Dicks \$70,000 to invest in a series of limited
- (6) partnerships. The partnerships failed. Chandler sued
- (7) Givens and Delta to get the money back, but she could not
- (8) comment about any settlement.
- (9) "She also filed a complaint against Dicks who
- (10) says she -- who she says convinced her she could not lose.
- (11) 'I blame him,' she says. 'He's made my life hell.'"
- (12) Do you see that?
- (13) A Yes.
- (14) Q Did you know prior to October 1996 that Ms.
- (15) Chandler had relocated from Ohio to Plant City, Florida?
- (16) A She doesn't live in Plant City, Florida.
- (17) Q So your understanding is that she still lives in
- (18) Ohio?
- (19) A I believe that she lives in Arizona.
- (20) Q In Arizona. Okay. That's not a helpful quote,
- (21) "I blame him. He's made my life hell"?
- (22) A That's correct.
- (23) Q Is it a true quote? Do you think you really made
- (24) her life hell?
- (25) A I hope not.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

JOHN LARRY DICKS,

Plaintiff,

vs.

CASE NO. 96-7441
Division D

THE NATIONAL REPUBLICAN
SENATORIAL COMMITTEE,

Defendant.

FILED
2000 DEC 20 PM 4:15
CLERK OF THE COURT
HILLSBOROUGH COUNTY FL

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant National Republican Senatorial Committee ("NRSC") respectfully submits this motion for summary judgment pursuant to Florida Rule of Civil Procedure 1.510.

Plaintiff John Larry Dicks was the unsuccessful Democratic candidate for the District 23 State Senate seat in November 1996. This lawsuit is based on an independent expenditure television advertisement that aired late in the 1996 campaign and discussed Mr. Dicks' background as a financial advisor. The NRSC sponsored the advertisement, which was based on information Mr. Dicks disclosed on a registration form he had filed with the National Association of Securities Dealers.

Mr. Dicks' Second Amended Complaint alleges that the NRSC's advertisement libeled him by asserting that he "is the subject of six securities investigations." The NRSC respectfully submits that it is entitled to summary judgment on

the Second Amended Complaint for three fundamental reasons, which are discussed in greater detail in the accompanying Memorandum of Law.

First, Mr. Dicks' libel claim is barred because the NRSC's statement at issue is substantially true.

Second, Mr. Dicks cannot prove that the NRSC acted with "actual malice"; that is, that it published the statement at issue with actual knowledge that it was false, or with a "reckless and willful disregard for the truth."

Finally, Mr. Dicks cannot prove that the NRSC's statement at issue caused him to suffer any actual damages.

Therefore, as discussed in greater detail in the accompanying Memorandum of Law, the NRSC respectfully requests that the Court enter summary judgment for the NRSC and against Mr. Dicks on the Second Amended Complaint.

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
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No. 96-7441
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JOHN LARRY DICKS,

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vs.

THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Defendant.

CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

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9

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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October 20, 2000

TABLE OF CONTENTS

	<u>Page</u>
BACKGROUND	1
1. Mr. Dicks' Work for the Givens Organization and Delta	2
2. Mr. Dicks' Legal Problems	4
3. Mr. Dicks' Candidacy for the State Senate and The NRSC Advertisement	5
4. Mr. Dicks' Activities Since the 1996 Election	7
ARGUMENT	8
I. THE STATEMENT AT ISSUE IS SUBSTANTIALLY TRUE	11
A. Mr. Dicks Admitted the Facts Underlying the Statement at Issue	13
B. The Term "Investigations" Fairly Includes Lawsuits and Arbitration Claims	15
C. The Use of the Word "Is" in Connection With the Claims Against Mr. Dicks Was Appropriate	18
II. THE NRSC DID NOT ACT WITH "ACTUAL MALICE"	21
A. No Evidence Demonstrates That the NRSC Acted With Actual Malice	23
B. The Punitive Damage Claim Does Not Satisfy the Actual Malice Requirement	26
III. MR. DICKS CANNOT PROVE CAUSATION OF ANY LEGALLY COMPENSABLE INJURY	31
CONCLUSION	34

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	26
<i>Bose Corp. v. Consumers Union of U.S., Inc.</i> , 466 U.S. 485 (1984)	10, 22
<i>Byrd v. Hustler Magazine, Inc.</i> , 433 So.2d 593 (Fla. 4th DCA 1983)	11
<i>Ciamar Marcy, Inc. v. M. Monteiro Da Costa</i> , 508 So.2d 1282 (Fla. 3d DCA 1987)	28
<i>Cronley v. Pensacola News-Journal, Inc.</i> , 561 So.2d 402 (Fla. 1st DCA 1990)	11, 21
<i>Curtis Publ'g Co. v. Butts</i> , 388 U.S. 130 (1967)	9
<i>Delaney v. NRSC</i> , No. CL 96-009369 (AG) (Fla. Cir. Ct. Palm Beach Cty.) (March 29, 2000)	11
<i>Dockery v. Florida Democratic Party, et al.</i> , 7 Fla. Weekly Supp. 393 (Fla. Cir. Ct. Polk Cty.) (March 2, 2000)	11
<i>Dolphin Cove Assoc. v. Square D Co.</i> , 616 So.2d 553 (Fla. 2d DCA 1993)	27
<i>Friedgood v. Peters Publ'g Co.</i> , 521 So.2d 236 (Fla. 4th DCA 1988)	11
<i>From v. Tallahassee Democrat</i> , 400 So.2d 52 (Fla. 1st DCA 1981)	31
<i>Gertz v. Robert Welch, Inc.</i> , 418 U.S. 323 (1974)	10
<i>Harte-Hanks Commun., Inc. v. Connaughton</i> , 491 U.S. 657 (1989)	22, 24

<u>CASES</u>	<u>Page</u>
<i>Hood v. Connors</i> , 419 So.2d 742 (Fla. 5th DCA 1982)	28, 29
<i>L.S.T., Inc. v. Crow</i> , 772 F. Supp. 1254 (M.D. Fla. 1991)	28
<i>Menendez v. Key West Newspaper Corp.</i> , 293 So.2d 751 (Fla. 3d DCA 1974)	10
<i>Monitor Patriot Co. v. Roy</i> , 401 U.S. 265 (1970)	10
<i>Nelson v. Associated Press, Inc.</i> , 667 F. Supp. 1468 (S.D. Fla. 1987)	12
<i>Newton v. Florida Freedom Newspapers, Inc.</i> , 447 So.2d 906 (Fla. 1st DCA 1984)	10, 11, 20
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964)	8, 9, 19, 22
<i>Ocala Star-Banner Co. v. Damron</i> , 401 U.S. 295 (1971)	22
<i>Palm Beach Newspapers, Inc. v. Early</i> , 334 So.2d 50 (Fla. 4th DCA 1976)	11, 21, 22
<i>Pritt v. Republican Nat'l Committee, et al.</i> , No. 97-C-380(v) (W. Va. Cir. Ct. Fayette Cty.) (May 15, 2000)	11
<i>Pullum v. Johnson</i> , 647 So.2d 254 (Fla. 1st DCA 1994)	12, 15
<i>Scandinavian World Cruises (Bahamas) Ltd. v. Ergle</i> , 525 So.2d 1012 (Fla. 4th DCA 1988)	15
<i>Shiver v. Apalachee Publ'g Co.</i> , 425 So.2d 1173 (Fla. 1st DCA 1983)	21, 31
<i>St. Amant v. Thompson</i> , 390 U.S. 727 (1968)	22
<i>Times Pub. Co. v. Huffstetler</i> , 409 So.2d 112 (Fla. 5th DCA 1982)	20

CASES Page

Water Int'l Network, U.S.A., Inc. v. East,
 892 F. Supp. 1477 (M.D. Fla. 1995) 28

Winpisinger v. Watson,
 628 F.2d 133 (D.C. Cir. 1979) 32, 33

Woodward v. Sunbeam Television Corp.,
 616 So.2d 501 (Fla. 3d DCA 1993) 12, 20

STATUTES AND CODE PROVISIONS

Fed. R. Civ. P. 11(b)(3) 16

Fla. R. Jud. Admin. 2.060(d) 16

Fla. Stat. Ann. § 768.72(a) 27

Fla. Stat. Ann. § 106.085 5, 23

Fla. Stat. Ann. § 106.143(4)(b) 23

NASD Code of Arbitration Procedure 16

 § 10314(a) 17

 § 10321(b) 17

 § 10321(c) 17

Ohio R. Civ. P. 11 16

MISCELLANEOUS

*Richard Danielson, In State Senate District 23, mud
 flies in both directions, St. Petersburg Times,*
 Nov. 4, 1996 7

*Kathleen Hall Jamieson, Everything You Think You Know
 About Politics And Why You're Wrong,*
 (Basic Books 2000) 25

Margaret Talev, Democrat ad breaks campaign pledge,
 Tampa Tribune, Nov. 4, 1996 25

Margaret Talev, Dicks sues Republicans over TV ad,
 Tampa Tribune, Nov. 1, 1996 7

Defendant National Republican Senatorial Committee ("NRSC") respectfully submits that it is entitled to summary judgment for three fundamental reasons.

First, plaintiff's libel claim fails because the statement at issue is substantially true.

Second, plaintiff cannot prove that the NRSC acted with "actual malice"; that is, that it published the statement at issue with actual knowledge that it was false, or with a "reckless and willful disregard for the truth." To the contrary, the General Counsel of the NRSC, whose office approved the challenged campaign advertisement on behalf of the NRSC, believed it to be true.

Finally, plaintiff cannot prove that the NRSC's statement at issue caused him to suffer any actual damages.

BACKGROUND

The following factual statement is drawn from the NRSC's Statement of Undisputed Material Facts ("Stmt.") filed herewith. Certain additional facts, also believed to be undisputed but not legally material to this matter, are included for context.

Plaintiff John Larry Dicks was the Democratic nominee for the District 23 State Senate seat in November 1996. His Republican opponent was Tom Lee. See Stmt. ¶ 1. Mr. Dicks is an attorney, a real estate broker and instructor, and a

financial advisor. Dicks Tr. at 60-61 (Exh. 1). From 1990 to 1993, Mr. Dicks was a National Instructor for the Charles Givens Organization, and between 1988 and 1995 he had stints as a registered investment advisor for Delta First Financial ("Delta"), a brokerage firm founded by Mr. Givens and Mr. Dicks' brother, Jack.

1. Mr. Dicks' Work for the Givens Organization and Delta.

The Givens Organization sponsored seminars that purported to educate the public about investing. See Margaret Talev, *Investors Bitter About Candidate*, Tampa Tribune, Oct. 22, 1996 at 2 (Exh. 12). Tens of thousands of people joined the Givens Organization during the 1980s and early 1990s. *Id.* Mr. Givens also wrote investment books such as Wealth Without Risk (1988) and Financial Self-Defense (1990). *Id.*

Mr. Dicks was one of four National Instructors for the Givens Organization. See Dicks Tr. at 32; Givens Organizational Chart (Exh. 13). He led seminars nationwide, touting the investment philosophies of Charles Givens and seeking to enlist new members into the Organization. See Dicks Tr. at 38. Mr. Dicks also appeared on television news programs and "infomercials" to promote his seminars and the Givens Organization. See Exhibits 14-15 (transcripts of several of Mr. Dicks' appearances). Further, Mr. Dicks wrote two books with

Mr. Givens, The Bookshelf Lawyer and Business Power Strategies (Dicks Tr. at 34), and he published do-it-yourself legal forms in Financial Self-Defense (at page 153) (Exh. 16).

Delta was the investment advisor to the Givens Organization. See Dicks Tr. at 36. Mr. Dicks gave seminars on behalf of Delta and solicited business through "consultations" with seminar audience members. See Dicks Tr. at 45-46.

Published reports show that the Givens Organization was ultimately sued by thousands of former members nationwide, who sought refunds of, *inter alia*, membership fees. See Talev, *Investors Bitter* (Exh. 12). In early 1996, a California jury rendered a \$14.1 million verdict against the Givens Organization in a class action suit involving 29,000 former members. *Id.* Similar complaints were filed in Wisconsin, Maryland, and North Dakota. *Id.* The Florida Attorney General's office sued the Organization and obtained a \$400,000 settlement. *Id.* The Givens Organization was ultimately bankrupted by its legal liabilities. *Id.*

In newspaper interviews during the 1996 campaign, Mr. Dicks claimed that, despite his prominent position, he should not be held accountable for the Givens Organization's business activities. See, e.g., Margaret Talev, *Senate candidate has tasted success*, Tampa Tribune, Oct. 15, 1996 at 1 (Exh. 6). He reiterated this point at his deposition. See Dicks Tr. at 29.

2. Mr. Dicks' Legal Problems.

Between 1992 and 1996, Mr. Dicks was named as a defendant by a total of eleven (11) former clients in six (6) arbitrations and one (1) lawsuit. Stmt. ¶ 4. In each of these matters, Mr. Dicks' former clients sought refunds for failed investments Mr. Dicks had sold them. The claimants alleged losses ranging from \$26,000 to \$70,000. Stmt. ¶¶ 4(a)-(g). Mr. Dicks was dismissed from two of the arbitrations because the claimants meant to sue his brother, Jack, but the other arbitrations and the lawsuit were eventually settled for monetary payments. Stmt. ¶ 5. Mr. Dicks described these matters on the U-4 Form he submitted to the National Association of Securities Dealers ("NASD") on March 1, 1995 ("1995 U-4 Form"), and on a subsequent form he filed on January 14, 1997 ("1997 U-4 Form") (Exh. 2, 3). Stmt. ¶¶ 3-4.¹

¹ The U-4 Form is the Uniform Application for Securities Industry Registration or Transfer, which requires financial professionals to provide, among other things, detailed information about their work history and any customer-initiated complaints or claims against them. The U-4 Form is a public document, and in some instances it is the only publicly-available source of information about claims against a financial advisor. Stmt. ¶¶ 2-3.

3. Mr. Dicks' Candidacy for the State Senate and The NRSC Advertisement.

In late 1995, Mr. Dicks entered the race for the District 23 State Senate seat. He had no primary opponent and became the Democratic nominee without contest. Stmt. ¶ 6.

In October 1996, as is typical in the political arena, the Florida Republican Party paid a consultant to do "opposition research" about Mr. Dicks through publicly-available materials, including Mr. Dicks' most recent U-4 Form, filed in March 1995. Stmt. ¶ 7. The material was given to Delaware Entertainment Broadcasting, a creative vendor with a good reputation, as the basis for an independent expenditure advertisement opposing Mr. Dicks' candidacy. *Id.* The advertisement was paid for by the NRSC. Stmt. ¶ 8. As required by state law (Fla. Stat. Ann. § 106.085), Craig Engle, General Counsel of the NRSC, notified Mr. Dicks and his opponent, Tom Lee, of the advertising expenditure by letter dated October 28, 1996. *Id.*

The advertisement aired from October 28 to November 4, 1996 (*id.*), and stated (Stmt. ¶ 9):

Voiceover: John Dicks is running for State Senate on his record. Well, here are the facts.

Voiceover: Fact: For years, John Dicks worked closely with controversial financial advisor Charles Givens.

Graphic: FACT: Charles Givens pays \$ millions in fraud complaints. *Tampa Tribune* 10/22/96.

Voiceover: Fact: Tens of thousands of people across the country who lost their money filed fraud complaints against Givens, who's paid millions in fines and judgments.

Graphic: FACT: John Dicks is the subject of six securities investigations.

Voiceover: Fact: John Dicks is the subject of six securities investigations from people who fell prey to his slick schemes.

Graphic: We can't have John Dicks as our state senator.

Voiceover: The fact is, we can't have John Dicks as our state senator.

Graphic: Paid political advertisement. Paid for by National Republican Senatorial Committee independently of any candidate or committee. 425 2d Street, NE, Washington, DC 20002.

The advertisement was based primarily on the U-4 Form Mr. Dicks filed with the NASD in 1995. See Affidavit of Craig M. Engle ("Engle Aff.") ¶ 3 (Exh. 33). The 1995 U-4 Form was the most current, publicly-available information about the securities actions filed against Mr. Dicks because, for reasons he cannot explain, Mr. Dicks had failed to file an updated U-4 Form in 1996. Stmt. ¶ 3. At all times, Mr. Engle and others at the NRSC believed the advertisement was accurate and truthful, based on Mr. Dicks' own admissions on his U-4 Form. See Engle

Aff. ¶ 6. See also Margaret Talev, *Dicks sues Republicans over TV ad*, Tampa Tribune, Nov. 1, 1996 at 1 (Exh. 17); Richard Danielson, *In State Senate District 23, mud flies in both directions*, St. Petersburg Times, Nov. 4, 1996 at 3B (Exh. 18).

Mr. Dicks filed this libel lawsuit on October 31, 1996. Stmt. ¶ 15. He challenges one statement, and one statement only, in the advertisement: "John Dicks is the subject of six securities investigations." Stmt. ¶ 16.

Mr. Dicks ultimately lost the State Senate election by a margin of 61% to 39%. Stmt. ¶ 10.

4. Mr. Dicks' Activities Since the 1996 Election

Mr. Dicks' political career did not end in 1996. In June 1998 he was elected a Commissioner of Plant City, Florida. Stmt. ¶ 11. In June 1999 he was appointed to a one-year term as Mayor of Plant City by his fellow Commissioners. Stmt. ¶ 12.

Since 1996, Mr. Dicks has not done business as an attorney or investment advisor. See Dicks Tr. at 209-10. He instead has managed his family's citrus groves and real estate. *Id.* at 13. Mr. Dicks can cite no evidence of harm to his financial status and his net worth, which was \$2.3 million in 1996, may well have increased. *Id.* at 142, 208. Thus, Mr. Dicks does not claim lost wages or similar financial injuries in his lawsuit. Stmt. ¶ 13. Moreover, Mr. Dicks admits that he

cannot name anyone who has questioned his reputation for honesty since the NRSC advertisement aired in 1996. Stmt. ¶ 14.

ARGUMENT

This case strikes at the heart of the First Amendment. It seeks to impose onerous liability on the NRSC for a statement it made about a candidate for public office in the course of a heated political campaign. Nearly four decades ago, the United States Supreme Court recognized the threat to First Amendment free speech rights when a public figure, like Mr. Dicks, asserts a defamation claim against a speaker, like the NRSC, that has addressed issues of public import. See *New York Times v. Sullivan*, 376 U.S. 254 (1964). In *New York Times* and subsequent decisions, the Supreme Court has set rigorous requirements for defamation actions by public figures, and has explicitly mandated a preference that such claims be disposed of by summary judgment to avoid imposing the cost to free speech rights that would accompany a trial.

Strikingly, Mr. Dicks cannot demonstrate by clear and convincing evidence that the statement at issue was false, a fundamental prerequisite of any defamation action. To the contrary, the NRSC's statement that Mr. Dicks "is the subject of six securities investigations" was substantially true. Mr. Dicks is simply playing semantic games that cannot survive summary judgment.

Even more fundamentally, Mr. Dicks cannot show that the statement at issue was published with "actual malice," a bedrock element of any libel claim by a public figure. The Supreme Court has long held that speech concerning public officials and candidates for public office is at the very core of the First Amendment guarantee of free speech. In its landmark decision in *New York Times*, the Supreme Court reversed a libel award in favor of a local official who claimed an advertisement in The New York Times about his treatment of civil rights demonstrators was defamatory. Emphasizing our nation's "profound national commitment" to robust debate on public issues, including "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials," 376 U.S. at 270-71, the Court interpreted the First Amendment to require public officials to prove that an allegedly defamatory statement was made with "actual malice," that is, "with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 280 (emphasis added).

This "actual malice" requirement applies to defamation suits filed by any "public figure." See *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155 (1967) (applying actual malice requirement to defamation suit filed by state university athletic director). The actual malice requirement "has its fullest and most urgent application" to speech concerning

candidates for public office. *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1970). Simply put, democracy could not function if speakers during the heat of campaign debate were deterred from comment by fear of onerous legal liability for inadvertent factual errors.

Moreover, Mr. Dicks must carry his burden of proving falseness and actual malice not just by a preponderance of the evidence, but by clear and convincing evidence. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350-51 (1974). Again, this evidentiary standard, like the actual malice requirement, is a mandate of the First Amendment.

In libel cases brought by public figures, the First Amendment mandates that summary judgment is the preferred method of disposition. This is so because the Court is charged, as a matter of First Amendment law, as the gatekeeper to assure that core political speech is not penalized by the burden and expense of a trial. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 (1984) ("Judges, as expositors of the Constitution, must independently decide whether the evidence in the record" is clear and convincing). Florida courts recognize that, in defamation cases brought by public figures, "summary judgments should be more liberally granted." *Menendez v. Key West Newspaper Corp.*, 293 So.2d 751, 752 (Fla. 3d DCA 1974). *Accord Newton v. Florida Freedom Newspapers, Inc.*, 447 So.2d

906, 907 (Fla. 1st DCA 1984) ("summary judgment should be more liberally granted where, as in this case, the constitutional standard of 'actual malice' applies"); *Cronley v. Pensacola News-Journal, Inc.*, 561 So.2d 402, 405 (Fla. 1st DCA 1990) (same); *Friedgood v. Peters Publ'g Co.*, 521 So.2d 236 (Fla. 4th DCA 1988) (same); *Palm Beach Newspapers, Inc. v. Early*, 334 So.2d 50 (Fla. 4th DCA 1976) (same).

For these reasons, three courts have recently entered summary judgment against public figures who alleged libel by a political advertisement. See *Dockery v. Florida Democratic Party, et al.*, 7 Fla. Weekly Supp. 393 (Fla. Cir. Ct. Polk Cty.) (March 2, 2000) (Exh. 19); *Delaney v. NRSC*, No. CL 96-009369 (AG) (Fla. Cir. Ct. Palm Beach Cty.) (March 29, 2000) (Exh. 20); *Pritt v. Republican Nat'l Committee, et al.*, No. 97-C-380(v) (W. Va. Cir. Ct. Fayette Cty.) (May 15, 2000) (Exh. 21). This case warrants similar disposition.

I. THE STATEMENT AT ISSUE IS SUBSTANTIALLY TRUE.

Mr. Dicks' libel claim requires clear and convincing proof that the challenged statement is false. "A false statement of fact is absolutely necessary if there is to be recovery in a defamation action." *Friedgood*, 521 So.2d at 242; *Byrd v. Hustler Magazine, Inc.*, 433 So.2d 593, 595 (Fla. 4th DCA 1983) (same). The determination of whether a statement is defamatory must be based on "the entire broadcast in context,

not simply the offending words." *Pullum v. Johnson*, 647 So.2d 254, 257 (Fla. 1st DCA 1994).

Moreover, the statement at issue need only be "substantially true" to be absolutely protected from suit. *Nelson v. Associated Press, Inc.*, 667 F. Supp. 1468, 1477 (S.D. Fla. 1987) (newspaper article not defamatory because "the law requires only that the publication be substantially true"). An illustrative case applying this standard is *Woodward v. Sunbeam Television Corp.*, 616 So.2d 501 (Fla. 3d DCA 1993). The *Woodward* court ruled that a report that plaintiff had served four years in jail was not defamatory, even though his actual sentence was only two years, because "this fact does not affect the gist of the story." *Id.* at 503.

Mr. Dicks challenges the statement that he "is the subject of six securities investigations" for two reasons. *Dicks Tr.* at 115-16 (Exh. 1). First, he challenges the use of the term "investigations" because he interprets it to denote only an official inquiry, by "a regulatory body of which you are licensed or [to] which you have some responsibility," into "whether you have done something wrong." *Id.* at 86. Second, Mr. Dicks challenges the use of the word "is" because, though he admits that he was at one time named in at least six securities lawsuits and arbitrations, fewer than six of them were actually pending when the advertisement aired. *Id.* at 124. These

semantic objections do not clearly and convincingly demonstrate falseness for purposes of a libel claim. To the contrary, the statement at issue is substantially true, based on Mr. Dicks' own admissions to the NASD.

A. **Mr. Dicks Admitted the Facts Underlying the Statement at Issue.**

Mr. Dicks concedes, as he must, that when the NRSC's advertisement aired he had been the subject of six NASD arbitrations and one lawsuit, filed by eleven former Delta clients. Stmt. ¶ 4. All the claimants sought to recover sums they had invested in failed ventures allegedly touted by Mr. Dicks in a fraudulent or negligent manner. As described by Mr. Dicks on his March 1, 1995 U-4 Form:

- On August 27, 1992, JoAnn Chandler filed a complaint against Mr. Dicks in the Ohio Court of Common Pleas for \$70,000 in compensatory damages plus punitive damages. Ms. Chandler alleged that Mr. Dicks defrauded her through "untruths" and "omissions" about certain "unsuitable" investments he had sold her.
- On January 20, 1993, Carol Pally filed an NASD arbitration claim against Mr. Dicks for \$33,300 in compensatory damages and \$100,000 in punitive damages. Ms. Pally alleged that Mr. Dicks sold her securities that were "too risky and unsuitable," and that he closed the sale through the use of "fraud, deception, and material misstatements of fact."
- On May 31, 1994, Edward and Shirley Karelsen filed an NASD arbitration claim against Mr. Dicks for \$26,500 in compensatory damages plus punitive damages. The Karelsens alleged that Mr. Dicks placed their IRA funds in an

"unsuitable recommendation," that he "falsely and fraudulently made misleading statements," breached his fiduciary duty, was negligent, and breached the "implied covenant of good faith and fair dealing."

- On September 13, 1994, Giri and Thana Giridhar filed an NASD arbitration claim against Mr. Dicks for \$55,000 in compensatory damages plus punitive damages. The Giridhars alleged that Mr. Dicks "failed in [his] fiduciary duty," made "unsuitable recommendations," acted "in a negligent fashion," failed to "perform proper due diligence," and breached an "implied covenant of good faith and fair dealing."
- On October 24, 1994, Joseph Kennedy filed an NASD arbitration claim against Mr. Dicks for \$48,000 in compensatory damages. Mr. Kennedy alleged that Mr. Dicks had used a "deceptive marketing strategy," including "false and misleading statements," had omitted facts in describing the investments, and sold them "without regard to suitability."
- On May 5, 1995, Eugene and Jean Trifilio filed an NASD arbitration claim against Mr. Dicks for \$60,000 in compensatory damages and \$300,000 in punitive damages. The Trifilios alleged that Mr. Dicks breached his fiduciary duty to them, committed negligence and fraud, and failed to evaluate the suitability of the investment he sold them.

1995 U-4 Form at 5-10 (Stmt. ¶¶ 4(a)-(f)).

On his January 14, 1997 U-4 Form, Mr. Dicks disclosed that on October 25, 1996, three days before the NRSC advertisement began to air, Frank and Florence Brown filed an NASD arbitration claim against him for \$26,000 in compensatory damages. The Browns alleged that Mr. Dicks breached his

15
fiduciary duty, committed fraud, and did not use due diligence.

See 1997 U-4 Form at 5-10 (Stmt. ¶ 4(g)).

B. The Term "Investigations" Fairly Includes Lawsuits and Arbitration Claims.

Mr. Dicks asserts that the NRSC's reference to the above claims as "investigations" is false, because he personally interprets the term to include only official inquiries by licensing or regulatory bodies. The NRSC respectfully submits that Mr. Dicks' own self-serving, unsupported definition of the term "investigations" is a far cry from clear and convincing proof of falseness. Moreover, it is simply wrong.

The very words of the NRSC advertisement state that Mr. Dicks "is the subject of six securities investigations from people who fell prey to his slick schemes" (emphasis added).² It is clear beyond reasonable dispute that the advertisement explicitly excluded government investigations, and made clear its focus on "investigations from people" who were victims.

Moreover, even without this dispositive language, the lawsuit and NASD arbitrations filed against Mr. Dicks are fairly called "investigations." The term "investigation" is defined

² Mr. Dicks does not challenge the reference to his "slick schemes," which is in any event a protected statement of the NRSC's opinion. *Scandinavian World Cruises (Bahamas) Ltd. v. Ergle*, 525 So.2d 1012, 1015 (Fla. 4th DCA 1988) (statements of opinion "are not actionable"); *Pullum*, 647 So.2d at 258 (same for "rhetorical hyperbole," even if "inflammatory").

as: "1. A seeking of knowledge, data, or the truth about something. 2. The act or an instance of exploring or investigating. 3. To study closely or systematically." Roget's Thesaurus 560 (2d ed. 1988). The verb "investigate" is similarly defined: "To observe or inquire into in detail. To make a systematic inquiry or examination." Webster's New College Dictionary 583 (2d ed. 1995). Therefore, the term "investigation" is broad enough to encompass NASD arbitration claims and lawsuits which, by definition, must be investigated before being filed or decided.³

Indeed, NASD arbitrations permit discovery for this very purpose. The NASD Code of Arbitration Procedure ("Code") and related NASD arbitration guides provide that:

- The claimant's Statement of Claim must include "documents in support of the claim" to be served on all parties and the arbitrators (Code § 10314(a), NASD Arbitration Procedures at 6) (Exh. 22-23);

³ Such "investigation" is, in fact, compelled by rules governing lawsuits. For example, Federal Rule of Civil Procedure 11 requires that pleadings signed by an attorney have evidentiary support that will be demonstrated after "further investigation or discovery." Fed. R. Civ. P. 11(b)(3). Similarly, the Florida Rules of Judicial Administration require attorneys to certify that pleadings have "good ground" to support them. Fla. R. Jud. Admin. 2.060(d). See also Ohio R. Civ. P. 11 (same). An attorney must "investigate" before being able to so certify. The rules governing discovery in lawsuits are also aimed at permitting "investigation" into claims and defenses.

- Parties may serve "written requests for information or documents" on each other, and must file such requests with the arbitrators (Code § 10321(b));
- At least ten days before an arbitration hearing, the parties must "serve on each other copies of documents in their possession they intend to present at the hearing" and "identify witnesses they intend to present at the hearing" (*id.* § 10321(c), NASD Arbitration Procedures at 14);
- Arbitrators are empowered to order the production of witnesses for depositions (NASD Arbitrator's Manual at 12) (Exh. 24).

These provisions: (1) require parties to "investigate" their claims and defenses; (2) permit the parties to "investigate" their opponents' claims and defenses; and (3) enable the arbitrators to "investigate" the parties' respective positions before deciding the matter.

Further, several of the actual claimants against Mr. Dicks specifically testified that they and their attorneys "investigated" him before filing their claims. For example, Mr. Giridhar testified that his attorneys conducted an "investigation" of Mr. Dicks, and Mr. Giridhar's attorney stated on the deposition record that he "performed an investigation and filed a complaint with the NASD." *Giri Giridhar Tr.* at 25, 40-41 (Exh. 25). The Karelsens also testified that they "investigated" Mr. Dicks. *Shirley Karelsen Tr.* at 15 (Exh. 26). Indeed, Mrs. Karelsen testified that the arbitrators of her

claim independently investigated Mr. Dicks, and that she gave them information to aid the investigation. *Id.*

Accordingly, the statement that Mr. Dicks is the subject of "securities investigations" is substantially true.

C. The Use of the Word "Is" in Connection With the Claims Against Mr. Dicks Was Appropriate.

Mr. Dicks also challenges the NRSC's statement that he "is" the subject of the above investigations because some of the claims against him were no longer pending when the advertisement aired. See Dicks Tr. at 255-56 (Exh. 1).⁴

Nonetheless, the statement at issue is still substantially true, based on Mr. Dicks' own admissions. The NRSC based its statement on the U-4 Form Mr. Dicks submitted to the NASD on March 1, 1995. See Engle Aff. ¶ 3 (Exh. 33). On that form, Mr. Dicks indicated that he had been named in six different proceedings brought by nine claimants, and that the Kennedy, Giridhar, Karelsen, and Pally matters (in that order) were still "pending." See 1995 U-4 Form (Exh. 2). These four matters involved six claimants, which itself provides a

⁴ Mr. Dicks claims that he settled with Ms. Chandler in July 1993, Ms. Pally in February 1996, the Karelsens in April 1996, the Giridhars in February 1996, Mr. Kennedy in August 1995, and the Trifilios in June 1995. See 1997 U-4 Form at 5-10 (Exh. 3). These settlements were confidential, however, and four of them were indisputably not publicly reported until after the 1996 election.

reasonable basis for the NRSC's reference to "six securities investigations." Moreover, the Browns filed their NASD arbitration claim on October 25, 1996 -- after Mr. Dicks submitted his U-4 Form, but before the NRSC advertisement began to air. See 1997 U-4 Form (Exh. 3). Therefore, in addition to the four claims disclosed on Mr. Dicks' 1995 U-4 Form as "pending," a fifth claim with two more claimants was actually pending when the advertisement aired.

Mr. Dicks admits that his 1995 U-4 Form was the most current publicly-available information about the claims against him. See Dicks Tr. at 302. He concedes that he did not update or supplement the form until January 1997 -- several months after the 1996 election. *Id.*; Stmt. ¶ 3.

The NRSC reasonably relied on Mr. Dicks' March 1995 filing as the basis for the statement at issue. There is no authority to suggest that the NRSC should be charged with knowledge of facts it could not reasonably have known, merely because Mr. Dicks had failed to update his U-4 Form since March 1995. Indeed, the Supreme Court in *New York Times* held that the newspaper could not be charged with facts contained in its own files, because it had no duty to investigate further. See 376 U.S. at 280-81. The accuracy of the statement at issue must therefore be judged by the information actually available to the NRSC.

Even though Mr. Dicks' 1995 U-4 Form indicates that only four matters were pending, and even though only one subsequent matter was also pending, the NRSC's statement regarding "six" investigations is still substantially true. The slight difference between five claims by eight claimants and six "investigations" does not demonstrate falseness. In *Woodward*, a newspaper article stated that a defamation plaintiff had served four years in jail, when in fact he had only served only two years. See 616 So.2d at 503. The appellate court nonetheless found this error irrelevant for defamation purposes because it "does not affect the gist of the story." *Id.* Indeed, an error "of only minor significance when the entire story is considered" does not constitute falseness. *Newton*, 447 So.2d at 907; *Times Publ'g. Co. v. Huffstetler*, 409 So.2d 112, 113 (Fla. 5th DCA 1982) (same). And Mr. Dicks does not even challenge the accuracy of the remaining facts set forth in the spot.

The NRSC respectfully submits that, as in *Woodward*, the difference between five claims by eight former clients and six "investigations" by former clients does not "affect the gist" of the statement at issue. The fact that Mr. Dicks left behind disgruntled investors would be equally demonstrated by either number of claims. In light of *Woodward*, *Newton*, *Times*

Publishing, and *New York Times*, the statement at issue is substantially true.⁵

II. THE NRSC DID NOT ACT WITH "ACTUAL MALICE."

As a candidate for the Florida State Senate, Mr. Dicks was a public figure as a matter of law. See, e.g., *Cronley*, 561 So.2d at 404-05 (candidate for Florida State Senate was a public figure). Indeed, this Court has previously ruled that a candidate for elective office is treated as a "public figure." See Order Granting Plaintiff's Motion for Leave to Add Claim for Punitive Damages at 3 (May 17, 1999) ("May 17, 1999 Order") (Exh. 11). See also *Shiver v. Apalachee Publ'g Co.*, 425 So.2d 1173, 1175 (Fla. 1st DCA 1983) (same).

As a public figure, Mr. Dicks' libel claim requires him to prove, by "clear and convincing evidence," that the statement at issue

was (1) a statement of fact, (2) which was false, and (3) made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard for whether it was false or not.

Palm Beach Newspapers, 334 So.2d at 52.

⁵ Because one might still be considered the "subject" of an investigation even after it has been "closed," the NRSC's statement was also true because Mr. Dicks remained the subject of the investigations even after they were "closed." As Craig Engle testified, "'Is' the subject and 'was' the subject I would feel are interchangeable terms." Engle Tr. at 38 (Exh. 7). See also Engle Aff. ¶ 6 (Exh. 33).

The third element is the "actual malice" requirement first established by the Supreme Court in *New York Times*, 376 U.S. at 280. In particular, "reckless disregard" can be proved only through clear and convincing proof that the defendant had "serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) (emphasis added); *Palm Beach Newspapers*, 334 So.2d at 52 (same).⁶

The United States Supreme Court has instructed that judges must "independently decide" whether a plaintiff is able to prove "actual malice" by clear and convincing evidence. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511-12 (1984) (no "actual malice" because statement was "one of a number of possible rational interpretations" of event). Indeed, "[p]ublic discussion about the qualifications of a candidate for elective office presents what is probably the strongest possible case" for the need to prove "actual malice." *Ocala Star-Banner Co. v. Damron*, 401 U.S. 295, 300 (1971) (ordering new trial in

⁶ This is a high threshold. In *St. Amant*, for example, the Supreme Court ruled that a libel defendant did not act with a "reckless and willful disregard for the truth," even though he made a televised speech accusing a sheriff of accepting bribes based solely on the unverified affidavit of an informant. See 390 U.S. at 731. Similarly, a "failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Harte-Hanks Commun., Inc. v. Connaughton*, 491 U.S. 657, 659 (1989). Here, of course, the NRSC reasonably relied on Mr. Dicks' own 1995 U-4 Form and on its creative vendor.

public official's libel suit where court did not require such proof). Mr. Dicks himself has acknowledged that the claims against him by former clients were "fair game for other politicians to comment on." Dicks Tr. at 183 (Exh. 1).

A. No Evidence Demonstrates That the NRSC Acted With Actual Malice.

Mr. Dicks asserts as evidence of actual malice a letter by his opponent, Tom Lee, to Craig Engle, requesting factual support for the advertisement, and a second letter the very next day suggesting that the NRSC withdraw the advertisement because Mr. Engle had not responded to the earlier letter. See Dicks Tr. at 186-87, 191; Letters from Tom Lee to Craig Engle, October 29 and 30, 1996 (Exhs. 27, 28). From these events, Mr. Dicks infers that "there was at least a basis to question whether the ads were correct" (Dicks Tr. at 191), and that, therefore, the NRSC's refusal to withdraw the advertisement or respond to Mr. Lee reflects actual malice. This theory fails for three reasons.

First, Mr. Dicks misunderstands the law of campaign finance. As the sponsor of an independent expenditure, the NRSC was prohibited by Florida law from communicating with Mr. Lee concerning the content or airing of the advertisement, other than to advise both candidates that the spot would run. See Fla. Stat. Ann. §§ 106.085, 106.143(4)(b). Mr. Engle's failure

to respond to either of Mr. Lee's letters reflects compliance with the law, not an admission of wrongdoing.⁷ And in any event, mere failure to respond to a letter does not constitute "clear and convincing" evidence of falseness or actual malice.

Second, to the degree Mr. Dicks is suggesting that the NRSC failed to investigate in response to Mr. Lee's letters, the Supreme Court has made clear that "failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Harte-Hanks*, 491 U.S. at 659. Moreover, Mr. Engle testified that upon receiving the first letter from Mr. Lee, he "went back and opened up the file that was about this ad to make sure that the statements were accurate." Engle Tr. at 22. Thus, even though not required to do so, Mr. Engle did investigate, and confirmed to his own satisfaction that the advertisement was true.

Third, Mr. Lee's letters did not imply that the NRSC advertisement was false. Rather, Mr. Lee emphasized his vow to "run a positive campaign," and requested "documenting evidence"

⁷ Thus, the NRSC's "general operating rule is to not make communications or consultations with candidates who we are operating independently of." Engle Tr. at 20 (Exh. 7). Indeed, Mr. Dicks himself acknowledged that Mr. Engle was prohibited by law from contacting Mr. Lee in response to his letters. See Dicks Tr. at 347-48 (Exh. 1).

so that he could "make a public statement regarding the factual accuracy" of the advertisement. Oct. 29 Letter (Exh. 27).⁸

When Mr. Engle did not respond by the next day, Mr. Lee sent a second letter requesting that the NRSC withdraw the advertisement. See Oct. 30 Letter (Exh. 28). Mr. Lee noted that Mr. Dicks' objections "are highly technical," and stated that he simply wanted to give Mr. Dicks "the benefit of the doubt to ensure that I do not take unfair advantage of the string of legal problems he has faced." *Id.* Indeed, Mr. Lee told the press that the advertisement was "95% correct" and that he did not question its truthfulness. Lee Tr. at 16 (Exh. 29).⁹ As Mr. Engle testified, it is not unusual for the intended

⁸ Despite the common criticism of "negative campaigning," recent studies have demonstrated that "negative" campaign advertisements are, on average, more accurate and informative than are pro-candidate, "positive" advertisements. See Kathleen Hall Jamieson, *Everything You Think You Know About Politics And Why You're Wrong* 73-79, 97-106 (Basic Books 2000).

⁹ Mr. Lee had also asked three television stations to stop airing the advertisement, and two did so. See Lee Tr. at 13; Margaret Talev, *Stations pull ad at request*, Tampa Tribune, Nov. 2, 1996 (Exh. 30). The weekend before the election, the Florida Democratic Party circulated a campaign mailer that attacked Mr. Lee with false charges. See Margaret Talev, *Democrat ad breaks campaign pledge*, Tampa Tribune, Nov. 4, 1996 at 7 (Exh. 31). Mr. Dicks did not criticize the flyer or ask that it be retracted or clarified. See Dicks Tr. at 354-56 (Exh. 1). In the wake of the Democratic mailer, Mr. Lee asked one television station, WFLA-TV, to re-air the advertisement, noting that "there could be no standard of . . . accuracy . . . lower than that which my opponent had taken." Lee Tr. at 16. WFLA-TV did not re-air the advertisement. See Burmer Tr. at 60-61 (Exh. 32).

beneficiaries of independent expenditures to distance themselves from them for reasons wholly unrelated to their accuracy. See Engle Tr. at 20-21.

The Court as gatekeeper must ensure that Mr. Dicks comes forward with probative evidence of actual malice at the summary judgment stage, before allowing him to proceed to trial. Mr. Dicks must provide "concrete evidence," not allegations that are "merely colorable" or "not significantly probative." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 256 (1986). Because he has failed to do so, summary judgment is appropriate on this ground.

B. The Punitive Damage Claim Does Not Satisfy the Actual Malice Requirement.

Mr. Dicks may attempt to rest his proffer of actual malice on the Court's May 17, 1999 order permitting him to amend his Complaint to add a claim for punitive damages. See May 17, 1999 Order at 2 (Exh. 11). In that Order, the Court assumed, based on plaintiff's representations, that "between 1992 and 1994, six individuals had filed complaints" against Mr. Dicks, but that "[t]here were no pending investigations at the time the campaign ads were run." *Id.* at 1-2. As shown above (pp. 18-19), these assumptions were not accurate. The Court observed that Mr. Dicks was required "to establish a reasonable evidentiary basis for recovery of punitive damages" before he

would be allowed to plead for that relief, but warned that "the court . . . is not to pre-judge the evidence that might be presented at trial," *id.* at 2 (citing *Dolphin Cove Assoc. v. Square D Co.*, 616 So.2d. 553 (Fla. 2d DCA 1993)). The Court concluded:

As a candidate for public office, Dicks was a public figure at the time the ads aired. The statement in question, which imputes untrustworthiness and poor character to candidate Dicks, was clearly susceptible to a defamatory meaning by the reasonable person standard. Dicks has made the requisite showing to allow amendment of his complaint so as to allege a claim for punitive damages.

Id. at 3 (emphasis added).

Thus, it is apparent that the standard correctly applied by the Court to allow amendment of a punitive damages claim -- "the reasonable person standard," connoting only negligence -- is far lower than the actual malice standard, which requires proof by clear and convincing evidence of actual knowledge that the statement is false or reckless disregard for the truthfulness of the statement.

Under Florida law, punitive damage claims are permitted if "there is a reasonable showing . . . proffered by the claimant which would provide a reasonable basis for recovery of such damages." Fla. Stat. Ann. § 768.72(a) (emphasis added). Thus, to plead a punitive damage claim, Mr. Dicks had to make a

proffer that, if proved true at trial, would support punitive damages. Under this standard, Florida courts routinely permit punitive damage claims in intentional tort cases by treating the well-pleaded allegations as per se support for punitive damages. As one court explained,

the rule in Florida appears to be that punitive damages are always recoverable in intentional tort cases where malice is one of the essential elements of the tort. The underlying rationale for this rule is that the proof of malice required to make out the cause of action is also sufficient evidence of malice on the part of the defendant to permit the jury to award punitive damages.

Ciamar Marcy, Inc. v. M. Monteiro Da Costa, 508 So.2d 1282, 1283 (Fla. 3d DCA 1987) (emphasis added). This rationale also applies where, as here, actual malice is an essential element of the tort. *Id.* at 1284 (element of actual malice "places the case squarely under the intentional tort-malice rule in which punitive damages are recoverable").

Therefore, in cases for intentional torts such as libel, the Florida punitive damages statute is satisfied by mere "allegations" and "little more than a statement of entitlement." *L.S.T., Inc. v. Crow*, 772 F. Supp. 1254, 1256 (M.D. Fla. 1991). *Accord Water Int'l Network, U.S.A., Inc. v. East*, 892 F. Supp. 1477, 1483 (M.D. Fla. 1995) (same; mere allegations of state and federal RICO violations "constitute a reasonable basis upon which punitive damages could be awarded"); *Hood v. Connors*, 419

So.2d 742, 744 (Fla. 5th DCA 1982) (conclusory allegation that libel defendant acted with actual malice was "sufficient to support a demand for punitive damages").

Mr. Dicks must clear a higher evidentiary hurdle to survive summary judgment, however. He must come forward with clear and convincing evidence that the NRSC actually knew the challenged statement was false or had "serious doubts" about its truthfulness. See pp. 21-22 above. The punitive damages ruling is not a proxy for this proof.

Mr. Dicks' punitive damages proffer consisted of "Tom Lee's letters and [excerpts from] the deposition of . . . Craig Engle, who admitted in his deposition that he never had discovered information that Dicks was being investigated at the time the ads aired." See May 17, 1999 Order at 2 (Exh. 11). As discussed above (pp. 24-26), Mr. Lee's letters do not demonstrate actual malice. Neither does Mr. Engle's testimony.

At the hearing on punitive damages, counsel for Mr. Dicks played a videotape of snippets from Mr. Engle's deposition, cut and pasted together out of context to distort his testimony. Tellingly, Mr. Dicks' counsel has repeatedly refused to provide a copy of the videotape to the NRSC's counsel. In any event, the key testimony relied on by the Court in its May 17, 1999 Order appears in the following passage:

Q: And you don't know whether John Dicks was ever the subject of a securities investigation, do you, sir?

A: On the basis of the research that has been provided from the Florida comptroller's office, I do know that there have been six securities-related complaints, investigations, or proceedings that have been filed under his name.

Q: I'm not interested in complaints, sir. I'm interested in investigations. The Florida comptroller's office never investigated John Dicks, did it?

A: No. I never said it did.

Q: And the Securities and Exchange Commission never investigated John Dicks, did it?

A: No. I never said they have.

Q: Well, who are you saying did investigate John Dicks, sir?

A: I'm not saying anyone has investigated John Dicks.

Q: Well, if you are the subject of a securities investigation, then someone has to be investigating you, don't they?

A: I would imagine that if you want to put a fine point on it, it would be the individuals who have filed the matters and the entities for which those individual cases are brought would be the supervisory body for the investigation.

Engle Tr. at 26-27 (Exh. 7) (emphasis added). The dogged insistence by Mr. Dicks' counsel that "I'm not interested in complaints, sir," clearly shows the passage cannot be read to

mean what Mr. Dicks suggests. This is explicitly so in view of Mr. Engle's statement that "the individuals who have filed the matters and the entities for which the individual cases were brought would be the supervisory body for the investigation." As shown above (pp. 18-19), the publicly-available information at the time the advertisements aired indicated that four cases brought by six individuals were still pending against Mr. Dicks.¹⁰

III. MR. DICKS CANNOT PROVE CAUSATION OF ANY LEGALLY COMPENSABLE INJURY.

Mr. Dicks must also prove that he suffered "actual damage" as a result of the NRSC's statements at issue. See *Shiver*, 425 So.2d at 1175 (affirming judgment for defendant on defamation claim where plaintiff could not prove "actual damage"); *From v. Tallahassee Democrat*, 400 So.2d 52 (Fla. 1st DCA 1981) (same). Mr. Dicks has conceded that he does not seek to recover any lost income or diminution in earnings potential as a result of the NRSC advertisement. Stmt. ¶ 13. Indeed, Mr. Dicks has not held himself out for business relations since the 1996 election, and as a result he has no ground for any income-

¹⁰ Moreover, Mr. Engle also testified that "if Mr. Dicks had been the subject of six pending securities investigations, I imagine the advertisement would have said [he] is the subject of six pending securities investigations. They weren't pending . . . and the ad doesn't say that." Engle Tr. at 25-26 (emphasis added).

based claim. See Dicks Tr. at 209-10 (Exh. 1). Mr. Dicks also acknowledges that, as of the 1996 election, his net worth was roughly \$2.3 million, and that it may well have increased since then. *Id.* at 142, 208.

Mr. Dicks' damage claim instead centers on his assertion that the statement at issue "subjected him to scorn and ridicule in the community." Second Amended Complaint ¶ 7 (Exh. 9); Dicks Tr. at 204-06 ("diminished stature in the community"). He has provided no evidence of such damage, however. To the contrary, in 1998 Mr. Dicks was elected to a three-year term on the City Commission of Plant City, Florida. Stmt. ¶ 11. He also served a one-year term as Mayor of Plant City, from June 1999 to June 2000. Stmt. ¶ 12. If anything, it appears that Mr. Dicks' stature in the community has increased since the 1996 election.

Mr. Dicks has also suggested that he seeks to recover the sums he personally spent in funding his campaign (Dicks Tr. at 206), but such sums are not compensable as damages. They are expenses Mr. Dicks voluntarily incurred in seeking public office and, as a matter of law, are too speculative to recover.¹¹

¹¹ Any claim rooted in the loss of an election is speculative, because the "endless number of diverse factors potentially contributing to the outcome" of elections "forecloses any reliable conclusions that voter support of a candidate is 'fairly traceable' to any particular event." *Winpisinger v.* (continued...)

Finally, Mr. Dicks proffers no evidence of any compensable physical, mental, or emotional harm caused by the NRSC advertisement. To be sure, Mr. Dicks has suggested that the advertisement caused him to suffer stress and anxiety (*id.* at 75), and he relatedly claimed that after the 1996 election his blood pressure increased. *Id.* at 78. Mr. Dicks acknowledged that he has always had high blood pressure, however, and admitted that he cannot link the increase to the NRSC advertisement. *Id.* at 78, 81. Mr. Dicks further admitted that he never saw a psychiatrist, psychologist, or other mental health care professional to deal with stress or anxiety allegedly caused by the NRSC advertisement. *Id.* at 82-83.

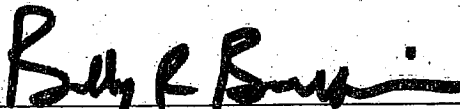
Watson, 628 F.2d 133, 137 (D.C. Cir. 1979). Indeed, Mr. Dicks acknowledged many possible reasons for his defeat, other than the statement at issue. See *Dicks Tr.* at 386-87. Newspaper articles that appeared several weeks before the advertisement also focused on Mr. Dicks' legal problems and affiliation with the Givens Organization. See *Talev, Investors Bitter* (Exh. 12); *Talev, Senate candidate* (Exh. 13). In one article, a claimant against Mr. Dicks said, "I blame him. He made my life hell." *Investors Bitter*, at 2. Mr. Dicks admitted that these articles were "not helpful" to his campaign. *Dicks Tr.* at 341.

CONCLUSION

For the foregoing reasons, the NRSC is entitled to summary judgment on Mr. Dicks' Second Amended Complaint.

Respectfully submitted,

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Tel. (813) 229-2300



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*Attorneys for Defendant
National Republican Senatorial
Committee*

Dicks Testimony

individuals other than Engle has been thwarted by the Defendant's refusal to answer. The Plaintiff reserves the right to supplement this answer on receipt of discovery.

10. My family has lived in our community for five generations. We are proud of the reputation and standing in the community that we have earned. No one has ever been the subject of any kind of investigation or criminal or disciplinary action of any kind. The general consensus was that our political campaign was even prior to the publication of the NRSC ad. Once it was aired, the numbers shifted quickly to our opponent. My time was spent almost exclusively reassuring supporters, friends and family that these ads were not true.

11. No.

12. In almost every discussion that I have held with any and everyone regarding our political campaign, the subject has centered around the NRSC ad. People have questioned it and people have been angry about it. Every conversation with someone new requires that I reassure them of the ad's untruths. My wife and children have been subjected to questioning about the ads and have had to respond and defend me. It has been particularly difficult for my children to see on television their father portrayed as someone evil and doing something wrong - yet not understand that things on TV are not, in this case, true. It would be impossible to list the name and address of everyone I have communicated with since the claim was made.

13. See No. 12.

14. N/A.

15. N/A.

16. a. No.

b. N/A.

c. N/A.

17. See No. 12.

IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT, IN AND
FOR HILLSBOROUGH COUNTY, FLORIDA

JOHN LARRY DICKS,)
Plaintiff,) NO. 96-7441 Div. W
v.)
THE NATIONAL REPUBLICAN)
SENATORIAL COMMITTEE,)
Defendant.)

ORIGINAL

VIDEO DEPOSITION UPON ORAL EXAMINATION OF
SHIRLEY KARELSEN

Taken at:

999 Third Avenue, Suite 3800

Seattle, Washington 98104

Tuesday, July 20, 1999

Scheduled Time: 11:30 A.M.

Actual Start: 12:15 P.M.

Reported by:

TIM BELLISARIO, CCR, RPR

CCR No. BE-LL-IT-*458B2

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1 it wasn't. It was a bad company; a bad investment.

2 Q. Any other things that you can think of where
3 Mr. Dicks might have lied?

4 A. Well, he lied about everything. I don't know
5 what he didn't lie about.

6 Q. After you filed the Complaint with the National
7 Association of Security Dealers, do you know whether there
8 was an investigation of Mr. Dicks and Delta First
9 Financial?

10 A. Oh, yes, there was.

11 Q. Do you know who conducted that investigation?

12 A. Well, I believe the arbitrators did.

13 Q. Do you know approximately how long the
14 investigation of Mr. Dicks lasted?

15 A. I believe around five years.

16 Q. And is it your understanding that this
17 investigation was conducted in part because of the
18 Complaint that you filed with the National Association of
19 Security Dealers?

20 A. Uh-hum (affirmative).

21 Q. Did you participate in the investigation of
22 Mr. Dicks by helping them and giving them information?

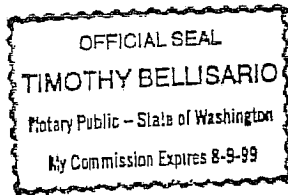
23 A. Yes.

24 Q. Do you recall whether anybody else participated
25 in the investigation of Mr. Dicks?

1 I further certify that the witness before examination
2 was by me duly sworn to testify the truth, the whole
3 truth, and nothing but the truth;

4 I further certify that the deposition, as
5 transcribed, is a full, true and correct transcript of the
6 testimony, including questions and answers, and all
7 objections, motions and exceptions of counsel made and
8 taken at the time of the foregoing examination.

9 WITNESS my hand and seal this 22nd day of July,
10 1999.



11
12 J. B.
13 TIMOTHY BELLISARIO, CCR, RPR
14 Notary Public in and for the
15 State of Washington,
16 residing at Seattle.

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IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT, IN
AND FOR THE HILLSBOROUGH
COUNTY, FLORIDA
CASE NO. 96-7441 Div W

JOHN LARRY DICKS,

COPY

Plaintiff,

vs.

THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Defendants.

DEPOSITION OF: GIRI GIRIDHAR
MONDAY, JULY 19, 1999

Biagini & Associates
600 Huyler Street
Suite A

So. Hackensack, New Jersey 07606
(201) 440-6399

G. GIRIDHAR - MR. KERI

1 I will ask you the question that I
2 asked prior to going back to the previous
3 question.

4 During the course of these events
5 in which you invested with John Dicks and Delta
6 First Financial, did you or your attorney ever
7 conduct an investigation against John Dicks
8 regarding these circumstances?

9 A. The attorneys that were involved
10 for the Arbitration Services, they did.

11 Q. So, they conducted an investigation
12 against John Dicks?

13 A. From what they told me, yes.

14 Q. Okay.

15 Since your wife was an additional
16 complainant in this matter, did your wife or
17 her counsel or once again, the people
18 conducting the arbitration, conduct an
19 investigation on her behalf against John Dicks
20 regarding these circumstances?

21 A. Yeah. They, basically, dealt with
22 me, but yes it was for our investment.

23 MR. DeVITA: Counsel, for the
24 record, you are asking -- this is counsel
25 DeVita, I don't know if you want me to state

G. GIRIDHAR - MR. KERI

1 John Dicks?

2 A. Most probably I would not have.

3 Q. Why is that?

4 A. Again risk. You know, it is going
5 to be risky, and once we were given the
6 impression that it was safe, we were led to
7 believe that this was a safe investment, and
8 then in a private session if they were to tell
9 me that they changed the banking laws, I would
10 not have gone ahead.

11 Q. Do you feel that Mr. Dicks had a
12 duty to tell you this information had he known
13 it at the time?

14 A. Yes, I do.

15 MR. KERI: I would like to attach
16 that as Defendant's Exhibit 3.

17 (DEFENDANT'S 3: A DOCUMENT DATED
18 JULY 17, 1997 MARKED FOR IDENTIFICATION, AS OF
19 THIS DATE.)

20 Q. Mr. Giridhar, if John Dicks made
21 the statement that no one had ever investigated
22 him, would you think that is an inaccurate
23 statement?

24 A. Yes, I do.

25 Q. It is an inaccurate statement?

G. GIRIDHAR - MR. KERI

1 A. Yes, it is inaccurate.

2 Q. Why is that?

3 A. Based on the conversations I have
4 had with the Investor Arbitration Services,
5 they told me that they had investigated the
6 Delta First Financial and the people associated
7 with it.

8 Q. Do you feel that John Dicks
9 conducted a thorough review of your financial
10 situation when he suggested that you make these
11 investments?

12 A. I would have to assume that he
13 did. I don't know.

14 Q. Is it fair to say that when he
15 advised you as to what investments to make,
16 that during these discussions he included the
17 discussion of risks as well as rewards to these
18 investments?

19 A. Risks were downplayed so much that
20 they were hardly mentioned.

21 Q. Mr. Giridhar, I don't know if you
22 know the technicalities of what Mr. Dicks has
23 to do with the NASD or not, but if he
24 represented on a form that he had to file with
25 the NASD, that the complaint that you filed

G. GIRIDHAR - MR. KERI

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I, DANIELLE LORENZO, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Danielle Lorenzo, C.S.R.
License No. XI02018

Dated: _____