

2B West's Fed. Forms, District Courts-Civil § 7:444.50 (5th ed.)

West's Federal Forms | May 2020 Update

District Courts-Civil

Jay E. Grenig^{a0}

Chapter 7. Complaints

III. Forms

G. Complaints in Diversity of Citizenship Case for Legal Relief

2. Intentional Torts

§ 7:444.50. Defamation of political figure

[Caption]

Plaintiff, *[name of plaintiff]* alleges:

NATURE OF THE ACTION

1. Plaintiff brings this action to hold Defendant *[name of Defendant]* accountable for defaming Plaintiff by publishing a statement about Plaintiff it knew to be false: *[Specification of allegedly defamatory statement. E.g., that Plaintiff was responsible for inciting a mass shooting at a political event in January 2011].* Specifically, on *[date of publication]* Defendant falsely stated as a matter of fact that *[state specifically what was stated e.g., Plaintiff incited Jared Loughner's January 8, 2011, shooting rampage at a political event in Tucson, Arizona, during which he shot nineteen people, severely wounding United States Congresswoman Gabrielle Giffords, and killing six, including Chief U.S. District Court Judge John Roll and a nine-year-old girl.]* A copy of Defendant's defamatory editorial column published on *[date of publication]* about Plaintiff is attached as Exhibit 1.
2. Defendant used its false assertion about Plaintiff as an artifice to exploit the *[describe subsequent event, e.g., The shooting that occurred on June 14, 2017, when James Hodgkinson, a man Defendant described as a "Bernie Sanders supporter and campaign volunteer virulently opposed to President Trump," launched a sniper-style attack with an assault rifle upon members of Congress and current and former congressional aides practicing for the annual charity Congressional Baseball Game at a field in Virginia near the nation's capital.]*
3. *[Provide detailed, plausible allegations with respect to defamatory statement. E.g., In its prominently placed column "America's Lethal Politics," Defendant capitalized on Plaintiff's name and Loughner's and Hodgkinson's horrific attacks to support its assertion that there was a "sickeningly familiar pattern" of politically motivated violence against members of Congress. This supposed "pattern" consisted of two events: (1) what Defendant falsely identified as Plaintiff's "clear" and "direct" incitement of Loughner's 2011 assault against Representative Giffords and other innocent bystanders in Tucson, Arizona; and (2) Hodgkinson's Virginia shooting.]*

4. *[Provide detailed, plausible allegations with respect to defendant's knowledge of falsity of defamatory statement. E.g., At the time of publication, Defendant knew and had published pieces acknowledging there was no connection between Plaintiff and Loughner's 2011 shooting. Moreover, Defendant' false statements about the link between Plaintiff and the Loughner shooting stood in stark contrast to how Defendant treated speculation about political motives behind Hodgkinson's rampage: Defendant concluded there was no connection between Hodgkinson and his professed penchant for Democratic stances sufficient to warrant implicating Democrats or the Bernie Sanders campaign as inciting factors for Hodgkinson's attack. Defendant sought to set the record straight by tweeting a "Fact Check" on June 15, 2017, directed at those who it wrote were "falsely blaming" Bernie Sanders and other Democrats for Hodgkinson's Virginia shooting.]*
5. Defendant published and promoted its editorial column despite knowing that the linchpin of its "sickening pattern" of politically-incited shootings was the false assertion that *[specify allegedly false assertion, e.g., Plaintiff incited Loughner to murder six people, among them a child and federal judge, and seriously wound numerous others.]*
6. In doing so, Defendant violated the law and its own policies.
7. As the public backlash over Defendant' malicious column mounted, it responded by making edits and "corrections" to its fabricated story, along with half-hearted Twitter apologies-none of which sufficiently corrected the falsehoods that the paper published. In fact, none mentioned Plaintiff or acknowledged that Plaintiff did not incite a deranged man to commit murder.
8. Plaintiff brings this action to hold Defendant accountable for falsely stating to millions of people that *[describe allegedly false statement, e.g., Plaintiff, a devoted wife, mother and grandmother, who committed a substantial portion of her adult life to public service, is part of a pattern of "lethal" politics and responsible for inciting an attack that seriously injured numerous people and killed six, including a nine-year-old girl who, at that time, was the same age as Plaintiff's youngest daughter.]*

PARTIES

9. Plaintiff is an individual who resides in and is a citizen of the *[specification of state in which plaintiff is a citizen]*.
10. Defendant is a *[specification of state in which defendant incorporated]* corporation with its principal place of business at *[specification of address of principal place of business]*.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action under [28 U.S.C.A. § 1332](#) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.
12. Venue properly lies within this judicial district pursuant to [28 U.S.C.A. § 1391](#) because Defendant resides in this judicial district and a substantial portion of the events giving rise to the claims asserted in this action occurred in this judicial district.

FACTS

Overview of the Parties

13. Plaintiff *[Describe plaintiff. E.g., Plaintiff is a dedicated wife, mother of five, and grandmother of five, who tries to live her life as a passionate voice on faith, family, and making America safe and secure for her family and the families of all Americans. In 2006, Plaintiff became the youngest and first female Governor of Alaska. Plaintiff rose to national prominence in 2008 when Senator John McCain tapped her as his vice-presidential running mate, making her the first woman to run on the Republican presidential ticket. In July 2009, Plaintiff resigned as Governor of Alaska and focused her career on being an author, political commentator, television personality and voice for conservative values.]*
14. Defendant is a *[Describe defendant. E.g., Defendant is a multi-billion-dollar global media organization that publishes a the New York Times daily newspaper, one of the oldest and most widely circulated print papers in the United States, and distributes content generated by its news room through its website www.NYTimes.com and several mobile platforms. The New York Times has been regarded as a national "newspaper of record," reflecting the considerable weight and influence attributed to the "voice" of Defendant. Defendant's print newspaper is sold in the United States and around the world through individual home delivery subscriptions, bulk subscriptions (primarily by schools and hotels) and single-copy sales. Defendant's content reaches a broad audience through its print, web and mobile platforms, including over three million paid subscribers and approximately 122 million monthly unique visitors to its website. Defendant charges consumers for content provided on its website and mobile applications. Digital subscriptions can be purchased individually or through group corporate or group education subscriptions. Defendant's "Metered Model" offers Internet users free access to a set number of articles per month on its website, and then charges users for access to content beyond that limit. In recent years, Defendant has been transitioning from its celebrated past as a great American print newspaper to a subscription-first, mobile-first news provider that is increasingly dependent upon click-based digital advertisements to generate revenue. Its digital only subscriptions have more than doubled during that time; its digital advertising revenue rose 19% in the first quarter of 2017.]*
15. Defendant maintains social media accounts, such as Twitter and Face book, on which it actively promotes articles. *[Description of article with specificity. E.g., One such article was the June 14, 2017, column that defamed Plaintiff, "America's Lethal Politics."]*

Plaintiff and Media Coverage of the 2011 Loughner Shooting

16. *In January 2011, immediately following Loughner's Arizona shooting, Plaintiff was the subject of several speculative and unsubstantiated rumors about a possible connection between her and Loughner's crime because of a map posted online which depicted congressional districts that Republicans were targeting for victory in an upcoming election. This rank speculation was quickly dispelled, as Loughner's criminal proceedings revealed that he was a mentally unstable man who was obsessed with Representative Giffords long before 2011.*
17. *Nevertheless, the mere suggestion that Plaintiff provoked or incited Loughner's attack profoundly impacted Plaintiff's personal and professional life. Among other things it led to the end of her position as a Fox News political commentator, influenced her decision not to run for President of the United States, and tainted her personal and professional image. It took Plaintiff years to overcome the detrimental impacts of the false speculation that she caused Loughner to commit murder.*
18. *Unfortunately, members of the media perceive Plaintiff as a convenient target for attacks against conservative policies and a subject likely to spark readership interest. Defendant recognized this phenomenon in Charles M. Blow's December 3, 2010 column "She Who Must Not Be Named" (attached as Exhibit 3):*

She was a vice presidential nominee. But she lost. She was the governor of Alaska. But she quit. Now she's just a political personality part cheerleader, part bomb-thrower—being kept afloat in part by the hackles of her enemies and the people who admire her resilience in the face of them. The left's outsize and unrelenting assault on her has made her a folk hero. The logic goes that if she's making people on the left this upset, she must be doing something right.

Yet the left continues to elevate her every utterance so that they can mock and deride her. The problem is that this strategy continues to backfire. The more the left tries to paint her as one of the “Mean Girls,” the more the right sees her as “Erin Brockovich.” The never-ending attempts to tear her down only build her up. She's like the ominous blob in the horror films: the more you shoot at it, the bigger and stronger it becomes.

Yes, she's about as sharp as a wet balloon, but we already know that. How much more time and energy must be devoted to dissecting that? How is this constructive, or even instructive at this point? What purpose does it serve other than inflaming passions to drive viewership and Web clicks?

As Politico's editor in chief, John F. Harris, and its executive editor, Jim VandeHei, very candidly expressed in August: “More traffic comes from an item on Sarah Palin's ‘repudiation’ faux pas than from our hundreds of stories on the complexities of health care reform or Wall Street regulation.”

So left-leaning blogs like The Huffington Post plaster pictures of her and her family all over their sites with entries about her latest gaffe or sideswipe. But she's barely mentioned on popular conservative blogs.

The same leftward skew is also true on television. An analysis of CNN, MSNBC and Fox News from Nov. 3 to Dec. 2, using data from ShadowTV, a monitoring service, found that CNN mentioned the name “Sarah Palin” nearly 800 times ... Left-leaning MSNBC mentioned it nearly 1,000 times. But Fox News, which employs her, mentioned it fewer than 600 times ...

People on the left seem to need her, to bash her, because she is, in three words, the way the left likes to see the right: hollow, dim and mean. But since she's feeding on the negativity, I suggest three other words: get over it.

19. Mr. Blow's column acknowledges that there is existing hostility held toward Plaintiff, and also recognizes that her name and attacks upon her inflame passions and thereby drive viewership and web clicks to media companies.

20. Defendant appreciates that in the increasingly competitive digital media landscape in which it finds itself, attacking Plaintiff brings an economic benefit to its business.

The Defamatory Palin Article

21. On June 14, 2017, Defendant exceeded the bounds of legality, decency and civility by publishing the false and defamatory column “America's Lethal Politics” (the “Palin Article”), which it Tweeted to nearly 39 million of its followers on Twitter. (See Exhibit 1.)

22. *On June 15, 2017, Defendant published the Palin Article in The New York Times print edition. (See Exhibit 2.)*
23. *The underlying premise of the Palin Article is that there is a “sickening” pattern of politically incited violence against members of Congress and that this pattern stems from Plaintiff's direct and clear incitement of Loughner's 2011 shooting in Arizona. Defendant fabricated this supposed “pattern” and Plaintiff's role in it, resurrecting a debunked connection between Plaintiff's political activities and Loughner's 2011 rampage in Arizona. By doing so, Defendant implicitly attacked the conservative policies Plaintiff promotes and drove its digital advertising revenues at Plaintiff's expense.*
24. *There was no legitimate reason or factual basis for the Palin Article, much less for Defendant to have falsely linked Plaintiff to Loughner's and Hodgkinson's shootings in any respect.*
25. *In the Palin Article, within the context of the fabricated pattern of politically motivated shootings, Defendant makes the following false and defamatory statements of and about Plaintiff:*

Was this attack evidence of how vicious American politics has become? Probably. In 2011, when Jared Lee Loughner opened fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a nine-year-old girl, the link to political incitement was clear. Before the shooting, Sarah Palin's political action committee circulated a map of targeted electoral districts that put Ms. Giffords and 19 other Democrats under stylized cross hairs.

Conservatives and right-wing media were quick on Wednesday to demand forceful condemnation of hate speech and crimes by anti-Trump liberals. They're right. Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask for of the right.

26. *These defamatory statements about Plaintiff were circulated to millions of Defendant' readers in print, on-line, and through mobile and social media.*
27. *The online version of the Palin Article included several advertisements generating revenue for Defendant.*
28. *Defendant generates advertising revenue from banners, video, rich media and other interactive ads on its web and mobile platforms, such as those that accompanied the Palin Article.*
29. *When Defendant published the Palin Article, it knew that there was no link or connection, let alone a “clear” and “direct” one, between Plaintiff's political activities and Loughner's 2011 shooting. Defendant also knew that Plaintiff did not incite Loughner's horrific crime.*
30. *For example, on June 14, 2017, Defendant published the article “Shooting Is Latest Eruption in a Grim Ritual of Rage and Blame” (attached as Exhibit [number of exhibit]), which recognized:*

In 2011, the shooting of Mr. Giffords by a mentally ill assailant came during a convulsive political period, when a bitter debate over health care yielded a wave of threats against lawmakers. Sarah Palin, the former vice-presidential candidate, drew sharp criticism for having posted a graphic online that showed cross hairs over

the districts of several members of Congress; including Ms. Giffords—though no connection to the crime was established.

31. A June 15, 2017 column written by Defendant Op-Ed columnist Bret Stephens “‘The Indigenous American Berserk’ strikes Again” (attached as Exhibit [number of exhibit]), acknowledged the same:

It was foul of the left to accuse the Tea Party of inciting Loughner's rampage—Bernie Sanders among them—all the more so since evidence for the claim was so strained.

...

Jared Loughner was a paranoid schizophrenic of no fixed ideological orientation.

32. That same day, Defendant published Charles M. Blow's column “Rhetoric and Bullets” (attached as Exhibit [number of exhibit]), which recounts how, shortly after Loughner's 2011 attack, Mr. Blow was “moved to commit an entire column to condemning the left for linking the shooting so closely to political rhetoric,” and how he felt compelled to do the same thing on the heels of Hodgkinson's Virginia shooting because:

What I abhor is ideological exploitation that reduces these acts to a political sport and uses them as weapons to silence political opponents and their “rhetoric,” rather than viewing them as American tragedies that we can work together to prevent through an honest appraisal and courageous action.

33. The “entire column” to which Mr. Blow referred in his June 15, 2017, column was published by Defendant just days after Loughner's 2011 rampage, and dispelled any notion that Loughner's crime was incited by political rhetoric. Mr. Blow's January 14, 2011, column, “The Tucson Witch Hunt” (attached as Exhibit [number of exhibit]), states:

Immediately after the news broke, the air became thick with conjecture, speculation and innuendo. There was a giddy, almost punch-drunk excitement on the left. The prophecy had been fulfilled: “words have consequences.” And now, the right's rhetorical chickens had finally come home to roost.

The dots were too close and the temptation to connect them too strong. The target was a Democratic congresswoman. There was the map of her district in the cross hairs. There were her own prescient worries about overheated rhetoric.

Within hours of the shooting, there was a full-fledged witch hunt to link the shooter to the right.

“I saw Goody Proctor with the devil! Oh, I mean Jared Lee Loughner! Yes him. With the devil!”

The only problem is that there was no evidence then, and even now, that overheated rhetoric from the right had anything to do with the shooting. (In fact, a couple of people who said they knew him have described him as either

apolitical or “quite liberal.”) The picture emerging is of a sad and lonely soul slowly, and publicly, slipping into insanity.

34. *On January 15, 2011, Defendant published another article, “Looking Behind the Mug-Shot Grin” (attached as Exhibit 10), which also recognized that no direct or clear link between political rhetoric and Loughner's actions could be claimed:*

Since last Saturday's shooting frenzy in Tucson, investigators and the news media have spent the week frantically trying to assemble the Jared Loughner Jigsaw puzzle in hopes that the pieces will fit, a clear picture will emerge and the answer to why will be found, providing the faint reassurance of a dark mystery solved.

Instead, the pattern of facts so far presents only a lack of one, a curlicue of contradictory moments open to broad interpretation. Here he is, a talented saxophonist with a prestigious high school jazz band, and there he is, a high school dropout. Here he is, a clean-cut employee of an Eddie Bauer store, and there he is, so unsettling a presence that tellers at a local bank would feel for the alarm button when he walked in.

...

What the cacophony of facts do suggest is that Mr. Loughner is struggling with a profound mental illness (most likely paranoid schizophrenia, many psychiatrists say); that his recent years have been marked by a stinging rejection—from his country's military, his community college, his girlfriends and, perhaps, his father; that he, in turn, rejected American society, including its government, its currency, its language, even its math. Mr. Loughner once declared to his professor that the number 6 could be called 18.

...

In the last three months, Mr. Loughner had a 9-millimeter bullet tattooed on his right shoulder blade and turned increasingly to the Internet to post indecipherable tutorials about the new currency, bemoan the presence of illiteracy and settle scores with the Army and Pima Community College, both of which had slammed him. He also may have felt rejected by the American government in general, and by Ms. Giffords in particular, with whom he had a brief—and, to him, unsatisfactory-encounter in 2007.

35. *Defendant had ample facts available that established that there was no connection between Plaintiff and Loughner's crime. Defendant' Editorial Board and staff followed Loughner's criminal case and the facts it revealed; the paper reported regularly about the case. Those proceedings failed to unearth any evidence that Loughner's actions were politically motivated. There is no evidence to suggest that Loughner ever saw the map of targeted electoral districts that the Palin Article references.*
36. *To the contrary, the facts revealed that Plaintiff did not incite Loughner's actions. The Washington Post summarized: “Loughner had no clear political views. Instead he was a troubled man who abused alcohol and drugs, and whose mental illness was apparent to his classmates and family even before he was diagnosed as schizophrenic during his court trial.” (See Exhibit [number of exhibit])*

Defendant Concedes the Falsity of the Palin Article—But Does Not Meaningfully Retract It or Apologize

37. *Soon after the Palin Article was published, Defendant was hit by public backlash over falsely stating that Plaintiff incited Loughner to commit murder.*

38. *In response, Defendant first tried to quietly save face by editing the Palin Article online. When that failed to quell the outcry, Defendant made further edits and posted two woefully insufficient online “corrections” and an “apology” to its readers.*

39. *In its first edit, Defendant merely deleted the phrase “the link to political incitement was clear” from the end of the following sentence: “In 2011, when Jared Lee Loughner opened fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a 9-year-old girl.” It also added the words: “But no connection to that crime was ever established.” Defendant left in place, however, an inconsistent and defamatory sentence in the next paragraph of the column, which stated: “Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask of others.”*

40. *Faced with continuing public and media criticism, Defendant eventually deleted the phrase, “[t]hough there's no sign of incitement as direct as in the Giffords attack ... and posted a half-hearted correction (the “First Attempted Correction”), written in a passive voice, about the “link” between “political incitement” and Loughner's heinous crime:*

Correction: June 15, 2017

An earlier version of this editorial incorrectly stated that a link existed between political incitement and the 2011 shooting of Representative Gabby Giffords. In fact, no such link was established

41. *The First Attempted Correction did not remove the unnecessary reference to Mrs. Palin in the column, even though she had no connection to Loughner's crime. As written, it also suggests that such a connection may still be established, when Defendant already knew that no such link existed. In fact, the First Attempted Correction made no mention of Plaintiff, while the column continued to reference her by name.*

42. *Given that the entire premise of the Palin Article was the “disturbing pattern” of politically incited violence emanating from a nonexistent link between Plaintiff and Loughner's 2011 crime, which Defendant conceded did not exist, the entire Palin Article should have been retracted—not minimally and inadequately corrected—and Defendant should have apologized to Plaintiff.*

43. *Defendant published a second online correction, which proved equally lacking. Still devoid of any reference to Plaintiff, this second correction (the “Second Attempted Correction”) was issued because the original column mischaracterized the subject map of targeted electoral districts as placing stylized cross hairs on Gabrielle Giffords and other lawmakers—individually—thus continuing to support the false narrative that there was a direct link between Plaintiff and Loughner's vicious attack.*

Correction: June 16, 2017

An editorial on Thursday about the shooting of Representative Steve Scalise incorrectly stated that a link existed between political rhetoric and the 2011 shooting of Representative Gabby Giffords. In fact, no such link was

established. The editorial also incorrectly described a map distributed by a political action committee before that shooting. It depicted electoral districts not individual Democratic lawmakers, beneath stylized cross hairs.

44. *By referring only to “a” political action committee, Defendant's second Attempted Correction continued the paper's steadfast refusal to acknowledge that it had falsely asserted that Plaintiff incited Loughner's deadly rampage.*

45. *Unbelievably, even after acknowledging the existence of the false and defamatory statements, Defendant continued to publish the false and defamatory column and its reference to Plaintiff as its linchpin example of “vicious American Politics”:*

Was this attack evidence of how vicious American politics has become? Probably. In 2011, Jared Lee Loughner opened fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a 9-year-old girl. At the time, we and others were sharply critical of the heated political rhetoric on the right. Before the shooting, Sarah Palin's political action committee circulated a map that showed targeted electoral districts of Mrs. Giffords and 19 other Democrats under stylized cross hairs. But in that case no connection to the shooting was ever established.

46. *In a reflection of Defendant's utter lack of concern for the harm it had inflicted on Plaintiff, Defendant's Editorial Page tweeted “We're sorry about this and we appreciate that our readers called us on the mistake;” as if Defendant had made a simple, ministerial error such as misspelling someone's name or getting a date wrong:*

We got an important fact wrong, incorrectly linking political incitement and the 2011 shooting of Giffords. No link was ever established.

47. *Defendant did not issue a full and fair retraction of its defamatory Palin Article, nor did it issue a public apology to Plaintiff for stating that she incited murder and was the centerpiece of a “sickening” pattern of politically motivated shootings.*

48. *For Defendant to have made a legally sufficient retraction, it would have to have issued it in such a manner as to manifest an honest intention and sincere effort to repair the harm done to Plaintiff.*

49. *Quite simply, a full, fair, and legally sufficient retraction would have required the removal of the Palin Article in its entirety because, absent the false and defamatory assertion that Plaintiff incited Loughner's 2011 shooting, Defendant's continued assertion that Plaintiff is part of a pattern of politically motivated crimes is indefensible.*

50. *Defendant's hesitant, equivocal and incomplete acknowledgement of the falsity of its statements connecting Plaintiff to Loughner's and Hodgkinson's acts, given the undeniable truth that Loughner's 2011 Arizona shooting was not politically incited, did not approach the degree of the retraction and apology necessary and warranted by Defendant's false assertion that Plaintiff incited murder.*

51. *On June 16, 2017, Defendant's refusal to accept responsibility continued when, in its print edition of its newspaper, Defendant merely republished at the bottom of its Editorial page the same two prior, inadequate online corrections.*

52. Defendant confirmed it would not accept responsibility for its defamatory Palin Article in a statement it provided to CNN through spokesperson, JB, Defendant's Editorial page editor and member of the Editorial Board, in which he said:

While it is always agonizing to get something wrong we appreciate it when our readers call us out like this. We made an error of fact in the editorial and we've corrected it. But that error doesn't undercut or weaken the argument of the piece.

53. JB's statement demonstrates that, when it comes to Plaintiff, Defendant is willing to operate with a purposeful avoidance of the truth—marked by a deliberate decision not to acknowledge facts confirming the falsity of its charges against Plaintiff.

54. Defendant's unwavering refusal to issue a meaningful apology to Plaintiff and a complete retraction is perhaps not surprising given Defendant's public pronouncements about its imperviousness to legal liability for libel. As recently as May 10, 2017, Defendant's Public Editor touted that “hardly anyone jousts with Defendant when it comes to formally asserting libel ... [because] ... When they do, they almost never win ... [and that] ... the last time the newspaper lost a libel suit in the United States was at least the early 1960s” while further noting:

But it's curious how few companies or individuals actually do sue the paper for allegedly libelous claims. That's a good thing if this is a measure of how rarely people feel defamed by Defendant. It's a bit more disconcerting if it suggests that those with a legitimate claim feel too intimidated to even try.

55. The Palin Article cites no sources establishing Plaintiff's clear and direct incitement of Loughner's shooting in Arizona—and even a basic review of Defendant's own above-mentioned articles and the source materials its staff compiled from and about Loughner's criminal case during that highly publicized event would have demonstrated that there was no direct and clear link between Plaintiff and Loughner's heinous acts.

56. Defendant deliberately ran the Palin Article knowing that the statements it made about Plaintiff were false and defamatory, or made a conscious decision to publish the Palin Article with reckless disregard for the truth of those statements.

57. Further evidence that Defendant acted with actual malice towards Plaintiff is the fact that the Palin Article violates Defendant's own policies and procedures, which forbid Defendant's conduct here and label it intolerable. In its handbook entitled “Ethical Journalism: A Handbook of Values and Practices for the News and Editorial Departments” (attached as Exhibit [number of exhibit]), Defendant professes:

Reporters, editors, photographers and all members of the news staff of The New York Times share a common and essential interest in protecting the integrity of the newspaper. As the news, editorial and business leadership of the newspaper declared jointly in 1998: “Our greatest strength is the authority and reputation of The New York Times. We must do nothing that would undermine or dilute it and everything possible to enhance it.”

...

The New York Times treats its readers as fairly and openly as possible. In print and online, we tell our readers the complete, unvarnished truth as best we can learn it. It is our policy to correct our errors, large and small, as soon as we become aware of them.

...

Staff members who plagiarize or who knowingly or recklessly provide false information for publication betray our fundamental pact with our readers. We will not tolerate such behavior.

58. Defendant's standards and Ethics policy is posted online (attached as Exhibit[number of exhibit]) and states in pertinent part:

Fairness

The goal of The New York Times is to cover the news as impartially as possible—"without fear or favor," in the words of Adolph Ochs, our patriarch—and to treat readers, news sources, advertisers and others fairly and openly, and to be seen to be doing so. The reputation of The New York Times rests upon such perceptions, and so do the professional reputations of its staff members. Thus The New York Times and members of its news department and editorial page staff share an interest in avoiding conflicts of interest or an appearance of conflict.

The journalistic standards spelled out in The New York Times 1999 "Guidelines on Our Integrity" are a supplement to its 2004 Handbook, and states that: "... it is imperative that The New York Times and its staff maintain the highest possible standards ... [and that] ... falsifying any part of a news report cannot be tolerated and will result automatically in disciplinary action up to and including termination."

Integrity

For more than a century, men and women of the New York Times have jealously guarded the paper's integrity. Whatever else we may contribute, our first duty is to make sure the integrity of The New York Times is not blemished during our stewardship. At a time of growing and even justified public suspicion about the impartiality, accuracy and integrity of some journalists and some journalism, it is imperative that The New York Times and its staff maintain the highest possible standards to insure that we do nothing that might erode readers' faith and confidence in our news columns. This means that the journalism we practice daily must be beyond reproach.

Because our voice is loud and far-reaching, The New York Times recognizes an ethical responsibility to correct all its factual errors, large and small. The paper regrets every error, but it applauds the integrity of a writer who volunteers a correction of his or her own published story. We observe the Newsroom Integrity Statement, promulgated in 1999, which deals with such rudimentary professional practices as the importance of checking facts, the exactness of quotations, the integrity of photographs and our distaste for anonymous sourcing.

Truth

As journalists we treat our readers, viewers, listeners and online users as fairly and openly as possible. Whatever the medium, we tell our audiences the complete, unvarnished truth as best we can learn it. We correct our errors

explicitly as soon as we become aware of them. We do not want for someone to request a correction. We publish corrections in a prominent and consistent location or broadcast time slot. Staff members who plagiarize or who knowingly or recklessly provide false information for publication betray our fundamental pact with our readers. We do not tolerate such behavior.

59. Defendant also publishes on its website the Society of Professional Journalists' Code of Ethics (attached as Exhibit [number of exhibit]), which states in pertinent part:

Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- *Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.*
- *Diligently seek out subjects of news articles to give them the opportunity to respond to allegations of wrongdoing.*
- *Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.*

...

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- *Show compassion for those who may be affected adversely by news coverage.*

...

Be Accountable

Journalists should:

- *Admit mistakes and correct them promptly*
- *Expose unethical practices of journalists and the news media*

- *Abide by the same high standards to which they hold others*

60. *In publishing the Palin Article and its half-hearted “corrections” and apology—instead of removing the entire article or, at the very least, all references in it to Plaintiff, and making a meaningful and sincere public apology—Defendant violated and blatantly ignored the standards of ethical journalism which it has adopted and expects others to abide by.*

Defendant Should Not Profit at Mrs. Palin's Significant Expense

61. *In the Palin Article and the way in which Defendant handled it in the days following its publication, Defendant put profit and politics above its self-professed principles.*

62. *This is particularly troubling given that, on November 13, 2016, Defendant had pledged to rededicate itself to the “fundamental mission” of Defendant journalism (the “Pledge”):*

That is to report to America and the world honestly, without fear or favor, striving always to understand and reflect all political perspectives and life experiences in the stories that we bring to you. It is also to hold power to account, impartially and unflinchingly.

63. *In this instance, Defendant is the power that must be held to account and, consistent with its Pledge, should accept full economic and journalistic responsibility to Plaintiff for the falsehoods in the Palin Article and the failure to retract it and issue a full and complete apology to Plaintiff.*

64. *As set forth above in Mr. Blow's December 3, 2010, column, Defendant knows Plaintiff is a proverbial “lightning rod” that can be used as an easy target for political barbs intended to inflame passions to generate website traffic.*

65. *Defendant knew its defamatory statements about Plaintiff would be viewed by millions of people. Defendant also knew that its defamatory column would be republished by numerous other news outlets and websites, both because of the horrific conduct Defendant ascribed to Plaintiff in connection with the most prominent news story of that day, and also because such republication is a part of Defendant's conscious business strategy.*

66. *Defendant actively promoted the Palin Article on social media, including on its Twitter feed, which has over 38 million followers, as did Defendant's Editorial Board, whose Twitter feed has nearly 600,000 followers. (See Exhibit [number of exhibit].)*

67. *Not surprisingly, the widely circulated and heavily promoted Palin Article resulted in hatred and hostility toward Plaintiff.*

68. *As one example, a democratic strategist seized on Defendant's narrative about Plaintiff, tagging Plaintiff in a Tweet about the false link between Plaintiff and the Giffords shooting along with the hash tag “#HuntRepublicans.”*

69. *As set forth in the above-referenced ethical standards, which Defendant adopted and expects of itself and others, “Ethical journalists treat ... subjects ... as human beings deserving of respect.” Defendant did not do that here.*

70. *When Defendant resurrected a 6-1/2 year-old false rumor about Plaintiff, it not only ripped open old wounds, but also used its loud and far-reaching voice as the "newspaper of record" to inflict new ones which are far worse and painful for Plaintiff.*

71. *As a direct and proximate result of Defendant' intentional and malicious misconduct, Plaintiff suffered anguish, humiliation, embarrassment and damage to her reputation—all of which are continuing in nature and will be suffered in the future.*

72. *As a direct and proximate result of Defendant' intentional and malicious misconduct, and its deliberate misuse of the known benefits of Plaintiff's name and status, Defendant also reaped ill-gotten gains from Internet advertising on the Palin Article, which under the unique and special circumstances of this case, should be disgorged.*

73. *Defendant should not be permitted to profit from a false and defamatory column printed with malice and with the knowledge that the identity of the victim of the defamatory publication will "drive viewership and web clicks."*

74. All conditions precedent to the filing and maintenance of this action have been performed, have occurred or have been waived.

75. Plaintiff has retained the undersigned attorneys in this action and is obligated to pay them a reasonable fee for their services.

CLAIM FOR RELIEF

(Defamation)

76. Plaintiff realleges and incorporates paragraphs I through 87.

77. Defendant published or caused to be published false and defamatory statements in the Article, which did and had the tendency to expose Plaintiff to hatred, contempt, ridicule and/or disgrace.

78. The defamatory statements in the Article are of and concerning Plaintiff, and reasonably understood to be about Plaintiff.

79. The defamatory statements in the Article are false.

80. Defendant published the defamatory statements in the Article knowing that they are false or with reckless disregard for the truth of the statements.

81. The defamatory statements in the Article constitute defamation per se because they tended to injure Plaintiff in her trade, business or profession and directly implicated Plaintiff in a horrific crime; specifically, that she incited a politically motivated attack and murder of innocent victims, among them sitting federal officials and a nine-year-old girl.

82. In light of Plaintiff's standing in the community, the nature of the statements made about her, the extent to which those statements were circulated, and the tendency of such statements to injure someone such as Plaintiff, the defamatory statements in the Article have directly and proximately caused Plaintiff to suffer significant damages, including damage to her reputation, humiliation, embarrassment, mental suffering, shame and emotional distress. These damages are ongoing in nature and will continue to be suffered in the future.

83. The republication of the defamatory statements in the Article in other publications, as well as via the dissemination of the Article through social media, caused Plaintiff to suffer additional damages, all of which were foreseeable to Defendant.
84. Defendant published the Article with actual knowledge that stories attacking Plaintiff inflame passions, which drives viewership and web clicks. Thus, Defendant knowingly and voluntarily exploited and retained a benefit conferred by Plaintiff, in special circumstances particular to this case in which it would be inequitable for Defendant to retain that benefit without paying the value of it to Plaintiff.
85. Defendant's conduct was committed knowingly, intentionally, willfully, wantonly and maliciously, with the intent to harm Plaintiff, or in blatant disregard of the substantial likelihood of causing her harm, thereby entitling Plaintiff to an award of punitive damages.
86. As a direct and proximate result of Defendant' misconduct, Plaintiff is entitled to compensatory, special and punitive damages in an amount to be proven at trial far in excess of \$75,000,00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. An award of compensatory, special and punitive damages in amounts to be established at trial;
2. Injunctive relief prohibiting the publication or republication of the defamatory statements in the Article;
3. An award of Plaintiff's costs associated with this action, including but not limited to Plaintiff's reasonable attorney fees and expenses; and
4. Such other and further relief as the Court deems just and proper to protect Plaintiff's rights and interests.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: *[date of complaint signed]*

[Name of attorney]

Attorneys for Plaintiff

[name of plaintiff]

[Name of firm]

[Address of firm]

[Telephone number of attorney]

[Fax number of attorney]

[State bar number of attorney]

[email address of attorney]

Notes

Comment:

This form is adapted from the complaint in [Palin v. New York Times Company, 940 F.3d 804 \(2d Cir. 2019\)](#). The court held that the complaint plausibly alleged actual malice and that the challenged statements were “of and concern” the plaintiff. The court also held that the plaintiff plausibly alleged that the challenged statements in the newspaper's editorial were reasonably capable of being proven false.

This form demonstrates the amount of detail that may be necessary in a defamation complaint. The italicized language is adapted from the actual complaint in the action.

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Footnotes

[a0](#)

Professor of Law, Marquette University Law School.

End of Document

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