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Attorneys for Plaintiff GARTH ANCIER

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

GARTH ANCIER,

Plaintiff,

vs.

MICHAEL F. EGAN, III,  
JEFFREY M. HERMAN and  
MARK F. GALLAGHER,

Defendants.

Civil No. 14-cv-00294-JMS-RLP

**PLAINTIFF GARTH ANCIER'S  
FINAL PRETRIAL  
STATEMENT; CERTIFICATE OF  
SERVICE**

Final Pretrial Conference

Date: November 6, 2015

Time: 10:00 a.m.

Judge: Hon. Richard L. Puglisi

AND RELATED CROSS CLAIMS.

Trial Date: December 15, 2015

**PLAINTIFF GARTH ANCIER'S FINAL PRETRIAL STATEMENT**

Plaintiff Garth Ancier (“Plaintiff”), by and through his attorneys, Alston Hunt Floyd & Ing and Jeffer Mangels Butler & Mitchell LLP, hereby submits his final pretrial statement pursuant to Local Rule 16.6 of the Rules of the United States District Court for the District of Hawai‘i.

**A. PARTIES**

This Final Pretrial Statement is filed on behalf of Plaintiff.

**B. JURISDICTION AND VENUE**

This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000.00 and the action is between citizens of different states.

A substantial part of the acts, events, or omissions giving rise to Plaintiff’s claims arose in and around the State of Hawai‘i. Therefore, pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in the District of Hawai‘i.

**C. SUBSTANCE OF ACTION**

Assuming his pending Motion for Summary Judgment is granted, Plaintiff Ancier will be going to trial on December 15, 2015, against a single defendant, Michael F. Egan III (“Egan”), for malicious prosecution and abuse of process. A settlement was reached with the other two defendants, Egan’s former

lawyers Jeffrey M. Herman (“Herman”) and Mark F. Gallagher (“Gallagher”). A hearing on *Mark F. Gallagher and Jeffrey M. Herman’s Joint Petition for Determination of Good Faith Settlement* is scheduled for November 6, 2014.

On June 27, 2014, Plaintiff Ancier sued Egan, along with Egan’s former lawyers Herman and Gallagher (collectively, “Defendants”), for malicious prosecution and abuse of process, after the defendants voluntarily dismissed Egan’s suit against Plaintiff Ancier. The Egan lawsuit accused Ancier of sexually abusing Egan Ancier in Hawai`i, during two trips in 1999. *See Michael F. Egan, III v. Garth Ancier, U.S.D.C., District of Hawai`i Case No. 14-c-v00188 SOM BMK* (the “Action”). The Action was based on false, salacious and detailed allegations of sexual assault. Plaintiff Ancier denied all allegations. Egan and his lawyers have never come forward with any evidence that the assaults took place, that Plaintiff Ancier was never in Hawai`i at the time the alleged assaults occurred, or even that Egan himself was in Hawai`i at the time.

As part of a an ongoing fraudulent money-making scheme plotted by Egan, including a fraudulent Ponzi business scheme for which Egan was indicted last year and to which he recently pled guilty, Egan told at least one other individual prior to his initiation of the Action that (a) in reference to his “business” plans, if all else failed he could go after “Gay Hollywood” and claim he was abused and they will have to settle because they cannot stand the publicity; and

(b) when asked by the same individual if he had in fact ever been abused, Egan responded, “God, no.”

Egan’s Action, with the assistance of Defendants Gallagher and Herman, was yet another fraudulent money-making scheme, focused on pressuring Hollywood executives to settle false claims to avoid negative and damaging publicity. Not content with a public filing, Herman and Egan took it further outside of the legal process and unnecessarily held a series of media events, starting with an April 17, 2014, press conference, to drum up adverse publicity against Plaintiff Ancier as part of their ongoing fraudulent money-making scheme devised by Egan.

On April 18, 2014, in continued furtherance of the fraudulent money-making scheme, Herman appeared on HuffPostLive (an Internet-based video streaming website) in a webcam interview with Ricky Camilleri to discuss the April 17, 2014 press conference. In the interview, Herman again claimed there was a sexual predator ring involving men in Hollywood using their positions of power and influence to sexually exploit children. Herman stated he would be naming more “Hollywood names” on the following Monday (April 21, 2014) who were part of the pool parties in California and who had flown to Hawai`i for parties where “they” sexually abused Egan.

In furtherance of the fraudulent money-making scheme, on Sunday, April 20, 2014, Herman announced on his law firm's website blog, at [www.hermanlaw.com/blog](http://www.hermanlaw.com/blog), that a news conference would be held the next day, with the headline: "Alert: Hollywood Executives To Be Named In Sexual Abuse Lawsuits Filed Monday."

On April 21, 2014 after generating considerable publicity with the April 17, 2014 press conference, the April 18, 2014 HuffPostLive interview and Herman's April 20, 2014 blog announcement, Herman and Egan held yet another press conference, this time to announce the filing of three additional complaints against three additional entertainment industry executives, including the Action against Plaintiff Ancier. (Gallagher had filed the additional three complaints earlier that day in the District of Hawai`i.) Egan's mother, Bonnie Mound, also attended and spoke at the press conference. The press conference was attended by at least nine media outlets. Besides publicizing the allegations in the Complaint, Herman further alleged there was a "Hollywood sex ring" and claimed, "I will continue to file cases on behalf of victims of sexual abuse and particularly exposing this Hollywood sex ring."

By filing the frivolous Action and commencing a media campaign of false information, Defendants' actions went beyond merely holding a press conference to publicize allegations of child sexual abuse made in a public

complaint. Each of these actions were done in furtherance of the scheme to shake down Hollywood executives “if all else failed” and as a marketing tool to troll for new clients, employing a negative media campaign to punish Plaintiff Ancier and to send a message to potential defendants. Process was used for the collateral purpose of coercing other prominent gay men in the entertainment industry to pay up or face similar false damaging publicity. This objective was a patently illegitimate use of process.

The press conferences, and the accompanying TV news broadcasts, internet articles and news articles, were used to send a message to potential defendants of the alleged “Hollywood sex ring” and a message to Plaintiff Ancier to settle or suffer the consequences of a heavily publicized lawsuit. The public threats to others, including Plaintiff Ancier, are not authorized by the legal process and were aimed at an objective not legitimate in the use of the process.

Even a cursory investigation by Herman and Gallagher would have shown that the allegations in the April 21, 2014 Action against Plaintiff Ancier was not worthy of credence and that the Action was an ill-advised last minute attempt to try to take advantage of Hawai`i’s extended statute of limitations as part of Defendants’ campaign to threaten entertainment industry executives with sexual assault charges and extract large settlements from them.

Because the Action's frivolous allegations of sexual abuse were blatant forum shopping and were filed without any reasonable and competent inquiry by counsel as required by Rule 11 of the Federal Rules of Civil Procedure, Plaintiff Ancier's counsel wrote to Herman and Gallagher on April 25, 2014, alerting them to the fact that a Rule 11 Motion would be filed if they failed to withdraw the Complaint. The letter also reminded them that their filing of the Action constituted a certification that they had conducted a reasonable pre-filing examination of the facts, including interviewing available witnesses and reviewing relevant documents prior to filing suit. Plaintiff Ancier's counsel also noted the fact that Egan had previously participated in law enforcement investigations concerning alleged sexual abuse by Collins-Rector and civil litigation in which he made similar allegations, without mentioning Plaintiff Ancier or any events in Hawai'i.

Rather than offering any evidence that would tend to support the allegations in the Action, such as statements of witnesses who could corroborate the assertion that Plaintiff Ancier was in Hawai'i during the time of Egan's alleged trips there, the response from Egan's counsel was to ask for *Plaintiff Ancier's* proof that he was *not* in Hawai'i during that time. They then failed to respond to a follow up letter reminding them that they bore the burden of providing information demonstrating that their filing was factually supported and made in good faith, and

offering to meet with them and review their evidence. Counsel's silence about the evidence they had to support their claims spoke volumes and confirmed that they failed to conduct the requisite inquiry before signing and filing the Action.

On June 5, 2014, Plaintiff Ancier served Defendants with a Motion for Rule 11 Sanctions. In response, on June 25, 2014, Defendants voluntarily dismissed the Action, without prejudice (this followed the June 4, 2014 voluntary dismissal of the action against David Neuman, one of the three others who were sued in this Court by Egan). In the meantime, however, Plaintiff Ancier suffered considerable damage that was caused and indeed intentionally fostered by Defendants' institution and maintenance of the Action. In addition to being forced to spend hundreds of thousands of dollars in attorneys' fees and costs to defend against the Action's false allegations, Plaintiff Ancier was subjected to an onslaught of negative publicity which was damaging to his hard-earned reputation and ability to continue to generate business and attract investors.

It is patently obvious that Defendants filed the Action in Hawai'i to try to take advantage of Hawai'i's then statute of limitations, which possibly ran only two days after the Action was filed. That statute made Hawai'i the only jurisdiction in which the claims alleged in the Action would arguably not be time-barred, a fact that defendants Gallagher and Herman did not dispute in their response to the Rule 11 warning letter from Plaintiff Ancier's counsel. Worse,

Defendants used this blatant forum shopping as the platform from which to launch their scheme to shake down Hollywood executives – including holding high profile press conferences at which Egan and Herman both spoke – in which they vowed to wage war on numerous unnamed members of the alleged Hollywood elite. This use of Plaintiff Ancier as a pawn in a threatened widespread campaign against entertainment industry executives was clear malicious conduct, harassment and not authorized by the process.

The fact that the Action was a malicious sham and part of a scheme to extort money from others was disclosed in discovery. Further, the falsity of the claims has now been admitted by Herman and Gallagher. They recently not only paid Plaintiff Ancier a seven-figure monetary settlement, but also took the unprecedented step of publicly issuing written apologies to Plaintiff Ancier.

Herman states in his apology:

I sincerely apologize for bringing lawsuits against you on behalf of my former client Michael Egan. . . . Based on what I know now, I believe that I participated in making what I now know to be untrue and proveably false allegations against you. Had I known what I learned after filing the lawsuits, I never would have filed these claims against you. I deeply regret the pain, suffering and damage the lawsuits and publicity have caused you, and your family, friends and colleagues. [¶ ] I sincerely regret my role in this matter and for the harm that I caused.

For his part, Egan failed to produce a single document in response to discovery requests or in his initial disclosures and invoked his Fifth Amendment privilege against self-incrimination, refusing to answer every question asked of

him in his deposition relating to the allegations in the Action and his contentions in this lawsuit. Only recently, as exhibits to two motions and not in response to discovery requests, has Egan conjured up new witness statements by his mother Bonnie Mound and another individual, making new and contradictory allegations against Plaintiff Ancier. Dkt Nos. 229, 267, 272.

**D. UNDISPUTED FACTS**

Plaintiff Ancier's counsel has attempted in good faith to stipulate with Egan to facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits, but Egan has failed and refused to stipulate to any such facts.

**E. DISPUTED FACTUAL ISSUES**

All factual issues in the First Amended Complaint are disputed.

**F. RELIEF PRAYED**

Plaintiff requests the following relief:

1. General, special and punitive damages in amounts to be proven at trial, including but not limited to lost compensation, lost profits, medical expenses, and other damages incurred due to the impact of Egan's Action on Plaintiff's career and business ventures;
2. Costs and attorneys; fees; and
3. Such other relief as the Court deems just and proper.

## **G. POINTS OF LAW**

1. Whether Egan is guilty of malicious prosecution; and
2. Whether Egan is guilty of abuse of process.

## **H. PREVIOUS MOTIONS**

On September 5, 2014, Plaintiff filed a Motion to Strike Defendant Michael F. Egan, III's Answer to the Complaint and Request for Sanctions; or in the Alternative, Request for Order to Show Cause for An Evidentiary Hearing Regarding Defendant's Submission of his Ghostwritten Answer [Dkt No. 30]. On October 17, 2014, the Court denied Plaintiff's Motion [Dkt. No. 49].

On October 3, 2014, Plaintiff filed a Motion to Strike Vince W. Finaldi's Declaration Submitted in Support of Defendant Michael F. Egan, III's Reply to Plaintiff's Motion to Strike Answer and Request for Sanctions or in the Alternative, Request for an Order to Show Cause for an Evidentiary Hearing [Dkt No. 43]. On October 17, 2014, the Court denied Plaintiff's Motion [Dkt No. 49].

On October 14, 2014, Defendant Jeffrey M. Herman filed a Motion for Judgment on the Pleadings as to Plaintiff's Complaint, filed June 27, 2014 [Dkt No. 44]. On December 3, 2014, the Court granted in part and denied in part Defendant Jeffrey M. Herman's Motion for Judgment on the Pleadings as to Plaintiff's Complaint filed June 27, 2014. The Court denied the Motion as to Plaintiff's malicious prosecution claim and granted the Motion as to Plaintiff's

abuse of process claim, with leave to amend by December 19, 2014 [Dkt No. 82]. On December 4, 2014, the Court filed an amended order granting in part and denying in part Defendant Jeffrey M. Herman's Motion for Judgment on the Pleadings as to Plaintiff's Complaint filed June 27, 2014. The Court granted in part and denied in part Defendant Jeffrey M. Herman's Motion, Plaintiff's malicious prosecution claim remained and if Plaintiff chose he was allowed to file an Amended Complaint to attempt to reallege, if possible, the abuse of process claim by December 19, 2014. The Amended Complaint would supersede the Complaint and must be complete in itself without reference to prior superseded pleadings. If Plaintiff chose not to file an Amended Complaint by December 19, 2014, the action would proceed as to Plaintiff's malicious prosecution claim only [Dkt No. 84]. Plaintiff filed a First Amended Complaint, amending his malicious prosecution claim on December 19, 2014 [Dkt No. 88].

On November 4, 2014, Defendant Jeffrey M. Herman filed a Motion for Stay or, in the alternative, Motion for Protective Order [Dkt No. 65]. On November 14, 2014, the Court granted in part and denied in part his Motion. The Court ordered 1) a stay of discovery until after the court decided Defendant Herman's Motion for Judgment on the Pleadings; 2) declined to enter a protective order to prevent the production of any materials that Defendants asserted as attorney-client privilege or work product; 3) ordered the parties to meet and confer

regarding a stipulated protective order no later than November 26, 2014; and 4) ordered Defendants to serve written responses, including a privilege log if applicable, to Plaintiff's discovery requests no later than fourteen calendar days after the Court issued its written decision on the Motion for Judgment on the Pleadings [Dkt No. 78].

On January 2, 2015, Plaintiff filed a Motion for Protective Order relating to the designation and handling of "Confidential Information" [Dkt No. 99]. On January 5, 2015, the Court elected to decide Plaintiff's Motion without a hearing [Dkt No. 100]. On February 3, 2015, the Court granted Plaintiff's Motion for Protective Order [Dkt No. 115].

On January 23, 2015, Defendant Gallagher filed a Motion to File Certificate of Merit Under Seal [Dkt No. 107]. On February 3, 2015, the Court granted Defendant Mark F. Gallagher's Motion and found good cause to seal the Certificate of Merit [Dkt No. 114].

On February 11, 2015, Defendant Egan filed a Motion for Stay/Protective Order of Deposition of Michael F. Egan III Noticed for February 17, 2015 [Dkt No. 120], the first of many attempts by Egan to avoid being deposed. On February 12, 2015, the Court elected to decide Defendant Egan's Motion without a hearing [Dkt No. 122]. On March 31, 2015, the Court denied his Motion [Dkt No. 165].

On February 13, 2015, Plaintiff filed a Motion to Compel Defendant Michael F. Egan III to Produce Documents [Dkt No. 124]. On February 13, 2015, the Court elected to decide Plaintiff's Motion without a hearing [Dkt No. 125]. On March 31, 2015, the Court granted in part and denied in part Plaintiff's Motion. Defendant Egan was required to produce documents responsive to certain request production numbers by April 15, 2015. The Court denied Plaintiff's request to find that Defendant Egan waive all privileges and to compel Defendant Egan to produce all privileged documents. Defendant Egan was ordered to provide a privilege log by April 15, 2015 [Dkt No. 165].

On March 2, 2015, Defendant Egan filed a Counter Motion for Stay/Protective Order of All Discovery Directed at Michael F. Egan III [Dkt No. 136]. On March 31, 2015, the Court denied Defendant Egan's Counter Motion [Dkt No. 165].

On March 8, 2015, Defendant Gallagher filed a Motion for Summary Judgment [Dkt No. 139]. On May 14, 2015, the Court held this Motion in abeyance, pending rulings by Magistrate Judge Puglisi on Plaintiff's Motion for Leave to File Second Amended Complaint. [Dkt No. 191]. On June 22, 2015, per electronic order, the Court granted in part and denied in part Plaintiff's Ex Parte Motion to Continue All Deadlines. For purposes of judicial efficiency and to avoid

confusion on the docket, the Court deemed Defendant Gallagher's Motion for Summary Judgment withdrawn without prejudice [Dkt. No. 213].

On March 10, 2015, non-party Bonnie J. Mound filed a Motion for Protective Order of Deposition of Bonnie J. Mound Noticed for March 18, 2015 [Dkt No. 145]. On April 15, 2015, the Court denied her Motion [Dkt No. 168].

On March 13, 2015, Defendant Herman filed a Motion for Partial Judgment on the Pleadings on Plaintiff's First Amended Complaint filed December 19, 2014 [Dkt No. 148]. On May 14, 2015, the Court held this Motion in abeyance, pending rulings by Magistrate Judge Puglisi on Plaintiff's Motion for Leave to File Second Amended Complaint, filed April 27, 2015 [Dkt No. 191]. On June 22, 2015, per electronic order, the Court granted in part and denied in part Plaintiff's Ex Parte Motion to Continue All Deadlines in order to allow time to finalize a settlement with Defendants Gallagher and Herman. For purposes of judicial efficiency and to avoid confusion on the docket, the Court deemed Defendant Herman's Motion for Partial Judgment on the Pleadings and Plaintiff's motion to amend withdrawn without prejudice [Dkt. No. 213].

On March 27, 2015, Plaintiff filed a Motion to Preclude Reliance on or Reference to "Certificate of Merit" [Dkt No. 116] or in the Alternative Motion to Compel Discovery [Dkt No. 162]. On March 27, 2015, the Court elected to

decide Plaintiff's Motion without a hearing [Dkt No. 164]. On April 27, 2015, the Court denied Plaintiff's Motion [Dkt No. 178].

On May 8, 2015, Defendant Mark F. Gallagher filed a Counter Motion for Continuance of the Trial Date and all Pretrial Deadlines [Dkt No. 187]. On June 22, 2015, per electronic order, the Court granted in part and denied in part Plaintiff's Ex Parte Motion to Continue All Deadlines. For purposes of judicial efficiency and to avoid confusion on the docket, the Court deemed Defendant Mark F. Gallagher's Counter Motion for Continuance of the Trial Date and all Pretrial Deadlines withdrawn without prejudice [Dkt. No. 213].

On June 9, 2015, Egan filed an Ex Parte Emergency Motion for Protective Order to Postpone Indefinitely [sic] the Deposition of Michael F. Egan III Noticed for June 11, 2015 [Dkt No. 202]. On June 9, 2015, the Court elected to decide Egan's Motion without a hearing [Dkt No. 203]. On June 16, 2015, the Court denied Egan's Ex Parte Emergency Motion [Dkt No. 209].

On June 15, 2015, Plaintiff Ancier filed an Ex Parte Motion to Continue Expert Disclosure Deadline to allow time to document the settlement agreement with Gallagher and Herman [Dkt No. 207]. On June 16, 2015, the Court found good cause to grant Plaintiff's Ex Parte Motion to Continue Expert Disclosure Deadline and amended paragraph 11 of the Rule 16 Scheduling Order [Dkt No. 63].

On June 12, 2015, Plaintiff filed an Ex Parte Motion to File Under Seal Plaintiff's Memorandum in Opposition to Defendant Michael F. Egan, III's Ex Parte Emergency Motion for Protective Order to Postpone Indefinitely the Deposition of Michael F. Egan III Notice for June 11, 2015, filed June 9, 2015 [Dkt No. 206]. On June 22, 2015, per electronic order, the Court denied the Ex Parte Motion with briefing on the motion to proceed in the normal course. [Dkt. No. 213]. On June 23, 2015, the Court, pursuant to electronic order, found good cause to seal Plaintiff's Memorandum in Opposition and directed the Clerk's office to place Plaintiff's Memorandum in Opposition and Attachment 1 Exhibit A and Attachment 2 Exhibit B to Defendant Egan's Ex Parte Emergency Motion for Protective Order under seal [Dkt No. 216].

On June 15, 2015, Egan filed a Motion to Seal Attachment 1 Exhibit "A" and Attachment 2 Exhibit "B" that were Contained in Defendant Michael F. Egan III's Ex Parte Emergency Motion for Protective Order to Postpone Indefinitely [sic] the Deposition of Michael F. Egan III Noticed for June 11, 2015 [Dkt No. 208]. On June 22, 2015, per electronic order, the Court denied the Ex Parte Motion with briefing on the motion to proceed in the normal course. [Dkt. No. 213]. On June 23, 2015, pursuant to electronic order, the Court found good cause to seal Plaintiff's Memorandum in Opposition and directed the Clerk's office to place Plaintiff's Memorandum in Opposition and Attachment 1

Exhibit A and Attachment 2 Exhibit B to Defendant Egan's Ex Parte Emergency Motion for Protective Order under seal [Dkt No. 216].

On June 22, 2015, Defendant Egan filed an Emergency Motion for Protective Order to Postpone for Sixty (60) days the Deposition of Michael F. Egan III [Dkt No. 214]. On June 22, 2015, per electronic order, the Court denied Defendant Egan's Motion for Protective Order to Postpone [Dkt No. 215].

On August 7, 2015, Defendant Mark F. Gallagher filed an Ex Parte Motion to File Exhibit "A" and "C" Under Seal in Support of the Joint Petition for Determination of Good Faith Settlement [Dkt No. 218]. On August 10, 2015, they filed their Joint Petition for Determination of Good Faith Settlement [Dkt No. 219]. On August 18, 2015, per electronic order, the Court found good cause to seal Exhibits A and C [Dkt No. 228].

On August 14, 2015, Defendant Egan filed a Motion to Extend Time to Respond to Defendant's Mark F. Gallagher and Jeffrey M. Herman's Joint Petition for Good Faith Settlement [Dkt No. 225]. On August 19, 2015, per electronic order, the Court continued the hearing on Defendants Mark F. Gallagher and Jeffrey M. Herman's Joint Petition for Determination of Good Faith Settlement and issued a briefing schedule; therefore Defendant Egan's Motion was considered moot [Dkt No. 232].

On August 17, 2015, Defendant Egan filed a Motion for Leave to Amend Answer to Assert Cross-Claim [Dkt No. 229]. On August 19, 2015, per electronic order, the Court elected to decide Defendant Egan's Motion without a hearing and issued a briefing schedule [Dkt No. 232]. On September 29, 2015, the court issued its Order Denying Michael F. Egan III's Motion for Leave to Amend Answer to Assert Cross-claim [Dkt No. 259].

On September 2, 2015, Plaintiff filed a Motion to Strike the Evidence in Support of [229] Defendant Michael F. Egan, III's Motion for Leave to Amend Answer to Assert Cross-Claim filed August 17, 2015 [Dkt No. 238]. On September 3, 2015, pursuant to electronic order, the Court elected to decide Plaintiff's Motion without a hearing and issued a briefing schedule [Dkt No. 242]. Due to the Court's denial of Egan's Motion for Leave to Amend, the Court denied the Motion to Strike as moot. Dkt. No. 232.

On September 2, 2015, Plaintiff filed an Ex Parte Motion to Seal Portions of Exhibit "C" to Plaintiff's Memorandum in Opposition to Defendant Michael F. Egan III's [229] Motion for Leave to Amend Answer to Assert Cross-Claim filed August 17, 2015 and Portions of Exhibit "A" to Plaintiff's Motion to Strike [Dkt No. 239]. On September 11, 2015, pursuant to electronic order, the Court and found good cause to seal the requested portions of Exhibit C and

Exhibit A and, directed the Clerk's Office to place Exhibit C and Exhibit A under seal [Dkt No. 249].

On September 10, 2015, Plaintiff filed an Ex Parte Motion to Seal Exhibits "4", "19"- "20", "23"- "25"; Unredacted Exhibit i"6" and Unredacted Portions of Concise Statement and Memorandum in Support of Plaintiff's Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment on the Issue of Liability, Against Defendant Michael F. Egan, III [Dkt No. 247]. On September 14, 2015, the Court denied without prejudice Plaintiff's Ex Parte Motion [Dkt No. 253].

On September 10, 2015, Plaintiff filed a Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment on the Issue of Liability, Against Defendant Michael F. Egan, III. Hearing on this Motion is scheduled for November 23, 2015 before the Honorable J. Michael Seabright.

On October 1, 2015, Defendant Egan filed a Statement Regarding Expert Disclosures [Dkt No. 263]. On October 5, 2015, the Court denied Defendant Egan's request for extension of time to serve expert disclosures [Dkt. No. 265].

On October 2, 2015, following up on the Court's denial without prejudice of Plaintiff's Ex Parte Motion to Seal [Dkt No. 253], Plaintiff filed a Motion to Publicly File Documents in Support of [245] Plaintiff's Motion for

Summary Judgment, filed September 10, 2015 and documents were submitted for *in camera* review [Dkt No. 264]. On October 2, 2015, pursuant to electronic order, the Court indicated that any party who objects to the Motion must file written objections seeking to seal such documents by October 13, 2015. If no objections were received by that date, the documents would be filed publicly. If objections were filed, the court would determine at that time whether a hearing would be necessary [Dkt No. 266].

On October 6, 2015, Defendant Egan filed a Motion for Appointment of Counsel [Dkt No. 267]. On October 8, 2015, pursuant to electronic order, the Court elected to decide Defendant Egan's Motion without hearing and no further briefing would be required. The Court placed Exhibit 1A to Defendant Egan's Motion provisionally under seal. On October 13, 2015, the Court issued an Order denying Defendant Egan's Motion for Appointment of Counsel [Dkt No. 273].

On October 23, 2015, Defendant Egan filed a Motion to Extend Time to Respond to Plaintiff Garth Ancier's Motion for Summary Judgment and MOTION for Continuance of Trial Date [Dkt. No. 280]. That motion is currently pending.

## **I. WITNESSES TO BE CALLED**

Plaintiff identifies the following individuals likely to be called to testify at trial:

1. **Garth Ancier.** Plaintiff Ancier will testify regarding the falsity of Egan's allegations in the Action, including the false allegations that Plaintiff Ancier traveled to Hawai'i and assaulted Egan; Plaintiff Ancier's career and business ventures; the public apologies to Plaintiff Ancier by Herman and Gallagher for filing the Action; and the emotional distress, damages to reputation and other harms suffered by Plaintiff Ancier as a result of Egan's malicious prosecution and abuse of process.

2. **Melvin L. Berman.** Mr. Berman is expected to testify regarding the falsity of Egan's allegations in the Action that Egan and Plaintiff Ancier traveled to Hawai'i; and Mr. Berman's communications with Egan in connection with Egan's 2000 lawsuit against Collins-Rector and Shackley.

3. **Alex Bradford.** Mr. Bradford is expected to testify regarding the falsity of Egan's allegations in the Action that Egan and Plaintiff Ancier traveled to Hawai'i and that Plaintiff Ancier assaulted Egan.

4. **Mark F. Gallagher.** Mr. Gallagher is expected to testify regarding the falsity of Egan's allegations in the Action; and Mr. Gallagher's public apology to Plaintiff Ancier for filing the Action.

5. **Larry Gerbrandt.** Mr. Gerbrandt is expected to testify as an expert regarding the damages suffered by Plaintiff Ancier as a result Egan's malicious prosecution and abuse of process

6. **Jeffrey Herman.** Mr. Herman is expected to testify regarding the falsity of Egan's allegations in the Action; and Mr. Herman's public apology to Plaintiff Ancier for filing the Action.

7. **Edward Clouston MacPherson.** Mr. MacPherson is expected to testify regarding Egan's fraudulent money-making schemes; statements made to Mr. MacPherson by Egan regarding Egan's fraudulent money-making schemes and Mr. Egan's plan to extort gay Hollywood executives with false allegations of sexual abuse against.

8. **Chris Martin.** Mr. Martin will testify regarding the false allegations that Plaintiff Ancier and Egan traveled to Hawai'i.

9. **Renate Radford.** Ms. Radford is expected to testify regarding the falsity of Egan's allegations in the Action that Plaintiff Ancier traveled to Hawai'i.

10. **Chad Shackley.** Mr. Shackley is expected to testify regarding the falsity of Egan's allegations in the Action that Egan and Plaintiff Ancier traveled to Hawai'i.

Plaintiff reserves the right to identify and call witnesses necessary for the authentication of documents and as rebuttal and impeachment witnesses, as necessary. Plaintiff reserves the right to call any or all of the witnesses identified by Egan. Plaintiff also reserves the right to name additional non-expert witnesses

and to modify the anticipated subject matter of the witnesses' testimony based upon further discovery.

**J. EXHIBITS, SCHEDULES AND SUMMARIES**

Plaintiff has not yet made a determination as to the exhibits, schedules, and summaries it intends to use at trial. Plaintiff will identify such exhibits, schedules and summaries in accordance with the Federal Rules of Civil Procedure and Local Rules.

Plaintiff reserves the right to submit as an exhibit any exhibit listed in the pretrial statement submitted by or on behalf of Defendants, including any amendments and/or supplements thereto.

**K. FURTHER DISCOVERY OR MOTIONS**

Plaintiff has filed a motion to extend the October 16, 2015 discovery deadline to allow the taking of Bonnie Mound's deposition because Egan belatedly attached to three filings he made earlier in October a statement by Ms. Mound which makes new allegations against Plaintiff. Plaintiff has also filed a motion to continue various pretrial deadlines set forth in the Court's Scheduling Order in order to allow sufficient time after the November 23, 2015, hearing on Plaintiff's motion for summary judgment. Dkt No. 245. For instance, motions in limine are due November 24, 2015, leaving only one day between the hearing on Plaintiff's motion for summary judgment and the motions in limine deadline under the

current schedule in the Scheduling Order (Dkt No. 63). Thus, Plaintiff anticipates seeking court approval for these date extensions:

- November 17, 2015, to November 30, 2015 (Premark all exhibits and exchange exhibits)
- November 24, 2015 to December 2, 2015 (motions in limine, final comprehensive witness list, meet and confer re: stipulations to authenticity and admissibility of exhibits, designation of deposition exhibits)
- December 1, 2015 to December 9, 2015 (special voir dire inquiries if any, agreed special verdict form if any, agreed concise statement of the case if any, jury instructions per LR 51.1 if any, opposition to motions in limine, objections to admissibility of exhibits, counter-designation of deposition exhibits).
- December 1, 2015 to December 10, 2015: trial brief.

## **L. STIPULATIONS**

Beyond trying to work out a possible stipulation regarding the authenticity and admissibility of various trial exhibits, Plaintiff does not contemplate stipulations at this time.

**M. AMENDMENTS, DISMISSAL**

Plaintiff does not contemplate further amendment to his pleadings.

**N. SETTLEMENT DISCUSSIONS**

Plaintiff has reached a settlement with Defendants Gallagher and Herman. A hearing on their Joint Petition for Determination of Good Faith Settlement is scheduled for November 6, 2014 before the Honorable Richard L. Puglisi. Egan never responded to an email by Plaintiff's counsel's inquiry about settlement.

**O. AGREED STATEMENT**

Beyond a possible agreed concise statement of the case (which will not be necessary for a non-jury trial), Plaintiff does not anticipate any other agreed statements

**P. BIFURCATION, SEPARATE TRIAL OF ISSUES**

Bifurcation is not appropriate or necessary.

**Q. REFERENCE TO MASTER OR MAGISTRATE JUDGE**

Plaintiff does not believe this action, or any part thereof, needs to be referred to a master or magistrate judge at this time.

**R. APPOINTMENT AND LIMITATION OF EXPERTS**

Appointment by the court of an impartial expert witness and limitation on the number of expert witnesses is neither feasible nor desired.

**S. TRIAL**

Assuming Plaintiff's pending motion for summary judgment is denied in whole or in part, trial will only be against Egan and would only be on the remaining issues that survive Plaintiff's motion for summary judgment, scheduled to be heard on November 23, 2015 before the Honorable J. Michael Seabright.

Plaintiff wishes to proceed with a bench trial and will seek to withdraw his demand for Jury Trial.

**T. ESTIMATE OF TRIAL TIME**

Plaintiff estimates a bench trial will take three-four business days to complete. Plaintiff estimates that his case can be presented in approximately two business days.

**U. CLAIMS OF PRIVILEGE OR WORK PRODUCT**

Egan claims that the attorney-client privilege applies to all oral and written communications between him and his former lawyers, Gallagher and Herman, even though Egan has waived the privilege by publicly filing motions which reveal such communications and the legal strategy developed by Plaintiff and his former lawyers.

**V. MISCELLANEOUS**

Plaintiff is not aware of any other issues which need to be addressed at this time.

DATED: Honolulu, Hawai‘i, October 27, 2015.

/s/ Louise K. Y. Ing  
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