

STEWART GOLLAN (USB # 12524)
RICKS & GOLLAN, PLLC
75 East 400 South, # 300
Salt Lake City, Utah 84111
Telephone (801) 413-3406
Email: sgollanlaw@gmail.com
Attorneys for Thomas R. Mancini

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

NELDON PAUL JOHNSON,

Plaintiff,

DEFENDANT’S FIRST AMENDED
ANSWER

vs.

Case No. 4:18-cv-00087-DN

THOMAS R. MANCINI,

Defendant.

Judge David Nuffer

Now comes Defendant, Thomas R. Mancini, and states the following as an answer to Plaintiffs’ Complaint:

1. Defendant Thomas R. Mancini (hereafter “Defendant”) admits in part and denies in part the allegations set forth in Paragraph One (¶ 1) of Plaintiff’s Complaint. Defendant admits that Plaintiff, Neldon P. Johnson is an individual residing in Millard County. Defendant denies all remaining allegations set forth in Paragraph One (¶ 1) of Plaintiff’s Complaint.

2. Defendant admits in part and denies in part the allegations set forth in Paragraph Two (¶ 2) of Plaintiff’s Complaint. Defendant admits that he is an individual. Defendant denies all remaining allegations set forth in Paragraph Two (¶ 2) of Plaintiff’s Complaint. Defendant further avers that at all times and when allegedly engaging in any of the conduct complained of

by Plaintiff in this action, he was acting solely as an agent and on behalf of the TRMancini, LLC. solar Consulting.

3. Defendant admits in part and denies in part the allegations set forth in Paragraph Three (¶ 3) of Plaintiff's Complaint. Defendant admits that the alleged events complained of occurred in the State of Utah. Defendant denies all remaining allegations set forth in Paragraph Three (¶ 3) of Plaintiff's Complaint.

4. Defendant restates and incorporates his responses to Paragraphs One through Three (¶¶ 1-3) of Plaintiff's Complaint.

5. Defendant admits the allegations set forth in Paragraph Five (¶ 5) of Plaintiff's Complaint.

6. Defendant lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph Six (¶ 6) of Plaintiff's Complaint and denies said allegations on that basis.

7. Defendant lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph Seven (¶ 7) of Plaintiff's Complaint and denies said allegations on that basis.

8. Defendant lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph Eight (¶ 8) of Plaintiff's Complaint and denies said allegations on that basis.

9. Defendant lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph Nine (¶ 9) of Plaintiff's Complaint and denies said allegations on that basis.

10. Defendant admits in part and denies in part the allegations set forth in Paragraph Ten (¶ 10) of Plaintiff's Complaint. Defendant admits that he reviewed documents purporting to

be sales documents. Defendant lacks sufficient knowledge to admit or deny the remaining allegations set forth in Paragraph Ten (§ 10) of Plaintiff's Complaint and denies all remaining allegations on that basis.

11. Defendant admits in part and denies in part the allegations set forth in Paragraph Eleven (§ 11) of Plaintiff's Complaint. Defendant admits he testified in a judicial proceeding while acting as an agent of TRMancini, LLC that Plaintiff's lenses may be able to produce heat in excess of 754 degrees. Defendant denies all remaining allegations set forth in Paragraph Eleven (§ 11) of Plaintiff's Complaint.

12. Defendant denies all allegations set forth in Paragraph Twelve (§ 12) of Plaintiff's Complaint.

13. Defendant denies all allegations set forth in Paragraph Thirteen (§ 13) of Plaintiff's Complaint.

14. Defendant denies all allegations set forth in Paragraph Fourteen (§ 14) of Plaintiff's Complaint.

15. Defendant denies all allegations set forth in Paragraph Fifteen (§ 15) of Plaintiff's Complaint.

16. Defendant denies all allegations set forth in Paragraph Sixteen (§ 16) of Plaintiff's Complaint.

17. Defendant denies all allegations set forth in Paragraph Seventeen (§ 17) of Plaintiff's Complaint.

18. Defendant denies each and every allegation not specifically admitted to and further denies that the Plaintiff has stated a claim against him.

Affirmative Defenses

First Defense

19. The Complaint states no claim upon which relief can be granted.

Second Defense

20. Venue was inappropriate in the state court case filed in Millard County, Utah.

Third Defense

21. Some or all of Plaintiff's claims are barred by estoppel and/or waiver.

Fourth Defense

22. Some or all of Plaintiff's claims are barred because the alleged statements or publications are not capable of defamatory meaning.

Fifth Defense

23. Some or all of Plaintiff's claims are barred because the referenced statements are protected speech.

Sixth Defense

24. Some or all of Plaintiff's claims are barred by Utah Code Ann. § 45-2-3.

Seventh Defense

25. Some or all of Plaintiff's claims are barred by the judicial proceeding privilege.

Eighth Defense

26. Some or all of Plaintiff's claims are barred by the common law neutral report privilege.

Ninth Defense

27. Some or all of Plaintiff's claims are barred by the Fourteenth and First Amendments to the United States Constitution.

Tenth Defense

28. Some or all of Plaintiff's claims are barred by Article I, Sections 1 and 15 of the Utah Constitution.

Eleventh Defense

29. Some or all of Plaintiff's claims against Defendant are barred by the incremental harm doctrine.

Twelfth Defense

30. Plaintiff has suffered no compensable harm as a result of Defendant's alleged conduct.

Thirteenth Defense

31. Plaintiff has failed to mitigate any damages he claims to have sustained as a result of Defendant's alleged conduct.

Fourteenth Defense

32. Some or all of the damages of which Plaintiff complains were the result of fault and/or actions or inactions of persons or entities over whom or which Defendant had no control and/or were the result of intervening causes.

Fifteenth Defense

33. Defendant did not act with common law or actual malice, and therefore any award of punitive damages is barred.

Sixteenth Defense

34. No act or omission of Defendant was done with a knowing or reckless indifference toward, or disregard of, the rights and safety of others, and therefore any award of punitive damages is barred.

Seventeenth Defense

35. Punitive damages are barred by the Due Process Clause of the Fifth Amendment to the United States Constitution, and by Article I, Section 7 of the Utah Constitution.

Eighteenth Defense

36. Punitive damages are barred by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Nineteenth Defense

37. Some or all of Plaintiff's claims against Defendant are barred because he failed to adequately plead and/or cannot prove special damages.

Twentieth Defense

38. Some or all of Plaintiff's claims against Defendant are barred because he failed to adequately plead allegations with the required level of specificity.

Twenty-First Defense

38. Some or all of Plaintiff's claims against Defendant are barred because the alleged statements were not made with the requisite degree of fault.

Twenty-Second Defense

39. Some or all of Plaintiff's claims against Defendant are barred by the common law fair report privilege.

Twenty-Third Defense

40. The referenced alleged statements of Defendant about which Plaintiff complains are privileged because they concern matters of legitimate public concern and were published without malice.

Twenty-Fourth Defense

41. At all times, Defendant exercised the requisite degree of care and prudence when undertaking any of the alleged conduct about which Plaintiff complains.

Twenty-Fifth Defense

42. Some or all of Plaintiff's claims against Defendant are barred by the single publication rule.

Twenty-Sixth Defense

43. Some or all of Plaintiff's claims against Defendant are barred by the unclean hands doctrine.

Twenty-Seventh Defense

44. Some or all of Plaintiff's claims against Defendant are barred because Plaintiff is, or at relevant times was, a limited-purpose public figure and Defendant did not act with actual malice.

Twenty-Eighth Defense

45. Some or all of Plaintiff's claims against Defendant are barred because any alleged damages sustained by Plaintiff were proximately caused by his own negligence and/or actions and/or fault, which were equal to or greater than any fault of Defendant. Alternatively, Plaintiff's alleged damages must be reduced because any such damages were proximately caused by his own comparative fault, which must be measured and compared against any alleged fault of the Defendant in this case as well as that of any other person or entity.

Twenty-Ninth Defense

46. Some or all of the statements alleged to have been published are true and therefore cannot give rise to a claim for defamation, slander or libel.

Thirtieth Defense

47. The filing of the present action is primarily based on, relates to, or is in response to an act or acts of Defendant while participating in the process of government and is done primarily to harass Defendant and should be dismissed, upon appropriate motion, pursuant to Utah Code Ann. § 78B-6-1403.

Thirty-First Defense

49. Some or all of Plaintiff's claims are barred because some or all of the statements or actions complained of were made or occurred outside of the relevant statute of limitation/limitation period.

Thirty-Second Defense

50. Some or all of Plaintiff's claims are barred by the doctrine of acquiescence.

Thirty-Third Defense

51. Defendant may have additional defenses that are unknown at this time, but which may be discovered during the course of these proceedings. Defendant does not waive and expressly reserves such defenses and specifically asserts them hereby, reserving the right to amend this pleading to assert such defenses as they become known.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

That Plaintiff's Complaint against him be dismissed with prejudice as no cause of action and that he be awarded his costs and attorney's fees incurred and such other relief as the Court deems just and proper.

Respectfully submitted this 26th day of November 2018.

/S/ Stewart Gollan

Stewart Gollan
Ricks & Gollan, PLLC
Attorney for Thomas R. Mancini

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be transmitted to the following via mail
in the United States Postal Service, postage pre-paid:

Neldon Paul Johnson
2730 West 4000 South
Oasis, UT 84624

on the 30th day of November 2018.

/S/ Stewart Gollan

Stewart Gollan
Attorney for Defendant Thomas R. Mancini