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18 Attorneys for Defendant Hidden Valley Lake Association

19 UNITED STATES DISTRICT COURT
 20 FOR THE NORTHERN DISTRICT OF CALIFORNIA

21 WAYNE CLARK,
 22)
 23) Plaintiff,
 24)
 25) vs.
 26)
 27) HIDDEN VALLEY LAKE
 28) ASSOCIATION, INC., et al.,
 29)
 30) Defendants.
 31)

No. 3:16-cv-2009 SI
 STIPULATION TO FILING OF
 SECOND AMENDED COMPLAINT
 AND ~~(PROPOSED)~~ ORDER THEREON

32 Plaintiff WAYNE CLARK and Defendant HIDDEN VALLEY LAKE ASSOCIATION
 33 hereby stipulate to the following:

- 34 1. At the Case Management Conference of March 24, 2017, the parties agreed to
 35 file a Stipulation and Proposed Order amending the First Amended Complaint by dismissing
 36 the Twelfth and Thirteenth Causes of Action and to attach the (Proposed) Amended Complaint
 37 to the stipulation. The Court entered an Order that such be done;
- 38 2. The parties have subsequently agreed to amending the First Amended Complaint

1 by dismissing as well the First and Second Causes of Action, for Breach of Contract and Breach
2 of the Covenant of Good Faith and Fair Dealing, respectively;

3 3. The parties further agree that, aside from the dismissals of the First, Second,
4 Twelfth and Thirteen Causes of Action, the (Proposed) Second Amended Complaint does not
5 change the substance of the remaining Causes of Action and that Defendant's Answer to the
6 First Amended Complaint shall be deemed to be the Answer to the Second Amended
7 Complaint;

8 4. A true and correct copy of the (Proposed) Second Amended Complaint
9 incorporating the above described amendments is appended hereto;

10 5. The dates established by the Pretrial Preparation Order of December 12, 2016, as
11 amended, will not be disturbed by the filing of the (Proposed) Second Amended Complaint.

12 Dated: May 26, 2017

LAW OFFICE OF VICTOR C. THUESEN

13
14
15 By /s/ Victor C. Thuesen

Victor C. Thuesen

Attorney for Plaintiff WAYNE CLARK

16 Dated: May 26, 2017

MURPHY, PEARSON, BRADLEY & FEENEY

17
18
19 By /s/ William A. Munoz

William A. Munoz

Attorneys for Defendant

HIDDEN VALLEY LAKE ASSOCIATION

20
21
22 ~~(PROPOSED)~~ ORDER GRANTING LEAVE TO FILE SECOND AMENDED COMPLAINT

23 Pursuant to the Stipulation of the Parties, and good cause appearing, it is ORDERED
24 that the (Proposed) Second Amended Complaint attached hereto may be filed with the Court
25 within _ days of this Order and that Defendant Hidden Valley Lake Association's Answer to the
26 First Amended Complaint shall be deemed its Answer to the Second Amended Complaint.

27 Dated: 5/31/2017

28 

SUSAN ILLSTON

United States District Judge

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6
7
8 IN THE UNITED STATES DISTRICT COURT FOR
9 THE NORTHERN DISTRICT OF CALIFORNIA

10	WAYNE CLARK,	)	NO. 3:16-CV-2009 SI
	Plaintiff,)	
11	vs.	)	(PROPOSED) SECOND AMENDED
		)	COMPLAINT FOR VIOLATION OF
12	HIDDEN VALLEY LAKE	)	PRIVACY, CALIFORNIA
	ASSOCIATION, INC., and	)	CONSTITUTION, ARTICLE I, SECTION
13	DOES 1 through 20,	)	1; DEFAMATION; NEGLIGENT
		)	SUPERVISION; NEGLIGENT
14	Defendants.	)	INFLECTION OF EMOTIONAL
		)	DISTRESS; INTENTIONAL INFLECTION
15		)	OF EMOTIONAL DISTRESS; LIBEL;
		)	FALSE LIGHT INVASION OF PRIVACY;
16		)	INTERFERENCE WITH PROSPECTIVE
		)	ECONOMIC ADVANTAGE AND
17		)	BUSINESS RELATIONS; VIOLATION
		)	OF LABOR CODE §§201 AND 203 FOR
18		)	LATE PAYMENT OF WAGES
19		)	JURY TRIAL DEMANDED

20 JURISDICTION AND VENUE

21 Plaintiff WAYNE CLARK respectfully alleges and complains against the above-named
22 defendants, HIDDEN VALLEY LAKE ASSOCIATION and DOES 1-20, inclusive, and each of
23 them, and demands a jury trial of all issues and causes of action, as follows:

24 1. This is an action brought pursuant to 28 U.S.C. § 1332 as complete diversity exists
25 between the parties.

26 2. Plaintiff WAYNE CLARK (“CLARK” or “Plaintiff”) resides in the State of
27 Washington. Defendant HIDDEN VALLEY LAKE ASSOCIATION (“Defendant” or “HVLA”) is
28 incorporated in the State of California and has its current place of business in Lake County in the

1 State of California.

2 3. The true names and capacities, whether individual, corporate, government, associate
3 or otherwise, of Defendants sued herein as Does 1 to 20, inclusive, are unknown to plaintiff at this
4 time and plaintiffs therefore sue said Defendants by such fictitious names. Plaintiff will seek leave
5 to amend this First Amended Complaint to show their true names and capacities when the same have
6 been ascertained. Plaintiff is informed and believes and thereon alleges that each of the Defendants
7 designated as a Doe is in some manner responsible for the occurrences and injuries alleged herein.
8 Plaintiff believes all Doe Defendants are residents of the State of California.

9 4. The true names and capacities, whether individual, corporate, government, associate
10 or otherwise, of Defendants sued herein as Does 1 to 20, inclusive, are unknown to plaintiff at this
11 time and plaintiffs therefore sue said Defendants by such fictitious names. Plaintiff will seek leave
12 to amend this First Amended Complaint to show their true names and capacities when the same have
13 been ascertained. Plaintiff is informed and believes and thereon alleges that each of the Defendants
14 designated as a Doe is in some manner responsible for the occurrences and injuries alleged herein.
15 Plaintiff believes all Doe Defendants are residents of the State of California.

16 5. CLARK is informed and believes and thereon alleges that at all times herein
17 mentioned, except where explicitly specified otherwise, each and every Defendant was the agent and
18 employee of each and every other Defendant, and in doing the things, acts and omissions hereinafter
19 alleged, was acting within the course and scope of such agency and employment, and in so doing was
20 acting with the consent, permission, and authorization of each of the remaining Defendants. All
21 actions of each Defendant as herein alleged were ratified and approved by the officers or managing
22 agents of each and every other Defendant.

23 FIRST CAUSE OF ACTION

24 VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE 1, SECTION 1

25 6. Plaintiff is a professional golfer. He was hired in 2011 to serve as Defendant's
26 Director of Golf.

27 7. On April 15, 2015, HVLA General Manager Cindy Spears ("Spears") gave verbal
28 notice to plaintiff CLARK that HVLA was terminating his contract for no cause effective that day.

1 8. CLARK was a very popular employee of HVLA. In order to justify CLARK'S
2 termination Spears engaged in a course of conduct and action to impugn CLARK's personal and
3 professional reputation. In the months following Clark's termination, Spears manufactured
4 information about Clark's performance as the Director of Golf that was untrue. She conveyed this
5 information to individuals that had no reason to know of it even if it were true. The information
6 included claims that Clark had embezzled funds of the Association, that he drank alcohol and
7 watched pornography while working, that he was going to be arrested for criminal conduct and that
8 he had engaged in fraud, dereliction of duties and theft, all of which she knew were untrue. She told
9 nonHVLA employees about such scurrilous and scandalous information about CLARK with the
10 intent that the nonHVLA employees would gossip about CLARK and publish the false information
11 on social media, including Facebook. The result was that certain nonHVLA employees posted false
12 information on Facebook and other websites that were intended to support the idea that CLARK had
13 been terminated for the conduct described herein. Spears conveyed such information as well to
14 employees of HVLA that had no reason to know of such information. She also started ~~the~~ rumors
15 that CLARK had been terminated "for cause."

16 9. Prior to his termination, CLARK had never been given a negative performance
17 evaluation and had performed his duties well at all times. He was never informed of deficient
18 performance or given any opportunity to respond as was required by the terms of his employment
19 contract and HLVA's practice and procedure associated with those terms.

20 10. In addition to the foregoing, Spears started rumors about CLARK that she knew to
21 be untrue including that he had inappropriately taken monies from the HVLA golf shop; that he
22 failed to charge all people for playing golf even though it was required; that he had pornography on
23 his computer; that he mismanaged the golf operation budget and increased HVLA subsidization from
24 HVLA funds; that his employment contract was illegal and invalid; that he did not pay for food or
25 drinks at the HVLA bar; that he made fraudulent use of his credit card, and; that HVLA paid for
26 CLARK's participation in golf tournaments inappropriately.

27 11. At all times during and following CLARK's employment with HVLA, he had the
28 right to have his personnel information kept private. Spears violated this right when she purposefully,

1 knowingly and willingly disclosed information regarding CLARK's confidential employment terms,
2 her unsupported claims about CLARK'S performance and conduct as alleged herein and other
3 confidential personnel information for the purpose of impugning his reputation and justifying his
4 termination for cause.

5 12. As a direct and proximate result of Defendants' violation of his Constitutional right
6 to privacy in his employment information, CLARK has suffered and continues to suffer a substantial
7 loss of earnings and other employment benefits that he would have received in post-termination
8 employment had Defendants not involved itself in publishing false and harmful information about
9 his employment with Defendant as herein alleged. Plaintiff has also suffered and continues to suffer
10 emotional harm, humiliation and mental anguish all to Plaintiff's damage.

11 13. The conduct of Defendants was willful, oppressive, fraudulent and malicious, thereby
12 entitling Plaintiff to an award of punitive damages.

13 SECOND CAUSE OF ACTION

14 DEFAMATION

15 14. Plaintiff realleges and incorporates herein by reference each and every allegation
16 contained in paragraphs 1 through __, inclusive, as though fully set forth herein.

17 15. On information and belief, Plaintiff asserts that Defendant HVLA or its agents, orally
18 uttered to others, or caused to be published, that CLARK was an incompetent employee, or words
19 to that effect, and that any problems with the golf operations at HVLA were caused by CLARK.

20 16. On information and belief, Plaintiff further alleges that Spears orally uttered to others,
21 or caused to be published, that CLARK was negligent in the performance of his duties and that she
22 further orally uttered to others, or caused to be published, words which tended directly to injure
23 CLARK with respect to his office, profession, trade or business. Among other things, Spears
24 deliberately represented to individuals that were neither employed by nor officers or representatives
25 of HVLA that CLARK was going to be arrested for criminal conduct including fraud, dereliction of
26 duties, theft and embezzlement, all of which she knew were untrue. She made these claims to
27 nonHVLA employees with the intent that the nonHVLA employees would gossip about CLARK and
28 publish the false information on social media, including Facebook. The result was that certain

1 nonHVLA employees posted false information on Facebook and other websites that appeared to
2 support the idea that CLARK had actually committed such actions and was a scurrilous man.

3 17. The utterances and publications made by Defendants were not privileged because
4 Defendants published these statements with personal animosity, hatred and ill will toward CLARK,
5 and they were published to persons who were not interested, and to persons who do not stand in a
6 relationship with an interested person.

7 18. Such publications were false and injured CLARK's reputation and his ability to retain
8 his job or to obtain other employment.

9 19. The publicity created by Defendants was offensive and objectionable to CLARK and
10 to a reasonable person of ordinary sensibilities in that Spear's defamatory statements were the
11 catalyst for CLARK's termination and continued for a significant period of time after CLARK'S
12 termination and have precluded CLARK from finding comparable replacement employment.

13 20. The publicity created by Defendants was done with malice in that it was made either
14 with knowledge of its falsity or in reckless disregard of its truth.

15 21. As a direct and proximate result of Defendants' defamatory statements, CLARK
16 suffered and continues to suffer a substantial loss of earnings and other employment benefits and has
17 suffered and continues to suffer humiliation and mental anguish all to plaintiff's damage in an
18 amount not yet ascertained, but within the minimum jurisdiction of this Court. Plaintiff will seek
19 leave to amend this Second Amended Complaint and insert the amount when the same is ascertained
20 or on proof thereof.

21 22. The conduct of Defendants was willful, oppressive, fraudulent and malicious, thereby
22 entitling plaintiff to an award of punitive damages.

23 THIRD CAUSE OF ACTION

24 NEGLIGENT SUPERVISION

25 23. Plaintiff realleges and incorporates herein by reference each and every allegation
26 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

27 24. Plaintiff alleges that Defendant HVLA owes all of its employees a duty to supervise
28 its employees in a manner consistent with common law. As an employee of HVLA, HVLA owed

1 CLARK this same duty.

2 25. HVLA breached its duty to CLARK by failing to supervise Cindy Spears and
3 discipline her appropriately upon notice of her unsafe, unhealthy, and unlawful conduct even though
4 it knew or should have known from complaints by CLARK and other employees that Cindy Spears
5 was abusing her office, mistreating employees, making false statements about them, violating their
6 right to privacy by discussing confidential employment information with people who had no need
7 to know and creating a negative and abusive work environment.

8 26. As a direct and proximate result of this breach of duty, Plaintiff has suffered
9 substantial economic losses and mental and emotional harm, including, but not limited to lost
10 wages, humiliation, mental anguish, embarrassment, loss of sleep, depression, as well as other
11 compensatory and consequential damages. He has also suffered pecuniary losses including the costs
12 of relocating and ~~costs of~~ trying to find replacement employment.

13 27. The conduct of Defendants was willful, oppressive, fraudulent and malicious, thereby
14 entitling plaintiff to an award of punitive damages.

15 FOURTH CAUSE OF ACTION

16 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

17 28. Plaintiff realleges and incorporates herein by reference each and every allegation
18 contained in paragraphs 1 through 27, inclusive, as though fully set forth herein.

19 29. In terminating plaintiff for conduct and reasons that were not accurate, Defendants
20 could foresee that plaintiff would suffer great emotional distress. In purposely stating purported
21 facts she knew to be untrue for the purpose of harming CLARK's reputation and goodwill in the
22 community and his profession, Cindy Spears negligently caused plaintiff great emotional distress.
23 Plaintiff did and does in fact suffer such distress.

24 30. As a direct and proximate result of this breach of duty, plaintiff has suffered
25 substantial economic losses and mental and emotional harm, including, but not limited to lost
26 wages, humiliation, mental anguish, embarrassment, loss of sleep, depression, as well as other
27 compensatory and consequential damages. He has also suffered pecuniary losses including the
28 costs of relocating and trying to find replacement employment.

1 cause the public to hold him in contempt and ridicule. The statements were published to those
2 persons who were not interested parties and to those persons who do not stand in a relationship
3 with an interested person.

4 37. Such publications were false and injured CLARK's reputation and his ability to
5 retain his job or to obtain other employment.

6 38. The publicity created by Defendants was offensive and objectionable to CLARK
7 and to a reasonable person of ordinary sensibilities in that it made CLARK the object of
8 suspicion of criminal intent, wrongdoing, moral turpitude and professional incompetence.

9 39. The publicity created by Defendants was done with malice in that it was made
10 either with knowledge of its falsity or in reckless disregard of its truth in that the HVLA, and its
11 individual Board members and administration were aware of and had access to CLARK's
12 personnel file and employment records.

13 40. As a direct and proximate result of this breach of duty, plaintiff has suffered
14 substantial economic losses and mental and emotional harm, including, but not limited to lost
15 wages, humiliation, mental anguish, embarrassment, loss of sleep, depression, as well as other
16 compensatory and consequential damages. He has also suffered pecuniary losses including the
17 costs of relocating and costs of trying to find replacement employment.

18 41. The conduct of Defendants was willful, oppressive, fraudulent and malicious,
19 thereby entitling plaintiff to an award of punitive damages.

20 SIXTH CAUSE OF ACTION

21 LIBEL

22 42. Plaintiff realleges and incorporates by reference each and every allegation
23 contained in paragraphs 1 through 41, inclusive, as though fully set forth herein.

24 43. On information and belief, plaintiff alleges that Defendants, through its Board
25 Member(s), General Manager and certain employees, and as directed by its General Manager,
26 caused others to purposely to publish in writing defamatory, unprivileged information publicly,
27 including without limitation that CLARK looked at pornography on his computer, embezzled
28 funds, lost monies by failing to charge players for golf at the golf course, and other purported

1 facts it knew to be false and untrue all for the purpose of harming CLARK's reputation and
2 goodwill in the community and his profession. As a result, CLARK has been exposed to
3 disgrace, ridicule, hatred, contempt, and caused plaintiff to be shunned or avoided and injured in
4 his profession. He has also suffered emotional distress as a result of Defendant's wrongful
5 conduct.

6 44. On information and belief, plaintiff alleges that Defendants published in writing,
7 or caused to be published in writing words which tended directly to injure CLARK with respect
8 to his office, profession, trade or business and done with fault and malice. Since his termination,
9 CLARK has applied for golf pro positions unsuccessfully.

10 45. Defendant's written statements spawned an environment rife with innuendo,
11 speculation and rumor about CLARK and his personal and professional character, profession,
12 trade and business. Hidden Valley Lake is a small community. On information and belief,
13 plaintiff alleges it has a very tight-knit group. CLARK's termination was reported widely in
14 several editions of the Association's newsletter, and HVLA's several social media pages.
15 Plaintiff believes that rumors among HVLA were started or contributed to by Cindy Spears and
16 HVLA Board Members' various public writings. Such false innuendos have created a public
17 perception that CLARK was terminated for incompetence and moral turpitude reasons.

18 46. The publications made by Defendants were not privileged because Defendants
19 published these statements with personal animosity, hatred, and ill will toward CLARK with the
20 intent to disgrace and injure plaintiff, to bring him into public disregard and cause the public to
21 hold him in contempt and ridicule. The publications were to persons who were not interested
22 parties and to those persons who do not stand in a relationship with an interested person.

23 47. Such publications were false and injured CLARK's reputation and his ability to
24 retain his job or to obtain other employment. He was shunned and avoided.

25 48. The publicity created by Defendants was offensive and objectionable to CLARK
26 and to a reasonable person of ordinary sensibilities in that it made CLARK the object of
27 suspicion of criminal conduct, wrongdoing, moral turpitude and professional incompetence.

28 49. The publicity created by Defendants was done with malice in that it was made

1 either with knowledge of its falsity or in reckless disregard of its truth in that the HVLA, and its
2 individual Board members and administration were aware of and had access to CLARK's
3 personnel file and employment records.

4 50. As a direct and proximate result of this breach of duty, plaintiff has suffered
5 substantial economic losses and mental and emotional harm, including, but not limited to, lost
6 wages, humiliation, mental anguish, embarrassment, loss of sleep, depression, as well as other
7 compensatory and consequential damages. He has also suffered pecuniary losses including the
8 costs of relocating and ~~costs~~ of trying to find replacement employment.

9 51. The conduct of Defendants was willful, oppressive, fraudulent and malicious,
10 thereby entitling plaintiff to an award of punitive damages.

11 SEVENTH CAUSE OF ACTION

12 FALSE LIGHT INVASION OF PRIVACY

13 52. Plaintiff realleges and incorporates by reference each and every allegation
14 contained in paragraphs 1 through 51, inclusive, as though fully set forth herein.

15 53. On information and belief, Plaintiff alleges that Defendants, ~~itself~~, through its
16 Board Member(s), HVLA's General Manager and certain employees, and as directed by its
17 General Manager, caused others to purposely publish orally and in writing to a large number of
18 people and to the public in general unfair and inaccurate depictions of CLARK. The published
19 statements were defamatory and unprivileged information, including without limitation that
20 CLARK looked at pornography on his computer, embezzled funds, lost monies by failing to
21 charge players for golf at the golf course, and other purported facts it knew to be false and untrue
22 all for the purpose of harming CLARK's reputation and goodwill in the community and his
23 profession. The publications unfairly and inaccurately depicted CLARK in a false light. As a
24 result, CLARK has been exposed to disgrace, ridicule, hatred, contempt, and caused plaintiff to
25 be shunned or avoided and injured in his profession. He has also suffered emotional distress as a
26 result of Defendant's wrongful conduct. The publications unfairly and inaccurately depicted
27 CLARK and were highly offensive to a reasonable person.

28 54. On information and belief, Plaintiff alleges that Defendants published in writing,

1 or caused to be published in writing, words which tended directly to injure CLARK with respect
2 to his office, profession, trade or business and done with fault and malice. It was done
3 intentionally or in reckless disregard of the falsity of the publications and the false light in which
4 CLARK would be placed. Defendants acted negligently in failing to learn whether the
5 publications placed plaintiff in a false light. Since the false publications and his termination,
6 CLARK has applied for golf pro positions unsuccessfully.

7 55. Defendant's written statements spawned an environment rife with innuendo,
8 speculation and rumor about CLARK and his personal and professional character, profession,
9 trade and business. Hidden Valley Lake is a small community. On information and belief,
10 plaintiff alleges it has a very tight-knit group. CLARK's termination was reported widely in
11 several editions of the Association's newsletter, and HVLA's several social media pages.
12 Plaintiff believes that rumors among HVLA were started or contributed to by Cindy Spears and
13 HVLA Board Members' various public writings. Such false innuendos have created a public
14 perception that CLARK was terminated for incompetence and moral turpitude reasons.

15 56. The publications made by Defendants were not privileged because Defendants
16 published these statements with personal animosity, hatred, and ill will toward CLARK with the
17 intent to disgrace and injure plaintiff, to bring him into public disregard and cause the public to
18 hold him in contempt and ridicule. Their publications were to persons who were not interested
19 parties, and to those persons who do not stand in a relationship with an interested person.

20 57. Such publications were false and injured CLARK's reputation and his ability to
21 retain his job or to obtain other employment. He was shunned and avoided.

22 58. The publicity created by Defendants was offensive and objectionable to CLARK
23 and to a reasonable person of ordinary sensibilities in that it made CLARK the object of
24 suspicion of criminal intent, wrongdoing, moral turpitude and professional incompetence.

25 59. The publicity created by Defendants was done with malice in that it was made
26 either with knowledge of its falsity or in reckless disregard of its truth in that the HVLA, and its
27 individual Board members and administration were aware of and had access to CLARK's
28 personnel file and employment records.

1 substantial economic losses and mental and emotional harm, including, but not limited to, lost
2 wages, humiliation, mental anguish, embarrassment, loss of sleep, depression, as well as other
3 compensatory and consequential damages. He has also suffered pecuniary losses including the
4 costs of relocating and trying to find replacement employment.

5 68. The conduct of Defendants was willful, oppressive, fraudulent and malicious,
6 thereby entitling plaintiff to an award of punitive damages.

7 NINTH CAUSE OF ACTION

8 VIOLATION OF LABOR CODE §§ 201 AND 203

9 69. Plaintiff realleges and incorporates by reference each and every allegation
10 contained in paragraphs 1 through 70, inclusive, as though fully set forth herein.

11 70. Plaintiff held an employment contract with Defendants for which he received
12 commission wages as defined by California Labor Code §200. Defendants terminated plaintiff on
13 or about April 15, 2015 without advance notice. At the time of his termination from employment,
14 Defendant HVLA failed to pay CLARK all commissions earned or were in process of being
15 earned as required by California Labor Code §201. Plaintiff did not secret or absent himself or
16 avoid Defendant's payment to him.

17 71. Wherefore plaintiff prays that Defendants pay earned commissions in the amount
18 of proof at trial; penalties according to California Labor Code §203 for wages equivalent to his
19 daily rate for a period not to exceed 30 days; and attorneys' fees and costs pursuant to California
20 Labor Code §218.5.

21 PRAYER FOR RELIEF

22 Plaintiff requests such damages from Defendants as to be proved at trial as follows:

23 1. For a money judgment representing general and compensatory damages including
24 lost past and future wages, earnings, retirement benefits and other employee benefits, ~~government~~
25 ~~service credits~~ and all other sums of money, together with prejudgment interest on those
26 amounts.

27 2. For all general and compensatory damages incurred for the lasting harm to
28 CLARK's professional reputation and other monetary relief.

3. For a money judgment for mental pain and anguish and emotional distress.
4. For costs of suit herein incurred.
5. For reasonable attorneys' fees.
6. For punitive damages.
7. For prejudgment and post-judgment interest.
8. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

CLARK hereby demands a trial by jury of all issues in this case.

Dated: May 26, 2017

LAW OFFICES OF VICTOR C. THUESEN

VICTOR C. THUESEN
Attorney for Plaintiff WAYNE CLARK