

EXHIBIT "1"

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

EXHIBIT "1"

RECEIVED

1 Case No. 11-CV-0383

DEC 22 2011

FILED

2
3 Dept. No. II

DOUGLAS COUNTY
DISTRICT COURT CLERK

2011 DEC 22 AM 9:45

TED THUAN
CLERK

M. BIAGGINI
DEPUTY

4
5
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8
9 MICHAEL E. PEGRAM,

10 Plaintiff,

11
12 vs.

13 COMPLAINT

14
15 JERRY JAMGOTCHIAN,

JURY TRIAL REQUESTED

16
17 Defendant.

18
19
20
21 Plaintiff Michael ("Mike") Pegram alleges as follows:

22 I. NATURE OF THE ACTION

23 1. This is an action by Mike Pegram, a prominent Nevada businessman, against
24 defendant Jerry Jamgotchian for defamation and false light. Defendant has perpetrated a
25 harmful and malicious smear campaign against Mr. Pegram, repeatedly publishing in widely
26 distributed emails that Mr. Pegram, as a member of a non-profit organization's board,
27 engaged in serious criminal conduct, including theft of the organization's funds.
28

McDONALD·CARANO·WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

roles, including on McDonald's National Leadership Council;

c. Thoroughbred Horse Racing – Mr. Pegram is a prominent owner of thoroughbred race horses. Horses owned by Mr. Pegram have won the Kentucky Derby, five Breeder Cup Championships, two Preakness Championships, the Dubai World Cup and five Eclipse Championship Awards. Mr. Pegram is among the industry's most respected owners. He was named the 2009 Gregson Foundation Honoree (awarded by California's largest charity devoted to horse racing for major contributions to the sport) and won in 1998 the "Big Sport of Turfdom Award" (awarded annually by the 180-member Turf Publicists of America to the person or group that most enhances coverage of thoroughbred racing); and

d. Bank Board Member – Mr. Pegram is a member of the Board of Directors for Skagit State Bank, which is regulated under Washington state and federal law.

7. Defendant, Jerry Jamgotchian, is a California resident.

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Article 6, Section 6 of the Nevada Constitution.

9. This Court has personal jurisdiction over Defendant pursuant to NRS 14.065.

10. Venue is proper in Douglas County pursuant to NRS 13.040.

IV. BACKGROUND FACTS

A. Background: The TOC Considers Purchasing Santa Anita Park Racetrack

11. The facts of this case began in California, but were exported by Defendant to Nevada, where Mr. Pegram resides and does business.

12. Thoroughbred Owners of California (the "TOC") is a California nonprofit mutual benefit corporation that acts as the legal representative of California's thoroughbred owners. The TOC represents 9,000-plus members in dealings with racing associations and before

1 regulatory and legislative bodies, and seeks to improve horse racing generally. Mr. Pegram
2 has been on the TOC's Board (the "Board") since July 1, 2010, and has been Chairman of
3 the TOC Board since November 16, 2011. Defendant is a member of the TOC.

4 13. In 2009, the owner of Santa Anita Park, one of California's most storied horse
5 racing tracks, went bankrupt. As a result, the owner planned to sell Santa Anita Park,
6 potentially to real estate developers who planned to develop the site commercially and
7 discontinue its use as a race track.

8 14. The TOC Board—of which Mr. Pegram was not yet a member—began
9 considering whether a TOC-led purchase of Santa Anita Park, to preserve it as a race track,
10 might be feasible and in the best interest of horse racing. The Board formed an exploratory
11 committee (the "Acquisition Committee") to perform due diligence on the potential
12 transaction (the "Santa Anita Due Diligence").

13 15. The purchase would have been a large, complex transaction, and the due
14 diligence required the TOC to expend significant resources. With extensive Board oversight
15 and approval, the Acquisition Committee spent approximately \$600,000 in expenses, almost
16 all of which was for the cost of hiring attorneys, investment bankers, accountants, and other
17 consultants to perform due diligence.

18 16. The \$600,000 was drawn from funds that the TOC had received from the
19 National Thoroughbred Racing Association for the TOC to use for the benefit of California
20 horse racing. The expenditures were well documented, and the individual Acquisition
21 Committee members did not receive any compensation or reimbursement for expenses.
22 Ultimately, Santa Anita Park was never put up for an open-market sale, and the TOC
23 ceased work on the Santa Anita Due Diligence.

24 17. The Santa Anita Due Diligence ended before Mr. Pegram became a member
25 of the TOC Board, and he did not participate in any way in activities related to that project.
26 It was not until July 2010—months after the TOC completed work on the Santa Anita Due
27 Diligence—that Mr. Pegram joined the TOC Board. It was then that Defendant began
28 publishing defamatory remarks about Mr. Pegram.

1 **B. Defendant Accuses The TOC Of Theft And Misappropriation**

2 18. In the Fall of 2010, Defendant began accusing the TOC Board of stealing and
3 misappropriating money from the TOC. The accusations related to the \$600,000 spent on
4 the Santa Anita Due Diligence and the TOC funds received from the National Thoroughbred
5 Racing Association. The accusations were false.

6 19. Defendant requested access to the TOC's financial records, and the TOC
7 granted his request. With full access to the TOC's files, Defendant failed to find any support
8 for his false accusations.

9 20. Without any basis for his allegations, Defendant began circulating the false
10 statements publicly in widely distributed emails. For example, Defendant sent the following
11 emails:

- 12 a. A September 27, 2010, email to over 40 recipients stating that (i) the
13 Board "misappropriate[ed]" TOC funds, (ii) the "TOC currently maintains
14 a **Secret Bank Account in the UK,**" and (iii) "the TOC has an '**off the**
15 **books slush fund**'" with "at least a \$1,200,000 balance in 2009" that is
16 being used to fund activities for the benefit of Board members.¹
- 17 b. A September 27, 2010, email forwarding the above email to 20
18 recipients and stating that members of the Board had "diverted for their
19 personal use . . . at least **\$600,000** in TOC Funds."
- 20 c. An October 6, 2010, email to over 45 recipients stating that the current
21 Board members had knowledge of, and were covering up, (i) "the
22 outright theft of \$600,000 in TOC Funds," (ii) a "SECRET" off-the-
23 books account with over \$1.2 million dollars, and (iii) an "illegal scheme
24 to take nearly **\$600,000**" from a "Slush Fund!!!!!"
- 25 d. A November 1, 2010, email to over 65 recipients stating that the
26 "CURRENT BOARDMEMBERS ARE TAKING AND WASTING TOC
27 MONEY."
28

¹ All emphasis is in the original emails.

- 1 e. A November 8, 2010, email to over 70 recipients, with the subject line:
- 2 "MISMANAGEMENT OF TOC AND MISAPPROPRIATION OF TOC
- 3 FUNDS," stating that Defendant had proof of TOC wrongdoing.
- 4 f. A December 8, 2010, email to over 65 recipients (i) announcing a
- 5 meeting at which Defendant would "explain how the TOC illegally
- 6 took \$1,167,025 of YOUR PURSE MONEY" and (ii) suggesting that
- 7 the TOC had "knowingly violated Business and Professions Code
- 8 Section 19613.05."
- 9 g. A December 28, 2010, email to over 75 recipients stating that "the TOC
- 10 does NOT need the \$\$\$\$. They steal enough already"
- 11 h. A January 6, 2011, email to over 25 recipients stating that the TOC is
- 12 "misappropriating our funds."

13 21. Throughout the time period in which Defendant was sending these emails, and
14 the emails described below, Mr. Pegram was on the Board of the TOC. The Board has only
15 15 members, so any person who received Defendant's false statements about the Board
16 would reasonably understand those comments to refer and apply to all members of the
17 Board, including to Mr. Pegram. Further, because the Board directs the TOC, any person
18 who received false statements about the actions of "the TOC" would reasonably understand
19 those comments to refer and apply to the Board and to Mr. Pegram personally.

20 **C. Defendant's Accusations Are Discredited: "No Misappropriation of Funds"**

21 22. As a result of Defendant's accusations, the California Horse Racing Board (the
22 "CHRB") undertook an investigation of the "alleged misappropriation of funds" that had been
23 provided to the TOC by the National Thoroughbred Racing Association and used for the
24 Santa Anita Due Diligence. The CHRB is an independent agency of the State of California
25 that regulates and oversees California horse racing generally, and the TOC specifically.

26 23. On January 26, 2011, after a thorough inquiry, the CHRB released a
27 memorandum summarizing its investigation and conclusions. The CHRB memorandum
28 debunked Defendant's accusations and stated: "The CHRB can find no misappropriation of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

funds by the TOC as alleged” by Defendant.

D. Ignoring The CHRB Report, Defendant Continues His False Accusations

24. Despite the CHRB’s thorough investigation that cleared the TOC, Defendant continued to widely distribute emails falsely and maliciously stating that the Board and Mr. Pegram were stealing from the TOC. For example, Defendant sent the following emails:

- a. An August 13, 2011, email to over 80 recipients, stating, “The TOC Board . . . screw[s] ALL CA Horseowners and use TOC’s resources for their own for parties, Del Mar lodging, junkets meetings, etc.”
- b. A November 16, 2011, email to over 140 recipients stating, “WE SIGNED TO PETITION TO DECERTIFY THE TOC AND NOT TO MAKE A DEAL WITH THESE CRIMINALS!!!!”
- c. A November 17, 2011, email to over 140 recipients stating, “NOBODY [on the Board] IS LISTENING AS THEY ARE TOO BUSY STEALING!!!!!!!!!!”

25. Mr. Pegram became the TOC Board’s Chairman on November 16, 2011. Defendant immediately began sending defamatory emails that named Mr. Pegram, including the following:

- a. A November 17, 2011, email to 148 recipients, with the subject line “Hey Mike Pegram!”, stating, “Pegram and the TOC will never do the right thing except to ‘gracefully’ step down (resign) from the TOC BoardHe knows the ‘TOC scam’ is finally over!!!”
- b. A December 1, 2011, email to 148 recipients, stating that “PEGGRAM AND THE CURRENT TOC BOARD MEMBERS” are “BUSY ‘STEALING’ MONEY FROM THE TOC’S NON-PARIMUTUEL ACCOUNT!!!”

1 **E. Defendant Emailed His Statements With Knowledge That They Were False**

2 26. The emailed statements described in paragraphs 20, 24, and 25 will be
3 referred to collectively as the “Misrepresentations.”

4 27. A recipient of the Misrepresentations would reasonably understand them to
5 contain factual statements that Mr. Pegram (i) was a criminal, (ii) stole or misappropriated
6 TOC funds, and (iii) had participated in and covered up various other TOC crimes. The
7 Misrepresentations are all false and were published with malice.

8 28. The Misrepresentations accuse Mr. Pegram and the TOC Board of improper
9 activities related to the TOC Board’s Santa Anita Due Diligence. The accusations against
10 the TOC Board were false—no money was misappropriated during the Santa Anita Due
11 Diligence, as shown by the CHRB report.

12 29. Moreover, the accusations as they applied to Mr. Pegram could not be more
13 unfounded—Mr. Pegram was not even on the TOC Board at the time that the Due Diligence
14 took place. As a result, and regardless of the merits of Defendant’s claims regarding the
15 TOC Board’s conduct in the Santa Anita Due Diligence, any accusations that Mr. Pegram
16 acted improperly concerning the Due Diligence are necessarily and obviously false.

17 30. Defendant has admitted that he knew the Misrepresentations were false and
18 sent them maliciously. On information and belief, Defendant told Drew Couto, former
19 president of the TOC, that he [Defendant Jamgotchian] knew that his statements about the
20 TOC Board stealing money were false but he was “just f***ing with the TOC;” and
21 Defendant further admitted that sending harassing emails was for him a “hobby,” a form of
22 entertainment, and a “substitute for golf.” And, in an interview published in International
23 Horse Racing Digest, Defendant stated that his aim was to “retire” horse racing officials and
24 board members.

25 31. On information and belief, Defendant sent the Misrepresentations with actual
26 knowledge that the statements were false or with serious doubts as to their truth.

27 **F. Defendant Targeted Mr. Pegram’s Reputation And His Livelihood**

28 32. Defendant widely circulated the Misrepresentations, sending them to

1 government officials, prominent members of the horse racing community, and members of
2 the media, in California, Nevada, and elsewhere. Most critically for Mr. Pegram, Defendant
3 sent many of the Misrepresentations into Nevada by emailing Nevada residents, Nevada
4 reporters, publications with Nevada subscribers, and a Nevada newspaper. Members of the
5 media who received Defendant's Misrepresentations used them, and in some cases re-
6 published emails verbatim, in articles published by their respective news outlets.

7 33. In Nevada particularly, Mr. Pegram's reputation is his most valuable and
8 essential asset because, as a casino owner, his business is dependent on his continued
9 good standing in the community.

10 34. The State of Nevada has extensive interests in upholding the character,
11 reputation, and integrity of its gaming industry. As a result, Nevada has stringent rules
12 regulating casinos, gaming employees, and casino owners.

13 35. Mr. Pegram, as the holder of an unrestricted gaming license, is subject to
14 these stringent rules. He underwent extensive investigations by the Nevada Gaming
15 Control authorities in order to obtain gaming licenses from the Nevada Gaming Control
16 Commission to own and operate his casinos. Nevada law makes clear that maintaining a
17 gaming license is a privilege that can at any time be restricted, revoked, or suspended. See
18 NRS 463.1405; Nevada Gaming Comm'n Reg. 5.040.

19 36. Mr. Pegram has an ongoing obligation to ensure that he does not act in a way
20 that reflects unfavorably on the "morals . . . of the people of the State of Nevada, or that
21 would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry."
22 See NRS 463.1405; Nevada Gaming Comm'n Reg. 5.011.

23 37. Mr. Pegram is monitored by the Nevada Gaming Control authorities.
24 Accusations of theft, embezzlement, or fraud could have adverse consequences with regard
25 to his gaming licenses, and imperil his livelihood.

26 38. The serious criminal accusations contained in the Misrepresentations may
27 have harmed, and could continue to harm, Mr. Pegram's reputation and business interests
28 in the community in which he resides, if not stopped and disproven.

1 39. On information and belief, Defendant knew that Mr. Pegram resided in
2 Nevada, and owned and operated casinos in Nevada; and Defendant sent the
3 Misrepresentations to Nevada residents and members of the Nevada press with the
4 purpose of inflicting commercial and reputational harm on Mr. Pegram in Nevada.

5 40. In addition, Defendant's defamatory statements may have harmed, and could
6 continue to harm, Mr. Pegram's reputation and business interests beyond Nevada, his state
7 of residence. Mr. Pegram owns numerous McDonald's restaurant franchises, is a member
8 of the Board of Directors for Skagit State Bank, and owns thoroughbred race horses located
9 in several states. Each of these business interests rely on Mr. Pegram's stellar reputation,
10 which Defendant's Misrepresentations have impugned. For example, under McDonald's
11 and Mr. Pegram's franchise agreements, McDonald's may terminate the agreement if Mr.
12 Pegram "engages in public conduct which reflects materially and unfavorably upon the
13 operation of the Restaurant, the reputation of the McDonald's System, or the goodwill
14 associated with the McDonald's trademarks."

15 **FIRST CLAIM FOR RELIEF**

16 **(Defamation)**

17 41. Mr. Pegram re-alleges paragraphs 1 through 40 as if fully set forth herein.

18 42. Defendant composed and intentionally published the Misrepresentations to
19 numerous third parties.

20 43. People who read the Misrepresentations reasonably understood them to be
21 factual statements about Mr. Pegram, and that he was involved in illegal activities, including
22 stealing, misappropriating, and misusing TOC funds.

23 44. The Misrepresentations were false, misleading, disparaging and defamatory of
24 Mr. Pegram.

25 45. Defendant sent the Misrepresentations with knowledge that they were false or
26 disregarded obvious warning signs of falsity and sent the Misrepresentations with an
27 awareness of a high probability that they were false.

28 46. The false statements contained in the Misrepresentations—including that Mr.

1 Pegram stole and misappropriated funds from an organization in which he held a leadership
2 role—would tend to harm his reputation in the estimation of the community, and deter third
3 persons from associating or dealing with him.

4 47. Damages are presumed because the Misrepresentations constitute
5 defamation *per se*: the Misrepresentations tended to (i) damage Mr. Pegram's reputation as
6 a competent executive; (ii) injure his reputation for honesty and integrity, which is required,
7 among other things, for owning a casino in Nevada or a McDonald's restaurant; and (iii)
8 indicate that Mr. Pegram committed crimes, including theft, fraud and embezzlement.

9 48. Defendant acted either with express malice (sending the defamatory emails
10 with the intent to harm Mr. Pegram) or with implied malice (performing despicable conduct
11 with a conscious disregard for Mr. Pegram's rights). As a result, Defendant is liable for
12 punitive damages in addition to general damages.

13 SECOND CLAIM FOR RELIEF

14 (False Light)

15 49. Mr. Pegram realleges paragraphs 1 through 48 as if fully set forth herein.

16 50. By disseminating the Misrepresentations, Defendant portrayed Mr. Pegram in
17 a false light in order to harm Mr. Pegram's personal and business reputation and business
18 opportunities, and cause embarrassment and personal humiliation.

19 51. The Misrepresentations placed Mr. Pegram in a false light that is highly
20 offensive to a reasonable person.

21 52. Defendant sent the Misrepresentations with malice. Defendant either knew
22 that the statements were false or recklessly disregarded the false light in which Mr. Pegram
23 was being placed.

24 53. As a proximate result, Mr. Pegram has suffered damages including but not
25 limited to embarrassment and personal humiliation.

26 54. Because Defendant acted with express and/or implied malice, Defendant is
27 liable for punitive damages in addition to general damages.

28

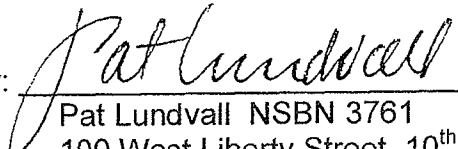
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

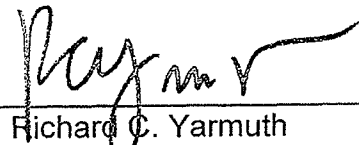
1. For compensatory damages in an amount to be proven at trial, which will exceed the \$10,000.00 jurisdictional requirements of this Court;
2. For punitive damages in an amount to be proven at trial;
3. For pre-judgment and post-judgment interest, as allowed by law;
4. For attorneys' fees and costs, as allowed by law, in an amount to be determined; and
5. For such other and further relief as the Court may deem just and proper.

DATED THIS 21 day of December, 2011.

MCDONALD CARANO WILSON LLP

By: 
 Pat Lundvall NSBN 3761
 100 West Liberty Street, 10th Floor
 P.O. Box 2670
 Reno, Nevada 89505-2670
 Phone: (775) 788-2000
 Fax: (775) 778-2020
 Email: lundvall@mcdonaldcarano.com
 Attorneys for Plaintiff

YARMUTH WILSDON CALFO PLLC

By: 
 Richard C. Yarmuth
 818 Stewart Street, Suite 1400
 Seattle, WA 98101
 Phone: (206) 516-3800
 Fax: (206) 516-3888
 Email: yarmuth@yarmuth.com
 Attorneys for Plaintiff
 (pro hac vice application forthcoming)


 MCDONALD-CARANO-WILSON
 100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
 P.O. BOX 2670 • RENO, NEVADA 89505-2670
 PHONE 775-788-2000 • FAX 775-788-2020