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**IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT**

BRANDON WHIPPLE, )  
Plaintiff, )  
 )  
v. )  
 )  
MATTHEW COLBORN, PROTECT )  
WICHITA'S GIRLS, LLC; MICHAEL )  
O'DONNELL; MICHAEL CAPPS and )  
JAMES CLENDENIN, )  
Defendants. )  
 )

Case No. 2019-CV-002211

Pursuant to K.S.A. Chapter 60

**ANSWER**

**COMES NOW** the defendant Michael O'Donnell, by and through his attorney Mark T. Schoenhofer, and for his answer to Plaintiff's Amended Petition provides:

1) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegation in paragraph 1, that Plaintiff is a resident of Wichita, Sedgwick County, Kansas. Defendant Michael O'Donnell admits the allegation in paragraph 1, that Plaintiff was a candidate for mayor of the city of Wichita in the general election, November 2019.

2) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegations contained in paragraphs 2 -4.

3) Defendant Michael O'Donnell admits the allegations contained in paragraph 5.

4) Defendant Michael O'Donnell admits the allegation in paragraph 6 that Defendant James Clendennin is a Wichita City Council member. Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegation in paragraph 6 that Defendant James Clendennin is a resident of Wichita, Sedgwick County, Kansas.

5) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegations contained in paragraph 7.

6) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegation in paragraph 8, as Plaintiff does not identify the "several supporters" by name. If Plaintiff alleges that Defendant Michael O'Donnell is one of the "several supporters", Defendant Michael O'Donnell denies the allegation.

7) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegations in paragraphs 9 - 12.

8) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegation in paragraph 13. Further, Defendant Michael O'Donnell denies involvement in the conspiracy alleged by Plaintiff in this paragraph.

9) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegation in paragraphs 14 - 15.

10) Defendant Michael O'Donnell denies the allegation in paragraph 16 that he was the "driving force behind the conspiracy". Defendant Michael O'Donnell denies the existence of a conspiracy. Defendant Michael O'Donnell admits the allegation in paragraph 16 that he sent a text message to Matthew Colborn asking how the project was coming. Defendant Michael O'Donnell also admits the allegation that Colborn responded that he had just locked in the team

and would get started on the creative. Defendant Michael O'Donnell admits the allegation that Colborn was responsible for "creative" on the advertisement. Defendant O'Donnell admits the remaining allegations in paragraph 16.

11) Defendant Michael O'Donnell denies that there was a conspiracy; therefore, he denies the allegations in paragraph 17 that Defendant Clendennin was a principal in that alleged conspiracy. Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the remaining allegations in paragraph 17.

12) Defendant Michael O'Donnell is without sufficient knowledge to either admit or deny the allegations in paragraph 18.

13) Defendant Michael O'Donnell admits the allegation in paragraph 19 that Matthew Colborn produced an advertisement that contained false information. The false information was a quote that Colborn attributed to Plaintiff that belonged to another politician, i.e., "He just came up, looked at me, smiled and said: 'hey do your panties match your outfit.'" Defendant O'Donnell denies that the advertisement was disgusting and defamatory. According to an article appearing in *The Sunflower*, entitled *Interns Acted as Designated Drivers for State Rep, WSU Lecturer in Capital*, Plaintiff was involved in "inappropriate conduct" involving college age female interns. The Sunflower reported that "Whipple was approached on campus Tuesday to comment on accusations of sexual harassment in the legislature, but he said the matter was too sensitive to discuss 'off the cuff.'" According to several individuals interviewed, the Plaintiff had been using college age female interns as designated drivers. A former male intern served as a designated driver for a group of Democratic legislators, including Plaintiff, who attended a fund raiser. That intern told *The Sunflower* that "Whipple and three other legislators were drinking on

the porch when he arrived at the ‘frat house’, a Topeka residence occupied by several Democratic members of state legislature.” On the way to the event, “Whipple complained about Abbi Hodgson, the former chief of staff of the Kansas House Democrats cited by the Hill, telling him he could no longer use female student interns as designated drivers.” One such female intern reported to Hodgson that “Rep. Whipple was one of the members with whom she had been driving around.” According to the Sunflower, Plaintiff suspected one of the female interns of being underage, but permitted her to drink at an event and joked about it. Hodgson told The Sunflower that she instructed Plaintiff to quit using college age female interns as designated drivers, as it was “inappropriate” behavior. Hodgson told the Kansas City Star that men living in the “frat house” were the “primary culprits” in this inappropriate behavior. Hodgson reported to The Sunflower that she told Whipple “how [using female interns as designated drivers] was inappropriate, and in response, that evening, he used a male intern and I had to follow up with him and say no interns, period.” A former intern told the Sunflower that “inappropriate behavior within the state democratic party is systemic and starts with individuals in positions of power.” Hodgson clarified, stating that “Sexual harassment in state politics is common amongst Democrats and Republicans.”

14) Defendant Michael O’Donnell denies the allegation in paragraph 19 that he wrote the script for the video advertisement. Matthew Colburn wrote the script and produced the video without Defendant Michael O’Donnell’s knowledge beforehand of its contents. Defendant Michael O’Donnell wrote suggestions for a billboard advertisement that he gave Defendant Colborn, which did not include the quote “He just came up, looked at me, smiled and said: ‘hey do your panties match your outfit.’” Defendant Michael O’Donnell had no knowledge

beforehand that a video was being produced, or that Colborn was adding a statement made by another politician to that video.

15) Plaintiff is without sufficient knowledge to either admit or deny the allegation in paragraph 20 that Plaintiff did not make any of the “sexually harassing comments” that appeared in a former Kansas City Star article.

16) Plaintiff is without sufficient knowledge to either admit or deny the allegation in paragraph 21 that “the hit piece dropped on October 16, 2019.” The video advertisement that was uploaded to Facebook and YouTube is no longer available for viewing, and Defendant O’Donnell does not know the date it was uploaded.

17) Plaintiff is without sufficient knowledge to either admit or deny the allegations in paragraph 22.

18) Plaintiff denies the allegations in Paragraph 23.

19) Plaintiff is without sufficient knowledge to either admit or deny the allegations in paragraph 24.

20) Defendant O’Donnell denies the allegation in paragraph 25 that he hatched a plan to blame others for the video. Defendant O’Donnell admits text messaging Dalton Glasscock, informing him that there was going to be an article in the paper about Capps’ involvement in the video advertisement. Defendant O’Donnell admits that Glasscock was upset and expressed belief that Capps could have cost Longwell the election. Defendant O’Donnell admits that he told Glasscock not to be angry, as it was just politics. Defendant O’Donnell denies that Glasscock demanded that he stop raising money “for the ad.” Glasscock demanded that O’Donnell stop raising money for an advertisement for the Republican Party. O’Donnell admits the allegation

that he told Glasscock he would tell the Weigands, Ruffins and Sam Sackett before they wrote their checks for the Republican Party advertisement.

21) Defendant O'Donnell is without sufficient knowledge to either admit or deny the allegations in paragraph 26.

22) Defendant O'Donnell admits the allegation contained in paragraph 27 that Defendant Capps agreed to appear on a local radio show to discuss the ad. Defendant O'Donnell admits the allegation contained in paragraph 27 that Defendant Capps met with Defendant O'Donnell and Defendant Clendenin before Capps went on the air. Defendant O'Donnell denies the allegation in paragraph 27 that the purpose of the meeting was to shift blame for the ad, and denies the ad was defamatory. The purpose of the meeting was to prepare Capps for questions he would likely face on the air. Defendant O'Donnell is without sufficient knowledge to either admit or deny the allegation in paragraph 27 that Capps invited Colborn to get a view from someone not in politics.

23) Defendant O'Donnell denies the allegation in the second "paragraph 25" (page 9 of Amended Petition) that he concocted a story to blame Dalton Glasscock and Kelly Arnold for the advertisement. Defendant O'Donnell insisted on telling the truth and stated that he could not perjure himself. Defendant O'Donnell admits that Defendant Capps, Defendant Clendenin and he agreed that Kelly Arnold had no culpability. Defendant Michael O'Donnell admits the remaining allegations in the "second paragraph 25".

24) Defendant O'Donnell admits the allegation contained in paragraph 28 that Defendant Capps appeared on a radio show. Defendant O'Donnell is without sufficient knowledge to either admit or deny the remaining allegations in paragraph 28.

## AFFIRMATIVE DEFENSES

1) Defendant O'Donnell affirmatively states that Plaintiff's petition fails to state a claim upon which relief can be granted and therefore this action must be dismissed.

2) This defendant states that the fault of all parties to the alleged occurrence, whether or not parties to this action, must be compared in this action pursuant to Kansas Law.

3) This defendant denies the allegations concerning the nature and extent of Plaintiff's damages.

4) This defendant expressly reserves the affirmative defenses set out in K.S.A. 60-212(b) (1) through (b)(7), together with the right, pursuant to K.S.A. 60-215, to assert any and all other affirmative defenses disclosed during the course of discovery in the instant case, as well as all such defenses and denials which are provided or contemplated by K.S.A. 60-208(b) and (c), K.S.A. 60-212(b), (c), K.S.A. 60-213(h) and K.S.A. 60-214, waiver and estoppel.

5) The comparative fault of the Plaintiff bars or reduces his recovery.

6) This defendant reserves the right to assert additional affirmative defenses, as the same may become known through the course of discovery or at the time of the pretrial order.

7) This defendant states that Plaintiff failed to join all parties pursuant to K.S.A. 60-219.

8) This defendant states that Plaintiff's Amended Petition is frivolous within the meaning of K.S.A. 60-211(b)(2, 3), as Plaintiff has no reasonable likelihood of success on the merits.

Unless injury to reputation is shown, plaintiff cannot established a valid claim for defamation.

Plaintiff has not alleged reputation loss as a damage in this suit, and cannot prove reputation loss.

Any claim for mental anguish is "parasitic," and compensable only after damage to reputation

has been established. Plaintiff won the Mayoral seat even after the alleged defamatory

advertisement was played. Plaintiff can show no damage to reputation. This suit was filed against this defendant with the principle objective of effecting the results of the Sedgwick County Commission, Second District election.

9) This defendant states that K.S.A. 60-5320 “The Public Speech Protection Act”– offers him relief from this suit, through a motion to strike claim.

10) This defendant affirmatively states that any injuries and/or damages sustained by Plaintiff were not caused by or contributed to by the alleged conduct of this defendant.

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DEMAND FOR JURY TRIAL

**COMES NOW**, the Plaintiffs, pursuant to applicable Kansas law, and respectfully makes request for trial by jury of twelve (12) persons on all issues herein above joined.

Respectfully submitted,

/S/ MARK T. SCHOENHOFER

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