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PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

GEORGE C. BRAIN, D.D.S.

07 2 06234 9

Plaintiff,

NO.

v.

COMPLAINT

CHRIS HALSNE, individually, and, KIRO-TV, INC., a Washington Corporation,

Defendants.

COMES NOW the Plaintiff, George C. Brain, D.D.S., an individual, by and through his attorneys of record, Douglas E. Stall of the law firm LATHAM, STALL, WAGNER, STEELE & LEHMAN, P.C., located in Tulsa, Oklahoma, and K. Michael Jennings of MCGAVICK GRAVES, P.S., located in Tacoma, Washington, and brings this action against the Defendants for defamation; false light invasion of privacy; intrusion into seclusion invasion of privacy; intentional infliction of emotional distress; negligent infliction of emotional distress; and negligence. In support of this Complaint, Dr. Brain alleges and states as follows:

I. Parties, Jurisdiction and Venue

1. Contemporaneously herewith, attorney Douglas E. Stall is requesting permission through attorney Mike Jennings to practice before this honorable Court via a Motion Pro Hac Vice in the above-entitled case.

ORIGINAL

**MCGAVICK
GRAVES**

A Professional Services Corporation

1102 Broadway, Suite 500 • Tacoma, Washington 98402

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1 2. George C. Brain, D.D.S., ("Dr. Brain") is a resident of Pierce County and a citizen of
2 the State of Washington.

3 3. Dr. Brain is a dentist with his principal place of business in the City of Tacoma,
4 Pierce County, and State of Washington.

5 4. Dr. Brain is not a public figure.

6 5. Chris Halsne is a resident of Snohomish County, State of Washington. Many of the
7 acts complained of herein by Defendant Halsne occurred in Pierce County.

8 6. Defendant Halsne is employed as an "Eyewitness News Investigative Reporter" by
9 KIRO-TV, INC., Channel Seven.

10 7. KIRO-TV, INC., Channel Seven, Seattle, Washington, is liable for the acts of its
11 employee, Chris Halsne, under the doctrine of *Respondeat superior*.

12 8. KIRO-TV, INC., also known as KIRO TV Channel Seven, is a Washington
13 corporation with its principal place of business in the City of Seattle, King County, State of
14 Washington; and it broadcasts into the surrounding communities, including Pierce County,
15 State of Washington.

16 9. Pierce County, State of Washington, is a proper venue for this action.

17 II. Factual Background

18 10. Dr. Brain specializes in pediatric dentistry. The majority of his practice is devoted to
19 providing dental care to underprivileged children, many of whom have very severe dental
20 disease. Additionally, some of the children for whom Dr. Brain provides dental care suffer
21 from mental and emotional challenges ranging from mild to severe, and they are unable to
22 find dental care from other dentists in Tacoma and the surrounding region. Since beginning
23 his dental practice in 1972, Dr. Brain and his staff, some of whom have worked alongside
24 Dr. Brain for nearly twenty-five years, have served the citizens of Washington by providing

1 excellent dental care to more than 300,000 children; many for charity only. Dr. Brain
2 provides a necessary and valuable service to the citizens of Tacoma, Washington.

3 11. In January 2007, Defendants' photographer entered Dr. Brain's dental practice under
4 subterfuge and false pretenses with a camera hidden in his briefcase. This photographer
5 misrepresented to Dr. Brain's receptionist that he was waiting on his girlfriend to bring her
6 son to Dr. Brain's office for dental work. In furtherance of his lie, the photographer gained
7 access to Dr. Brain's examination area. While there, using his briefcase camera,
8 Defendant's photographer surreptitiously videotaped Dr. Brain and his staff providing dental
9 care to children. Defendants then published portions of said videotape without the consent
10 of anyone depicted in the video including Dr. Brain and his patients.

11 12. Several days later, Defendant Halsne called Dr. Brain's receptionist demanding an
12 opportunity to interrogate Dr. Brain about allegations of child abuse and assault.

13 13. The Defendant's conduct outlined in the preceding paragraph violated all bounds of
14 decency and professionalism; and violated the privacy of Dr. Brain, his staff and the children
15 he was treating.

16 14. On or about February 4, 2007, and then again on or about February 6, 2007, and
17 then again on or about February 21, 2007, the Defendants aired false and defamatory
18 stories concerning Dr. Brain and his dental practice.

19 15. On or about February 5, 2007, and then again on or about February 7, 2007, and
20 then again on or about February 22, 2007, the Defendants placed on their Internet website,
21 KIROTV.com, transcripts and the video from the false and defamatory stories they
22 broadcasted about Dr. Brain.

23 16. The stories aired and published by Defendants contained false, misleading, and
24 defamatory statements; the stories were made false by the omission of material facts

1 concerning Dr. Brain, his dental practice, and the personnel he employs; and the gist of the
2 stories when viewed as a whole is false.

3 17. Specifically, the Defendants made the following false, misleading, half-truth, and
4 defamatory statements about Dr. Brain.

5 18. From the February 4, 2007 broadcast:

6 a. "For nearly 20 years, children have been accusing Tacoma dentist Dr.
7 George C. Brain of assaulting them, threatening them, choking off their airways."

8 b. "Despite that . . . he remains one of the highest paid, tax-funded dentists in
9 Washington."

10 c. "The complaint file against Dr. Brain is substantial, but we found an equally long
11 history of inaction from those in charge of protecting young patients.

12 d. "Dr. George Brain pulls teeth and fills cavities for low-income children, but he
13 doesn't do it for charity."

14 e. ". . . listening to her two children cry. Their tears surprised her because 5-year-
15 old Cameron was just supposed to get a small cavity filled."

16 f. "Courtney, 8, was only scheduled for sealants."

17 g. ". . . the unauthorized work."

18 h. "Cameron had a face and neck notched with bloody cuts, then – within hours – a
19 massive infection appeared inside the little boy's mouth."

20 i. ". . . but isn't the first mother to wonder what happened in this dentist's chair."

21 j. ". . . uncovered nine criminal complaints filed with Tacoma police, all accusing Dr.
22 George Brain of assaulting children while performing dental work."

23 k. ". . . causing breathing problems and a cut lip."
24

1 l. "The first eight complaints against Dr. Brain did not turn into charges. The ninth
2 one did: assault of a child in the second degree."

3 m. "In 2003, a young girl complained Dr. Brain choked her and pulled two teeth
4 without permission."

5 n. "But Robnett adds, despite Dr. Brain's thick file, her office couldn't get a
6 conviction."

7 o. "The state licensing board . . . lightly disciplined Dr. Brain."

8 p. "We did, however, discover a little insight into what Dr. Brain thinks about the
9 repeated accusations against him."

10 q. "For the record, we can't find evidence that any of the nine criminal complaints
11 sued or collected a dime from Dr. Brain for their alleged mistreatment."

12 19. From the February 6, 2007 broadcast:

13 a. "Children have repeatedly complained over the years that Brain choked,
14 shoved, assaulted or grabbed them by the throat."

15 b. "Halsne pins down the Dental Board about its handling of Dr. Brain."

16 c. "Dr. Brain's resume includes nine police reports from kids who claim to have
17 been assaulted during dental work."

18 d. "Those resulted in a charge of assault on a child, but no criminal convictions."

19 e. "we dig inside Dr. Brain's licensure file to discover more accusations of
20 assaultive or threatening behavior."

21 f. "Pediatric dentist Dr. George Brain has been under scrutiny for professional
22 misconduct for years."

1 g. "Records at the Dental Quality Assurance Commission show seven
2 complaints of assault, abuse or verbal threats towards children. One led to disciplinary
3 action."

4 h. "The board assigned Dr. Brain to a 'monitoring' program and required an
5 'anger management evaluation.'"

6 i. "... Dr. Brain has been on their radar and they're watching him."

7 j. "A complaint on file with the dental board this week alleges Dr. Brain
8 overmedicated Courtney, yanked a tooth, and filled a cavity in another tooth without
9 parental permission."

10 k. "It also accuses Dr. Brain of creating scratches on Cameron's face and
11 causing a grossly infected lip."

12 l. "Dr. Brain made around \$1.5 million last year from the state in return for
13 treating low-income children and their families."

14 m. "Does a patient who doesn't have any money, who has to use a state welfare
15 voucher to get that work done – should they receive any lesser care than someone with
16 premium insurance?"

17 n. "Dozens of people have called and e-mailed Tuesday, wanting to tell KIRO
18 Team 7 Investigators about their treatment inside Dr. Brain's office."

19 20. From the February 21, 2007 broadcast:

20 a. "Accusations of abuse against a Tacoma dentist continue to pour in...."

21 b. "That's on top of the seven previous licensing board investigations accusing
22 Dr. Brain of assault or threatening behavior involving children patients."

23 c. "In 2006, one of those cases turned into a disciplinary action: 'probation' and
24 a call for Dr. Brain to get an 'anger management evaluation'."

1 d. "...Chris Halsne digs deep into a state system that pays millions of your tax
2 dollars to dentists, like Dr. Brain, already in trouble for bad behavior."

3 e. "Dentists accused of using dirty tools, choking patients, or breaking off teeth
4 below the gum line are the kinds of dentists you're most likely to get if you're poor."

5 f. "...a high percentage of disciplined dentists also rack up big money treating
6 welfare patients...."

7 g. "At 9 years old, Jayme Hutt sat alone in Tacoma dentist Dr. George Brain's
8 chair, hoping someone would rescue her."

9 h. "...Jayme came out with a badly swollen lip and deep, red marks on her
10 neck."

11 i. "Jayme's mom, Teresa, took her complaint to the state Dental Board after
12 failing to get the dentist criminally prosecuted for assault."

13 j. "Despite being sanctioned by the State Dental Board for his handling of
14 Jayme's case, Dr. Brain kept on practicing and kept on asking the state to send him welfare
15 patients, lots of welfare patients."

16 k. "...Dr. Brain billed the state for treating more than 20,000 low-income children
17 in 2006 alone."

18 l. "...Washington's top 20 tax-funded dentists, something jumped off the sheet:
19 four have been disciplined by the dental board, sanctioned, or put on probation. That's 20
20 percent of them."

21 m. "When you look at the list of all licensed dentists in Washington, less than 5
22 percent have disciplinary actions in their files."
23
24

1 n. "...as one state agency, the Department of Health, sanctions dentists for bad
2 behavior, another state agency, DSHS, hires those same disciplined dentists to perform
3 welfare work on low income children."

4 o. "...that's a weak excuse that points to a broken system in terrible need of
5 repair."

6 p. "Dr. Brain has repeatedly denied our request for an interview, but he will be
7 talking to investigators from the dental board soon."

8 21. The Defendants had a duty to verify and accurately report the information they
9 published to the public about Dr. Brain, but they failed in that duty. Consequently, Dr. Brain
10 has suffered damages.

11 **III. First Cause of Action -**
12 **Defamation**

13 22. Plaintiff hereby incorporates the allegations of paragraphs one through twenty-two.

14 23. The Defendants are liable to Dr. Brain for defamation because the stories about
15 which Dr. Brain is complaining were demonstrably false, misleading, half true, and
16 defamatory.

17 24. The Defendants are liable to Dr. Brain for defamation because the substance of the
18 stories about which Dr. Brain is complaining made a substantial danger to Dr. Brain's
19 reputation apparent to Defendants.

20 25. The Defendants are liable to Dr. Brain for defamation because the stories about
21 which Dr. Brain is complaining created a provably false impression by omitting material
22 facts and, thereby, resulted in defamation by implication.

23 26. The Defendants are liable to Dr. Brain for defamation because they also juxtaposed
24 a series of facts and half-truths so as to imply a defamatory connection between them.

1 27. The Defendants are liable to Dr. Brain for defamation because the gist, sting and/or
2 meaning reasonably conveyed by the stories published by the Defendants, when
3 considered as a whole, are false and defamatory.

4 28. The Defendants are liable to Dr. Brain for defamation because they were negligent.

5 29. The Defendants are liable to Dr. Brain for defamation because they acted with
6 reckless disregard for the truth, had an actual awareness of the probable falsity of the
7 defamatory statements, and/or in fact entertained serious doubts about the truth of the
8 statements published.

9 30. The Defendants are liable to Dr. Brain for defamation because the stories about
10 which Dr. Brain is complaining are not privileged communications.

11 31. The Defendants are liable to Dr. Brain for defamation because they purposefully
12 avoided the truth by failing to properly investigate and report the facts before they aired their
13 "investigative reports."

14 32. The Defendants' actions in publishing these defamatory statements about Dr. Brain
15 have exposed him to public hatred, contempt, ridicule, obloquy, opprobrium, and mental
16 and physical injury, and they have deprived him of public confidence.

17 33. As the direct and proximate result of Defendants misconduct, Dr. Brain has suffered
18 damages as more fully outlined below.

19 **IV. Second Cause of Action –**
20 **False Light Invasion of Privacy**

21 34. Plaintiff hereby incorporates the allegations of paragraphs one through thirty-three.

22 35. The Defendants are liable to Dr. Brain for false light invasion of privacy.
23
24

1 36. The Defendants gave publicity to a matter that would be highly offensive to a
2 reasonable person, and was highly offensive to Dr. Brain; and the publicity was substantially
3 false.

4 37. The Defendants recklessly disregarded the falsity of the published matter concerning
5 Dr. Brain.

6 38. The Defendants recklessly disregarded the false light in which Dr. Brain would be
7 placed when they published the stories at issue.

8 39. The Defendants' actions placed Dr. Brain in a false light before other residents of
9 the State of Washington, Dr. Brain's peers, and the public at large.

10 40. As the direct and proximate result of Defendants misconduct, Dr. Brain has suffered
11 damages as more fully outlined below.

12 **V. Third Cause of Action –**
13 **Invasion of Privacy by Intrusion into Seclusion**

14 41. Plaintiff hereby incorporates the allegations of paragraphs one through forty.

15 42. The Defendants are liable to Dr. Brain for intrusion into seclusion invasion of privacy.

16 43. The Defendants intentionally intruded upon the solitude or seclusion of Dr. Brain, his
17 staff and his patients while Dr. Brain was performing dental procedures on patients.

18 44. The Defendants' intrusion was substantial.

19 45. The manner of Defendants' intrusion was highly offensive and objectionable to a
20 reasonable person, including Dr. Brain.

21 46. As the direct and proximate result of Defendants misconduct, Dr. Brain has suffered
22 damages as more fully outlined below.

23 **VI. Fourth Cause of Action –**
24 **Infliction of Emotional Distress**

47. Plaintiff hereby incorporates the allegations of paragraphs one through forty-six.

1 48. The Defendants are liable to Dr. Brain for intentional and negligent infliction of
 2 emotional distress because their conduct in obtaining and publishing the false and
 3 defamatory statements about Dr. Brain without properly investigating, confirming and
 4 reporting the true facts was extreme and outrageous so as to go beyond all possible bounds
 5 of decency and would be considered atrocious and utterly intolerable in a civilized society

6 49. As the direct and proximate result of Defendants misconduct, Dr. Brain has suffered
 7 damages as more fully outlined below.

8 **VII. Fifth Cause of Action –**
 9 **Negligence**

10 50. Plaintiff hereby incorporates the allegations of paragraphs one through forty-nine.

11 51. The Defendants are liable to Dr. Brain for negligence when they published the
 12 stories about which Dr. Brain complains.

13 52. The Defendant KIRO is liable to Dr. Brain for negligence because it negligently hired,
 14 supervised and retained Defendant Halsne.

15 53. As the direct and proximate result of Defendants misconduct, Dr. Brain has suffered
 16 damages as more fully outlined below.

17 **VIII. Damages**

18 54. As the direct and proximate result of Defendants' misconduct, Dr. Brain has suffered
 19 adverse effects, injuries and damages, including but not limited to:

- 20 a. Severe emotional distress;
- 21 b. Embarrassment;
- 22 c. Humiliation;
- 23 d. Public hatred, ridicule, contempt, and obloquy;
- 24 e. Loss of income due to loss of patients, patient referrals, and cancellation of appointments;

1 f. Injury to his reputation and good standing in the community;

2 g. Disruption in his practice due to the adverse impact that the defamatory
3 stories are having on Dr. Brain himself, his patients, and his office staff; and

4 h. Physical and mental injury.

5 IX. Punitive Damages

6 55. Dr. Brain is entitled to punitive damages because the Defendants acted with malice
7 and in reckless disregard of the truth of the statements when they published the false and
8 defamatory statements about Dr. Brain. Furthermore, KIRO-TV knew or reasonably should
9 have known about Halsne's propensity to fail to properly investigate the true facts of a story;
10 his willingness to use false and deceptive practices during investigations; his willingness to
11 ignore the truth, and present only half-truths and lies; his willingness to invent a "story" and
12 then juxtapose carefully chosen facts and half-truths in order to craft a story to support his
13 tale; his willingness to defame others and portray them in a false light all to advance his own
14 career; and his propensity to act with malice while investigating and reporting stories. The
15 evidence supporting these assertions was known to Defendant KIRO TV when it hired
16 Halsne because of the case: *H.L. Mitchell, v. Griffin Television, LLC and Chris Halsne*; 60
17 P.3d 1058, 2002 OK CIV APP 115 [CJ 99-16, Creek County, Oklahoma].

18 X. Prayer for Relief

19 1. For judgment against the Defendants, and each of them, in an amount to be proven
20 at trial;


21 2. For Plaintiff's attorney fees and costs necessarily incurred in the prosecution of this
22 action;

23 3. For punitive damages in an amount calculated to punish the Defendants for acting
24 recklessly, intentionally, and/or with actual malice toward Dr. Brain; and

1 4. For such other and further relief as the court deems just and equitable under the
2 premises.

3 Respectfully submitted this 16 day of March, 2007

4 McGAVICK GRAVES, P.S.

5
6 By: 
7 K. Michael Jennings, WSBA #8076
8 Of Attorneys for Plaintiff

8 Attorney's for Plaintiff:

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