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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SEAN D. REYES, an individual,

Plaintiff,

vs.

IT'S NOW OR NEVER, INC., a Nevada
corporation; JOHN SWALLOW, an
individual; FRIENDS OF JOHN
SWALLOW, a Utah Candidate Committee;
and DOES 1-15.

Defendants.

COMPLAINT

(JURY DEMAND)

Case No. _____

Judge _____

Plaintiff Sean D. Reyes hereby complains of It's Now or Never Inc., John Swallow,
Friends of John Swallow and Does 1-15 (collectively the "*Defendants*") and alleges as follows:

PARTIES

1. Plaintiff Sean D. Reyes (“Plaintiff” or “Reyes”) is an individual residing in Salt Lake County in the State of Utah.

2. Defendant It’s Now or Never, Inc. (“INON”) is an Independent Expenditure-Only (Super PAC) Committee registered in the State of Nevada that has done business in Salt Lake County in the State of Utah.

3. Defendant John Swallow (“Swallow”) is an individual residing in Salt Lake County in the State of Utah.

4. Defendant Friends of John Swallow (“FOS”) is a Candidate Committee registered with the State of Utah and with its principal place of business in Salt Lake County in the State of Utah.

5. Does 1–15 are individuals and/or entities whose identities are currently unknown to Plaintiff who may be liable for the damages alleged herein. Plaintiff will amend this Complaint to identify such parties as their identities become known.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102.

7. Venue is appropriate pursuant to Utah Code Ann. § 78B-3-307.

8. Personal jurisdiction exists over each of the Defendants because: (a) the Defendants reside in Utah; (b) the Defendants have principal places of business in Utah; and/or

(c) the Defendants conducted business within Utah or on behalf of Utah residents or entities pursuant to Utah Code Ann. § 78B-3-205.

GENERAL ALLEGATIONS
(Background)

9. Plaintiff Reyes and Defendant Swallow are candidates running to become the nominee for the Republican Party of Utah to run in the general election for Utah Attorney General.

10. Defendant FOS is the Candidate Committee for Defendant Swallow that is authorized to, among other things raise and spend money for the candidate, under Defendant Swallow's authority and control. Defendant FOS does not act independently of and without authorization from Defendant Swallow.

11. Defendant INON is a Super PAC, formed to receive and make donations on behalf of political candidates and causes. Defendant INON is registered in Nevada. On information and belief, INON was formed only recently.

12. On information and belief, Defendant INON has close ties to Defendants Swallow, FOS and/or associates, team members, advisors, donors or other parties assisting or participating in the campaign for Defendant Swallow.

13. Reyes is an attorney licensed to practice with the Utah State Bar who, among other local and national awards, was selected as the National Outstanding Young Lawyer for the United States in 2008 by the American Bar Association.

14. After a close contest at the State Nominating Convention on April 20, 2012, Reyes and Swallow were forced into a Primary election to be decided on June 26, 2012.

15. Reyes and Swallow were locked in an extremely close race which polls, surveys and political observers called a dead heat as recently as early to mid-June.

16. Around that time, beginning on or around June 14, 2012, INON purchased radio and television ads with local Utah stations accusing Reyes of unethical and illegal conduct related to a complaint filed with the Utah Lieutenant Governor's Office that was dismissed and which cleared Reyes of any wrongdoing. The attack ad is sensationalized, dramatic and makes several false and misleading characterizations as set forth in more detail below.

17. Subsequently, INON purchased time for an additional radio ad that purported to represent an incident of "road rage" and called into question Reyes' qualification to serve as Utah Attorney General.

18. INON takes credit for all the ads within the content of the ad itself.

19. In the past few weeks alone, INON has spent approximately \$140,000 to purchase negative ads intended to damage Reyes' character and influence voters not to vote for him in the Primary Election to take place June 26, 2012.

20. These negative hit ads have damaged Reyes in a number of ways.

21. They have cast Plaintiff Reyes in a false light, impugned his integrity, damaged his reputation among the voters and public at large, have resulted in increased support for his opponent, and misled numerous voters into early voting for his opponent.

Lieutenant Governor's Complaint

22. On or around April 4, 2012, the Utah Lieutenant Governor's Office (the "LGO") received a complaint from an individual named Kelly Smith.

23. In his complaint, Mr. Smith alleges that Reyes had received a \$5,000 campaign contribution in 2010 from an entity Reyes helped form called the Utah Freedom Defense PAC without making requisite reports for his campaign for Utah Attorney General.

24. On April 4, Reyes' Campaign clarified with the LGO that the \$5,000 contribution was a reimbursement and not a contribution.

25. Reyes' Campaign further clarified that it could not have been a campaign contribution to Reyes because he had not begun campaigning at that point in time.

26. In fact, Reyes did not start his campaign for Utah Attorney General until 2011.

27. On information and belief, the complaint was a political stunt directed or otherwise operated by Defendants FOS, Swallow and/or their consultants, associates or team members, to create controversy weeks before the State Nominating Convention.

28. On April 6, 2012, forty-eight (48) hours after receiving the complaint, the LGO's office officially issued a written statement that the case was closed.

29. The LGO's office accepted the clarification by Reyes' Campaign and no amended report for the Utah Freedom Defense PAC was required.

30. In the LGO's statement, no wrongdoing was found on the part of Reyes, his campaign or the Utah Freedom Defense PAC.

31. The LGO's office has made official public comments through its Director of Elections, Mark Thomas, that no violations occurred.

GENERAL ALLEGATIONS
(Defamatory and False Light Statements)

Radio Attack Ad: Alleged Campaign Violations

32. In the attack ad related to the LGO Complaint, a man and a woman discuss the Attorney General's race, expressing concerns about Reyes and saying he has issues and that endorsements for his opponent are made with good reason.

33. The man's voice then says that "Reyes admitted he complied to (sic) making a \$5,000 **under the table, misreported** cash payment to his political consultant, Comprehensive Solutions."

34. He then says, "Here is Sean Reyes getting **caught** on KUTV News." A clip airs with some editing wherein Reyes explains that he made a cash payment.

35. The woman's voice then interjects, "Reyes **admitted** he made a \$5,000 cash payment? That's completely **unethical**. Play that again."

36. The clip of Reyes is replayed.

37. The woman then states: "A candidate for Attorney General who has **ethics issues** with his own campaign?"

38. The man's voice closes with: "Sean Reyes, not the ethics we need from an Attorney General."

39. INON takes credit for the ad in the closing comments.

40. The phrase **under the table** has a plain meaning of secret and illegal activity, is false, defamatory, defamatory per se and paints Reyes in a false light.

41. The term **misreported** is plainly false and defamatory because Reyes was not required to report how or to whom he made a payment. It was the reimbursement that needed to be reported. It also paints Plaintiff in a false light.

42. The use of the word **caught** in the context of the commercial is both false, defamatory and paints Reyes in a false light.

43. Use of the word **admitted** in the context of the commercial and in conjunction with phrases like **under the table** is misleading and paints Reyes in a false light.

44. The allegation that Reyes' conduct is **unethical** is false, defamatory, defamatory per se and paints Plaintiff in a false light.

Television Attack Ad: Alleged Campaign Violations

45. The television attack ad run by INON is nearly identical to the radio ad described above.

46. There is no woman's voice but there are additional phrases used by the man's voice stating, "For Attorney General, Sean Reyes has shown he has had some **major ethics issues.**" And "Sean Reyes, **skirting the campaign laws, not the ethics** we need for Attorney General."

47. The term skirting the campaign laws has a plain meaning of secret and illegal activity, is false, defamatory, defamatory per se and paints Reyes in a false light.

48. The phrases **major ethics issues** and **not the ethics** as used in the context of the attack ad and in conjunction with the other phrases described above like **under the table** and **skirting campaign laws** are false, defamatory, defamatory per se and paint Reyes in a false light.

Radio Attack Ad: “Road Incident”

49. Reyes was the subject of a Salt Lake City Weekly Article in February of 2008 to highlight his selection as the first-ever National Outstanding Young Lawyer of the Year for 2007-08. The interview by the writer was conducted in late 2007 and into the early part of 2008.

50. In this radio attack regarding an incident that took place in 1993, a woman’s voice begins by saying “Thinking about the Attorney General’s Race?” and continues by stating, “In February 2008, the Salt Lake City Weekly ran a cover story featuring candidate Reyes **bragging about recklessly committing road rage**. Here is an excerpt from the article beginning with Reyes chasing down a car stopped at a light.”

51. A man’s voice then dramatically impersonates Reyes. ““Get out!” Sean Reyes screamed, ‘get out of there now!’ The occupants punched down the doorlocks. Their assailant was beside himself with rage. Sean Reyes snapped off their radio antenna, jumped on their car hood and repeatedly whipped at their wind screen with a metal strip. The three teenagers looked up at him with ashen faces. Before the light turned green, Sean Reyes jumped off the hood, flung the antenna at the car in disgust and stormed back to his car. Quote: ‘It’s not like I was going to kill anybody,’ Sean Reyes recalled.”

52. The woman's voice returns with "road rage? Sean Reyes? That's not the temperament we'd expect from Utah's Next Attorney General. **To read the rest of the newspaper story, search the internet for Sean Reyes and Road Rage.**" She finishes with an acknowledgment, "Paid for by It's Now or Never Incorporated. Not authorized by any candidate or candidate's committee."

53. Because the commercial never indicates the alleged incident took place in 1993, when Plaintiff was 22 years old, because it selectively leaves out passages of the account like the number, age and size of the car occupants, and because it doesn't reference any of the rest of the article, the whole incident as portrayed is misleading, paints Reyes in a false light.

54. The phrase **bragging about recklessly committing road rage** is false, defamatory and paints Reyes in a false light. For example, Reyes never brags in the article or elsewhere about the alleged incident.

55. By searching for "Sean Reyes" and "Road Rage" as suggested in the attack ad, popular search engines (e.g., Bing) will list as its first result, a link to a video showing a thuggish looking man in the alleyway smashing a car with crowbar or other object and jumping on top of the car with Sean Reyes's voice played in the background saying "I'm that Fighter for Utah", further painting Reyes in a false light.

GENERAL ALLEGATIONS
(Civil Conspiracy)

56. On information and belief, INON received instructions to create and purchase air time for the attack ads directly or indirectly from the other Defendants and/or persons or entities they control.

57. On information and belief, INON received funding to create and purchase air time for the attack ads directly or indirectly from the other Defendants and/or persons or entities they control

58. On information and belief, Defendants were also involved with trying to destroy the reputation of Reyes through use of other devices such as social media, including YouTube videos, to disseminate false and misleading characterizations and statements about Reyes.

FIRST CAUSE OF ACTION
(Defamation Per Se – Defendant INON)

59. Reyes re-alleges and incorporates the allegations set forth above as though fully set forth herein.

60. INON has published false and defamatory statements about Reyes to the public, including the listeners and viewers of the stations that played the attack ads.

61. INON knew that the statements were false when they were made.

62. INON intentionally published the defamatory statements, knowing that they were false or in reckless disregard for the truth or falsity of such statements.

63. INON was motivated to publish the statements out of ill will, spite, and actual malice.

64. INON knowingly made the false statements to interfere with Reyes' relationship with voters and the general public.

65. INON knowingly made the false statements in an attempt to destroy Plaintiff's reputation and good name with the public and to influence the Primary election.

66. The defamatory statements were not privileged.

67. The defamatory statements, including at least those characterizing Reyes' actions as being "unethical" and "under the table", are defamatory per se because they allege conduct that is incompatible with the exercise of a lawful campaign, business, trade, profession or office and because they allege conduct that is or may be criminal in nature.

68. Reyes has been damaged in the estimation of the community, in the estimation of voters and in the estimation of present and future business relationships.

69. Reyes is therefore entitled to a judgment against INON as set forth below in the Prayer for Relief.

SECOND CAUSE OF ACTION
(Defamation – Defendant INON)

70. Reyes re-alleges and incorporates the allegations set forth above as though fully set forth herein.

71. INON has published false and defamatory statements about Reyes to the public, including the listeners and viewers of the stations that played the attack ads.

72. INON knew that the statements were false when they were made.

73. INON intentionally published the defamatory statements, knowing that they were false or in reckless disregard for the truth or falsity of such statements.

74. INON was motivated to publish the statements out of ill will, spite, and actual malice.

75. INON knowingly made the false statements to interfere with Reyes' relationship with voters and the general public.

76. INON knowingly made the false statements in an attempt to destroy Reyes' reputation and good name with the public and to influence the Primary election.

77. The defamatory statements were not privileged.

78. Reyes has been damaged in the estimation of the community, in the estimation of voters and in the estimation of present and future business relationships.

79. Reyes is therefore entitled to a judgment against INON as set forth below in the Prayer for Relief.

THIRD CAUSE OF ACTION
(False Light – Defendant INON)

80. Reyes re-alleges and incorporates the allegations set forth above as though fully set forth herein.

81. INON, through its attack ads, has publicized false and/or misleading statements and characterizations of Reyes that place him in a false light with the public, the business community and voters.

82. The false and/or misleading statements, mischaracterizations and false light in which Reyes was placed are highly offensive to a reasonable person.

83. INON knew that the statements it published were taken out of context, false and/or were mischaracterizations when they were made.

84. INON intentionally published the statements, knowing that they were taken out of context, false and/or otherwise misleading in reckless disregard for the truth, falsity or accuracy of such statements and the false light in which Reyes would be placed.

85. INON was motivated to publish the statements out of ill will, spite, and actual malice.

86. INON knowingly made the misleading statements to interfere with Reyes' relationship with voters and the general public.

87. INON knowingly made the false and/or misleading statements in an attempt to destroy Reyes' reputation and good name with the public and to influence the Primary election.

88. Reyes has been damaged in the estimation of the community, in the estimation of voters and in the estimation of present and future business relationships.

89. Reyes is therefore entitled to a judgment against INON as set forth below in the Prayer for Relief.

FOURTH CAUSE OF ACTION
(Civil Conspiracy – All Defendants)

90. Reyes re-alleges and incorporates the allegations set forth above as though fully set forth herein.

91. Defendants, and/or those over whom they had control, worked in concert to create, fund and air the attack ads.

92. The purpose of the conspiracy was to damage the reputation of Reyes among potential voters in an effort to secure a victory for Swallow in the Primary Election.

93. Defendants, and/or those over whom they had control, understood the purpose of the conspiracy, agreed with it, gave approval for it, whether or not all Defendants were involved in the execution of it and the making, funding or purchasing of the attack ads.

94. Defendants, and/or those over whom they had control, agreed to the use of attack ads to damage the reputation of Reyes. The use of the attack ads was unlawful in that they were defamatory and cast Reyes in a false light.

95. Defendants used various devices to veil the participation of one or more of the conspirators.

96. As a direct result of the conspiracy, Reyes has been damaged in the estimation of the community, in the estimation of voters and in the estimation of present and future business relationships.

97. Reyes is therefore entitled to a judgment against Defendants as set forth below in the Prayer for Relief.

98. As to Defendants conduct in all of the Causes of Action, set forth herein, Reyes has suffered actual, proximate, special and consequential damages as a result of Defendants' actions.

99. Reyes has also suffered significant and real damage to its reputation as a result of Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Reyes prays for judgment, damages, and other legal and equitable relief as follows:

1. On its causes of action, for an award of damages in an amount to be determined at trial;
2. For punitive damages in an amount to be determined at trial; an award of attorneys' fees and costs; and
3. For such other legal and equitable relief as this Court may deem just and proper.

JURY DEMAND

Reyes hereby requests that this action be set for trial by jury.

DATED this 22nd day of June 2012.

PIA ANDERSON DORIOUS REYNARD & MOSS



Joseph G. Pia

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Plaintiff's Address:

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