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8 INVESTIGATIVE NEWSOURCE and
LORETTA HEARN

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO, CENTRAL
12

13 SAN DIEGANS FOR OPEN
GOVERNMENT; and DOES 1 through 10,

14 Plaintiffs and Petitioners,

15 v.

16 SAN DIEGO STATE UNIVERSITY;
17 CALIFORNIA STATE UNIVERSITY;
SAN DIEGO STATE UNIVERSITY
18 FOUNDATION; and DOES 11 through
19 100,

20 Defendants and Respondents.

Case No. 37-2015-00011951-CU-MC-CTL

**DECLARATION OF LORETTA
HEARN IN SUPPORT OF
DEFENDANTS LORETTA HEARN
AND INVESTIGATIVE NEWSOURCE
MOTION TO STRIKE COMPLAINT
PURSUANT TO CODE OF CIVIL
PROCEDURE § 425.16**

[Notice of Motion and Motion, Declarations,
Request for Judicial Notice, Exhibit Appendix,
and Proposed Order filed concurrently]

Hearing

Date: August 21, 2015
Time: 9:00 a.m.
Dept: C-67

Judge: Hon. Eddie C Sturgeon

The Hon. Eddie C Sturgeon, Dept. C-67

[Complaint Filed: April 9, 2015]

1 support from the nonprofit San Diego State University Foundation (the “**Foundation**”). In
2 light of its university setting, *inewsourc*e also works to teach, train, and mentor journalism
3 students.

4 6. *inewsourc*e began working informally with KPBS in 2010 to air some
5 of *inewsourc*e’s early stories. The partnership between *inewsourc*e and KPBS began to
6 solidify when *inewsourc*e’s data reporter began working with reporters at KPBS.

7 7. The most high-profile project produced jointly during the beginning
8 of the partnership between *inewsourc*e and KPBS was a study of the resurgence of
9 whooping cough, which had reached epidemic proportions in 2010. *inewsourc*e reporters,
10 particularly *inewsourc*e’s data expert, teamed up with a reporter for KPBS to investigate
11 who was getting sick and why. This project was aired on KPBS radio, online, and as a TV
12 documentary in December 2010. It was published on watchdoginstitute.org, *inewsourc*e’s
13 website at the time, as well. The KPBS landing page for the project can be found at
14 <http://www.kpbs.org/news/envision/whoopingcough/>, and is attached to the Appendix of
15 Exhibits as **EXHIBIT 2**. A sample article, titled “Investigating Whooping Cough” and
16 published on December 16, 2010, is attached to the Appendix of Exhibits as **EXHIBIT 3**.

17 8. *inewsourc*e and KPBS formalized their partnership in the fall of 2011.
18 Their informal reporting partnership had worked well, and both organizations believed, in
19 light of their situations in the fall of 2011, that it made sense to formalize their
20 arrangement at that time.

21 9. KPBS was finishing a new newsroom and beginning a nightly
22 television news show. To that end, it wanted more content, particularly investigative
23 reporting, for its many platforms.

24 10. At the same time, *inewsourc*e was looking for a respected, reliable
25 audience for its burgeoning investigative news content.

26 11. As part of their more formal arrangement, KPBS agreed to give
27 *inewsourc*e space in its newsroom, so *inewsourc*e staff could be close to KPBS editors,
28 reporters, and producers for planning and collaborative opportunities. In exchange,

1 *inewsourc*e agreed to give KPBS all of its content for distribution on radio, TV, and the
2 web. A true and correct copy of the agreement (“**2012 Agreement**”) between *inewsourc*e
3 and KPBS, executed in 2012, is attached to the Appendix of Exhibits as **EXHIBIT 4**. I
4 negotiated the 2012 Agreement between *inewsourc*e and KPBS on behalf of *inewsourc*e. I
5 did not negotiate on behalf of KPBS and had no role whatsoever—much less authority,
6 decision-making power, or influence—on the KPBS side of the negotiations. Deanna
7 Mackey, KPBS station manager, and Suzanne Marmion, director of news and editorial
8 strategy, negotiated on behalf of KPBS. Other senior people at SDSU and the Foundation
9 approved the 2012 Agreement on behalf of KPBS, but I did not interact with them and do
10 not know their identities. Neither Deanna Mackey nor Suzanne Marmion has a financial
11 interest in *inewsourc*e. Moreover, at the time of the negotiations, I was not paid at all by
12 SDSU.

13 12. *inewsourc*e and KPBS updated their lease in 2015 (the “**2015 Lease**”),
14 a true and correct copy of which is attached to the Appendix of Exhibits as **EXHIBIT 5**,
15 and extended the 2012 MOU (the “**2015 Extension**”), attached to the Appendix of Exhibits
16 as **EXHIBIT 6**. I negotiated the 2015 Lease and 2015 Extension between *inewsourc*e and
17 KPBS on behalf of *inewsourc*e. I did not negotiate on behalf of KPBS and had no role
18 whatsoever—much less authority, decision-making power, or influence—on the KPBS
19 side of the negotiations. Deanna Mackey, KPBS station manager, and Suzanne Marmion,
20 director of news and editorial strategy, negotiated on behalf of KPBS. Other senior people
21 at SDSU and the Foundation approved the 2015 Lease and 2015 Extension on behalf of
22 KPBS, but I did not interact with them and do not know their identities. Neither Deanna
23 Mackey nor Suzanne Marmion has a financial interest in *inewsourc*e. Moreover, at the
24 time of the negotiations, I was an “adjunct professor” at SDSU and taught one class worth
25 three credits. I was paid for my time at the standard rate of pay for an adjunct, but
26 received no other benefits from SDSU.

27
28

1 13. Each of those three agreements makes clear that they are made
2 pursuant to a partnership between *inewssource* and KPBS for the purpose of newsgathering
3 and reporting.

4 14. The 2012 Agreement, attached to Plaintiff's Complaint, provides that
5 *inewssource*, in exchange for office space, will provide to KPBS (1) "Ten substantial data-
6 driven stories which include an Investigative Newsource interactive tool using data to
7 allow the audience to dig deeper into the story;" (2) "One Watchdog feature per month to
8 include a print version; [*inewssource*] reporters will be available as reasonably requested
9 (subject to professional commitments) by KPBS for broadcast coverage; feature content
10 shall be agreed upon in advance with the KPBS Director of News and Editorial Strategy;"
11 and (3) "Weekly data brief on a topic of interest to KPBS' audience; such data brief
12 content shall be agreed upon in advance with the KPBS Director of News and Editorial
13 Strategy." It further provides that *inewssource* "reporters will be available as reasonably
14 requested (subject to professional commitments) by KPBS for broadcast coverage which
15 could include features, packages, debriefs, and other programs."

16 15. The 2015 Lease, again attached to Plaintiff's Complaint, again makes
17 clear that *inewssource* and KPBS entered into a partnership for the purposes of
18 newsgathering and reporting. It specifically states, "SDSURF/KPBS shall lease office
19 space (Exhibit 1 attached) for [*inewssource*] based reporters to use to create investigative
20 news content."

21
22 ***inewssource* And KPBS's Joint Reporting**

23 16. Since *inewssource* and KPBS formalized their arrangement in October
24 2011, *inewssource* and KPBS have jointly created and/or distributed more than 285 stories.
25 KPBS publishes *inewssource* stories on its website on a page called joint investigations
26 desk, available at <http://www.kpbs.org/news/investigations-desk/> and a true and correct
27 copy of which is attached to the Appendix of Exhibits as **EXHIBIT 7**. *inewssource*
28 publishes content on the *inewssource.org* website.

1 17. As a practical matter, there are three ways in which *inewsourc*e and
2 KPBS generate news stories. First, in most cases, *inewsourc*e reporters do the reporting,
3 with input from KPBS editors. For example, “An Impossible Choice,” noted above, was
4 reported and produced entirely by *inewsourc*e. Similarly, an investigation into San Diego
5 attorney Cory Briggs, available at <http://inewsourc.org/cory-briggs-inewsourc/> and
6 attached to the Appendix of Exhibits as **EXHIBIT 8**, was completed by *inewsourc*e
7 reporters, with assistance from a KPBS videographer. Finally, “Money, Power and
8 Transit: An investigation,” an investigation into the North County Transit District,
9 available at <http://inewsourc.org/money-power-transit/> and attached to the Appendix of
10 Exhibits as **EXHIBIT 9**, was reported and produced by *inewsourc*e, with camera and
11 studio support from KPBS.

12 18. Second, in some cases, KPBS reporters do the reporting, and I, as
13 *inewsourc*e’s editor, am primarily responsible for editing. For example, I edited a March
14 24, 2014 story called “Balboa Park Centennial Committee Members Apologize For
15 Failure” written by KPBS reporter Angela Carone, available at
16 <http://inewsourc.org/2014/03/24/balboa-park-centennial-committee-members-apologize->
17 [for-failure/](http://inewsourc.org/2014/03/24/balboa-park-centennial-committee-members-apologize-) and attached to the Appendix of Exhibits as **EXHIBIT 10**. I similarly edited a
18 November 6, 2014 story called “Justice Elusive in San Diego State Sexual Assault Case,”
19 also written by KPBS reporter Angela Carone, available at
20 <http://inewsourc.org/2014/11/06/justice-elusive-in-san-diego-state-sexual-assault-case/>
21 and attached to the Appendix of Exhibits as **EXHIBIT 11**.

22 19. Finally, KPBS and *inewsourc*e reporters jointly report certain stories.
23 For example, the whooping cough investigation noted above was a collaboration between
24 then-KPBS reporter Joanne Faryon and *inewsourc*e data specialist Kevin Crowe. A
25 sample article called “KPBS And Watchdog Institute Investigation Questions Efficacy Of
26 Whooping Cough Vaccine” published on December 14, 2010, available at
27 <http://www.kpbs.org/news/2010/dec/14/kpbs-and-watchdog-institute-investigation->
28 [question/](http://www.kpbs.org/news/2010/dec/14/kpbs-and-watchdog-institute-investigation-), is attached to the Appendix of Exhibits as **EXHIBIT 12**.

1 20. In all cases, *inewsourc*e works closely with KPBS editors and
2 producers on specific content for the KPBS platforms. This includes appearances on
3 KPBS’s Evening Edition, Midday Edition, and Roundtable.

4 21. Moreover, *inewsourc*e and KPBS jointly promote the stories that are
5 jointly authored, produced, and/or distributed, and, pursuant to the agreement between
6 them, use one another’s trademarks. They additionally engage in joint fundraising.
7 *inewsourc*e does not use any marks belonging to KPBS or SDSU other than to promote
8 their shared content or partnership.

9
10 ***inewsourc*e’s Investigation Of Attorney Cory Briggs**

11 22. As noted above, *inewsourc*e investigated San Diego attorney Cory
12 Briggs. *inewsourc*e published a series of unflattering stories about Mr. Briggs and his
13 questionable practices, beginning on February 23, 2015 with a story called “Cory Briggs’
14 land deals raise ethical, legal questions,” available at
15 <http://inewsourc.org/2015/02/23/cory-briggs-land-deals-raise-ethical-legal-questions/> and
16 attached to the Appendix of Exhibits as **EXHIBIT 13**.

17 23. After more than a dozen stories about Briggs and his escapades, on
18 April 9, 2015 Plaintiff San Diegans for Open Government (“**SDOG**”)—which *inewsourc*e
19 has reported is controlled by Briggs—sued me, *inewsourc*e, KPBS, SDSU, and the
20 Foundation. SDOG did not serve me with the lawsuit in April.

21 24. On April 13, 2015, Brigg’s law firm served me and *inewsourc*e with a
22 subpoena in connection with another case seeking information related to a story that
23 *inewsourc*e published on February 26, 2015 called “Briggs opposes San Diego City
24 Attorney’s move to unseal transcript,” available at
25 [http://inewsourc.org/2015/02/26/briggs-opposes-san-diego-city-attorneys-move-to-](http://inewsourc.org/2015/02/26/briggs-opposes-san-diego-city-attorneys-move-to-unseal-transcript/)
26 [unseal-transcript/](http://inewsourc.org/2015/02/26/briggs-opposes-san-diego-city-attorneys-move-to-unseal-transcript/) and attached to the Appendix of Exhibits as **EXHIBIT 14**. Briggs
27 subsequently withdrew that subpoena on May 5, 2015, after a motion to quash was filed on
28 behalf of me and *inewsourc*e, but still did not serve me with this lawsuit.

1 25. It was not until *inewssource* continued to report on Briggs that I was
2 served via substitute service effective June 22, 2015. For example, one May 28, 2015
3 story titled, “Briggs-associated nonprofits flout state, federal laws,” available at
4 <http://inewssource.org/2015/05/28/briggs-associated-nonprofits-flout-state-federal-laws/>
5 and attached to the Appendix of Exhibits as **EXHIBIT 15**, devoted significant attention to
6 Plaintiff SDOG. The article noted, among other things:

- 7 • “The San Diego City Attorney’s Office is currently trying to persuade a
8 judge in Superior Court that one of Briggs’ most litigious nonprofits, San
9 Diegans for Open Government, is a ‘mere alter ego’ of its counsel.”
- 10 • “According to depositions and other court filings, Briggs and his firm hold
11 and maintain all the group’s corporate records; file and pay for its lawsuits,
12 its annual registration fees and filings with the state and federal
13 governments; control its **Facebook** and **Twitter** accounts; and collect all
14 settlements and judgments when the group prevails in court.”
- 15 • “Briggs Law Corp. has represented the nonprofit in every court case it has
16 filed with the exception of a suit against *inewssource* [this lawsuit], filed less
17 than two months after its series on Briggs began.”

18 26. I sincerely believe that this baseless lawsuit is pure retaliation and
19 part of a pattern and practice of harassment by Mr. Briggs and his significant other,
20 Sarichia Cacciatore, against me and *inewssource* for the news reporting activities
21 summarized above. I base this belief on the fact that since *inewssource* has published
22 articles about Mr. Briggs and Ms. Cacciatore, we have received the following, culminating
23 in this lawsuit:

- 24 i. Three meritless retraction demands, true and correct copies of
25 which, along with *inewssource*’s responses thereto, are attached to the Appendix of Exhibits
26 as **EXHIBIT 16**, **EXHIBIT 17** and **EXHIBIT 18**.

1 ii. The meritless subpoena noted above, which required a motion
2 to quash. A true and correct copy of both are attached to the Appendix of Exhibits as
3 **EXHIBIT 19.**

4 iii. A demand for documentation as to *inewsourc*e's § 501(c)(3)
5 nonprofit status, a true and correct copy of which, along with *inewsourc*e's response
6 thereto, are attached to the Appendix of Exhibits as **EXHIBIT 20.**

7 iv. This meritless lawsuit filed on April 9, 2015.
8 The very same day the lawsuit was filed, Mr. Briggs tried to attract media interest in doing
9 a story about his lawsuit in an attempt to portray *inewsourc*e in a negative light. I and
10 Brad Racino learned about the lawsuit from journalists who told us about Mr. Briggs'
11 contacting them in an attempt to interest them in writing about it. When we looked on the
12 Court's website on April 9, 2015, the complaint was not yet available, and Mr. Briggs had
13 not served it on us. On April 10, 2015, the complaint was available on the Court's
14 website.

15
16 **This Lawsuit**

17 27. As noted above, SDOG sued me, *inewsourc*e, KPBS, SDSU, and the
18 Foundation on April 9, 2015.

19 28. As I understand it, the crux of the allegations are that the agreements
20 between *inewsourc*e and KPBS (a department of SDSU) violated California's prohibitions
21 on self-dealing.

22 29. For example, paragraph 18(A), which is pled on information and
23 belief, alleges that the 2012 Agreement between *inewsourc*e and KPBS "was negotiated
24 and/or executed by one or more CSU, SDSU, and/or SDSUF officials or employees in
25 their official capacities who, at the time of the contract's negotiating and/or execution, had
26 a financial interest in the contract in violation of Government Code Section 1090 and other
27 conflict-of-interest laws, including but not limited to LORETTA HEARN." This
28 statement is false. I negotiated the 2012 Agreement between *inewsourc*e and KPBS on

1 behalf of *inewsourc*e. I did not negotiate on behalf of KPBS and had no role whatsoever—
2 much less authority, decision-making power, or influence—on the KPBS side of the
3 negotiations. Deanna Mackey, KPBS station manager, and Suzanne Marmion, director of
4 news and editorial strategy, negotiated on behalf of KPBS. Other senior people at SDSU
5 and the Foundation approved the 2012 Agreement on behalf of KPBS, but I did not
6 interact with them and do not know their identities. Neither Deanna Mackey nor Suzanne
7 Marmion has a financial interest in *inewsourc*e.

8 30. Similarly, paragraph 22(A), which again is pled on information and
9 belief, alleges that the 2015 Lease between *inewsourc*e and KPBS “was negotiated and/or
10 executed by one or more CSU, SDSU, and/or SDSUF officials or employees in their
11 official capacities who, at the time of the contract’s negotiating and/or execution, had a
12 financial interest in the contract in violation of Government Code Section 1090 and other
13 conflict-of-interest laws, including but not limited to LORETTA HEARN.” This
14 statement is false. I negotiated the 2015 Lease and 2015 Extension between *inewsourc*e
15 and KPBS on behalf of *inewsourc*e. I did not negotiate on behalf of KPBS and had no role
16 whatsoever—much less authority, decision-making power, or influence—on the KPBS
17 side of the negotiations. As with the 2012 Agreement, Deanna Mackey, KPBS station
18 manager, and Suzanne Marmion, director of news and editorial strategy, negotiated on
19 behalf of KPBS. Other senior people at SDSU and the Foundation approved the 2015
20 Lease and 2015 Extension on behalf of KPBS, but I did not interact with them and do not
21 know their identities. Neither Deanna Mackey nor Suzanne Marmion has a financial
22 interest in *inewsourc*e.

23 31. Finally, paragraphs 29(A) and 29(C), also pled on information and
24 belief, alleges that “LORETTA HEARN used her position as a lecturer or other instructor
25 at SDSU in order to secure approval of the 2012 Agreement, the 2014 Lease, or both for
26 the benefit of INVESTIGATIVE NEWSOURCE” and that I somehow receive “substantial
27 personal benefits from INVESTIGATIVE NEWSOURCE’s use of property owned by
28 CSU, SDSU, and/or SDSUF.” This, too, is false. As described above, the agreements

1 pertain to a partnership between *inewsourc*e and KPBS for the distribution of content
2 brought about by their mutual needs and I receive no personal benefit, aside from personal
3 satisfaction from good news reporting, therefrom.

4 I declare under penalty of perjury under the laws of the State of California
5 that the foregoing is true and correct.

6 Executed July 27, 2015, at San Diego, California.

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8 _____
9 Loretta Hearn

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