

# BAGATELOS LAW FIRM

ST. FRANCIS CIRCLE PROFESSIONAL CENTER CITY OF DANA POINT

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ATTORNEY AT LAW

October 26, 2018

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RECEIVED  
CITY CLERK'S DEPARTMENT

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Dana Point Taxpayers Association  
34145 Pacific Coast Highway, Suite 701  
Dana Point, CA 92629

Re: Notice Re Defamatory Statements In Violation of Civil Code Section 45

Dana Point Taxpayers Association:

This firm represents Sanford Edward. We are writing to advise you that your organization has disseminated a campaign flyer that includes false statements about Mr. Edward that are defamatory and may be subject to legal remedies. Such statements are in direct violation of California Civil Code Section 45. By this letter and on behalf of Mr. Edward, we demand that you immediately cease and desist from disseminating any further information that contains false statements, and further demand that you take steps to immediately notify the public about the falsity of the information you have already disseminated.

Enclosed is a copy of the campaign flyer that contains the defamatory false statements. In particular, the following statements are false:

1. The flyer states: “. . . EDWARD THREW A PRIVATE FUNDRAISER FOR HIS SLATE OF CANDIDATES.” This statement is a false assertion. Mr. Edward, in fact, did not sponsor or attend any such event, nor does he have a “slate of candidates.” To date, Mr. Edward has not publically or financially supported any of the eight candidates in the upcoming Dana Point City Council election.

2. The flyer states that “Dana Point sued Headlands developer Sanford Edward for fraud, breach of contract, and not paying \$553,000 in legal fees to the city.” It further states that “Edward wants his money back” and that “Electing city council candidate Charles Payne is his payday.” These statements are false, taken out of context, place Mr. Edward in a damaging light, imply that Mr. Edward has committed wrongful acts, and state that he is supporting a candidate for purposes of having that candidate engage in illegal activities.

Whoever wrote these allegations did so with malicious intent, as it has been widely publicized – as reported in the Orange County Register, at numerous online sites, in the Dana Point Times, and in other publications – that the City settled its lawsuit with Mr. Edward in May 2017, and, in fact, never collected \$553,000 in legal fees as the flyer suggests. Rather, as the public records show, in its Settlement Agreement, the City of Dana Point released all of its

claims against Mr. Edward and clearly acknowledged that its allegations were a “mistake.” As a result, the City agreed to fully rescind and dismiss all of its claims, as confirmed in numerous sections of the Settlement Agreement, including Section 5, City Retracts and Rescinds Fraud Allegations, which reads as follows:

The City acknowledges that **all claims** it made alleging Sanford Edward committed personal fraud, or other malfeasance, were a **mistake**. As such, **the City hereby retracts and formally rescinds all such claims**.  
(Emphasis added)

It is atypical for a public municipality to admit that it made a “mistake” regarding a lawsuit with these types of allegations, but the City was compelled to do so, because its original claims were egregious and false. So, the flyer’s statement that Mr. Edward wanted his money back is defamatory and untrue. The foregoing statements involve false assertions that conveniently and purposely ignore the true facts that overwhelmingly refute the libelous statements contained in the mailer.

3. The flyer describes a meeting between Mr. Edward with Buck Hill and Charles Payne as involving “plotting to take over the city council.” The flyer uses the words “Kingmakers” and “Slick” to describe Sanford, implying that he an undesirable and dishonest person, instead of a respected businessman and upright member of the Dana Point community who annually supports numerous charitable events (since purchasing the 121 ac. Headlands property in 1998, Mr. Edward has made over 110 donations to local charities and non-profits). The flyer advises readers to “STOP SLICK SANFORD FROM BUYING CITY HALL.” This statement implies that Sanford is engaging in illegal activities, involving corruption of public officials and candidates running for public office in Dana Point.

For your information, libel is a false publication of statements about a person, which exposes that person to contempt, ridicule, or obloquy, and causes a person to be shunned or avoided, or injures the person in his occupation. *California Civil Code Section 45; Wynberg V. National Enquirer, Inc., 564 F. Supp. 924, 925 (C.D. Cal. 1982)*. A publication need not be false in its entirety to constitute a violation of the California libel statute. Rather, courts have found that a single sentence may be the basis for an action in libel. *Washburn v. Wright, 261 Cal. App.2d 789, 795 (1968)*.

It is also worth noting that liability is not limited to what is stated explicitly. Courts have found that a defendant may be liable also for what it insinuates or implies. *Maidman v. Jewish Publications, Inc., 54 Cal. 2d 643, 651; 355 P.2d 265 (1960)*. Furthermore, falsely accusing a person of a crime is libelous *per se*. *Barnes-Hind, Inc. v. Superior Court, 181 Cal. App. 3d 377, 385 (1986)*. California courts liberally find libel *per se* at the pleading stage, going so far as to state that it would be an “. . . error for a court to rule that a publication cannot be defamatory on its face when by any reasonable interpretation the language is susceptible of a defamatory meaning.” The implications of the statements about Mr. Edward being a “kingmaker,” being “slick,” “buying City Hall,” having candidate Payne be his “payday,” and “plotting to take over

the city council” all are strongly susceptible of having a defamatory meaning and causing readers of the flyer to hold Mr. Edward in lower esteem.

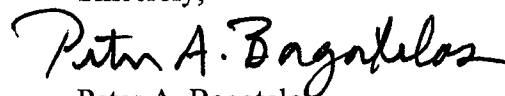
As a general rule, anyone who actively participates in the publication of false and libelous statements may be liable for special, general, and/or even punitive damages. *DiGiorgio Corp. v. Valley Labor Citizen*, 260 Cal. App. 2d 266 (1968). Your Dana Point Taxpayers Association reported on a late independent expenditure report Form 496 that it received substantial funding from CREPAC, the South Orange County Economic Coalition PAC, David Neal, and Howard F. Ahmanson/Fieldstead & Company, which funds were used to prepare and disseminate the campaign flyer containing the false, misleading, and untrue assertions against Mr. Edward. Each of these financial contributors may be subject to libel charges and damages. The Supreme Court stated: “[t]he destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives a man whose reputation has been falsely dishonored.” *Rosenblatt v. Baer*, 383 U.S. 75, 93 (1966).

The statements contained in your campaign flyer have defamed Mr. Edward. They have been disseminated publicly without regard to the truth or falsity of the statements, have been made to deride Mr. Edward in the community and depict him as a vile person, have been made with the specific intent of invalidating Mr. Edward and the good acts he has performed, have been made out of context to depict Mr. Edward in a false light and without regard to the true facts that invalidate the false statements. Mr. Edward is considering taking legal action and hereby reserves all of his rights in this regard.

Once again, on behalf of Mr. Edward, we demand that you immediately cease and desist in disseminating any further information that implies or contains false statements, and further demand that you take steps to immediately notify the public about the falsity of the information you have already disseminated.

Please confirm that you will comply with these demands. If we have not received a response in writing by Friday, November 2, 2018, or if any mailers or flyers of a similar nature are produced, Mr. Edward shall pursue his legal remedies.

Sincerely,

  
Peter A. Bagatelos

Enclosure  
cc: (with enclosure)

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- ✓ 2. Kathy Ward  
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5. David Neal  
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6. Howard F. Ahmanson/Fieldstead & Company  
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7. Members of the Dana Point City Council  
c/o Dana Point City Clerk  
Councilwoman Deborah Lewis  
Councilman Paul Wyatt  
Councilman John Tomlinson  
Councilman Joe Muller  
Councilman Richard Viczorek
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