

Steven M. Wilker, OSB No. 911882  
Direct Dial: 503.802.2040  
Fax: 503.972.3740  
E-Mail: steven.wilker@tonkon.com  
David S. Aman, OSB No. 962106  
Direct Dial: 503.802.2053  
Fax: 503.972.3753  
E-Mail: david.aman@tonkon.com

**TONKON TORP LLP**  
1600 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, OR 97204

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

**OBSIDIAN FINANCE GROUP, LLC and  
KEVIN D. PADRICK,**

Plaintiffs,

v.

**CRYSTAL COX,**

Defendant.

Civil No. CV 11-0057 HA

**MEMORANDUM IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

Plaintiffs Obsidian Finance Group, LLC and Kevin D. Padrick move for summary judgment in their favor because defendant Crystal Cox has no evidence to support the baseless and defamatory statements she has made about plaintiffs. The Court should enter summary judgment in plaintiffs' favor on the issue of liability for the defamation claim.

## **I. FACTUAL BACKGROUND**

Obsidian is a limited liability company located in Lake Oswego, Oregon. Obsidian acts as an advisory and investment firm, specializing in unique and difficult business situations, including distressed enterprises and distressed assets. Kevin Padrick is a Senior Principal and member of Obsidian. (Declaration of Kevin D. Padrick in Support of Plaintiffs' Motion for Partial Summary Judgment ("Padrick Decl."), ¶¶ 1-4).

Defendant Crystal Cox has published and continues to publish the following statements about Padrick and Obsidian on one or more websites that she maintains:

- Padrick has committed “fraud against the government.”
- Padrick “stole [money] from the US Government.”
- Padrick has engaged in “illegal” and “fraudulent” activity.
- Padrick is “VERY Corrupt” and has engaged in “Corruption, Fraud, Tax Crimes, Solar Tax Credit Crimes.”
- Padrick is a “liar.”
- Padrick pays off the media and politicians.
- “Did Oregon Attorney Kevin Padrick hire a hitman to kill me?”
- Padrick has committed “tax fraud.”
- Padrick is “guilty of Fraud, Deceit on the Government, Illegal Activity, Money Laundering, Defamation, Harassment”

- “Kevin Padrick of Obsidian Finance LLC is a Criminal, he has broken many laws in the last 2 years to do with the Summit 1031 case and regardless of the guilt of the Summit 1031 principals, Kevin Padrick is a THUG and a Thief hiding behind the Skirt tails of a corrupt un-monitored bankruptcy court system and protected by Corrupt Bend DA and Corrupt Bend Oregon Judges. And I will Expose every detail of every law he broke, every secret hand shake and back alley deal.. every solar credit fraud.. every sale to a friend or cronie of real estate consumer money and every indiscretion[.]”

(Padrick Decl. ¶ 5, Ex. 1).

These statements are all completely false. (Padrick Decl. ¶ 6). Moreover, the statements have damaged and continue to damage Obsidian's and Padrick's reputation and business. (Padrick Decl. ¶ 7).

## **II. STANDARD GOVERNING SUMMARY JUDGMENT**

Summary judgment is proper if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). "The moving party must show an absence of an issue of material fact. Once the moving party shows the absence of an issue of material fact, the nonmoving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial." *Far West Federal Bank v. Director, Office of Thrift Supervision*, 787 F. Supp. 952, 955 (D. Or. 1992), *aff'd*, 119 F.3d 1358 (9th Cir. 1994) (citations omitted). A factual issue is only genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). A scintilla of

evidence, or evidence that is merely colorable or not significantly probative, does not present a genuine issue of material fact. *Id.* at 249-50.

Moreover, Federal Rule of Civil Procedure 56(a) and (g) allow the Court to grant summary judgment on the issue of liability alone, with the amount of damages to be determined at trial.

### **III. DEFENDANT IS LIABLE FOR DEFAMATION AS A MATTER OF LAW**

Defendant Cox must be found liable for defamation under Oregon law if (1) she made a defamatory statement about Obsidian or Padrick, (2) the defamatory statement was published to third parties and (3) Obsidian or Padrick suffered special harm or her statements were actionable *per se*. See *L & D of Oregon, Inc. v. American States Ins. Co.*, 171 Or. App. 17, 22 (2000). Although a plaintiff must also plead that the defamatory statement is false, defendant Cox bears the burden of proving the truth of the statement(s) as an affirmative defense. See *Fowler v. Donnelly*, 225 Or. 287, 292 (1960).

Defendant Cox's statements constitute defamation as a matter of law.

First, defendant's statements about Padrick and Obsidian are defamatory. A statement is defamatory if it would tend "to diminish the esteem, respect, goodwill or confidence" in which the plaintiff is held or "excite adverse, derogatory or unpleasant feelings or opinions against" the plaintiff. *Farnsworth v. Hyde*, 266 Or. 236, 238 (1973), quoting *Andreason v. Guard Publishing Co.*, 260 Or. 308, 311 (1971). Here, there is no question that the statements would tend to diminish the esteem, respect and confidence in Padrick and Obsidian. They include charges of fraud, theft, illegal activities and the like.

Second, the defamatory material was clearly published to third parties, in this case on Internet websites that defendant controls and maintains. (Padrick Decl. ¶ 5, Ex. 1).

Third, the statements are actionable *per se* without any showing of resulting harm. The statements are actionable *per se* because they ascribe to Padrick and Obsidian characteristics or conduct that would adversely affect their fitness for their occupation or profession. *Bank of Oregon v. Independent News, Inc.*, 65 Or. App. 29, 31 (1983); *Bock v. Zittenfield*, 66 Or. App. 97, 99 (1984). And certain of the statements also accuse plaintiffs of engaging in serious criminal conduct, which is also actionable *per se*. *Cook v. Safeway Stores, Inc.*, 266 Or. 77, 82 (1973).

Finally, the statements are entirely false. (Padrick Decl. ¶ 6). Defendant has no evidence to support the truth of any of her statements. As a matter of law, she cannot prevail on her affirmative defense that the statements are true.

Accordingly, the Court should grant summary judgment in favor of plaintiffs on the issue of liability, and proceed to trial on damages only.

DATED this 27th day of April 2011.

TONKON TORP LLP

By /s/ David S. Aman

Steven M. Wilker, OSB No. 911882

Direct Dial: 503.802.2040

Fax: 503.972.3740

E-Mail: steven.wilker@tonkon.com

David S. Aman, OSB No. 962106

Direct Dial: 503.802.2053

Fax: 503.972.3753

E-Mail: david.aman@tonkon.com

Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** on:

Crystal L. Cox  
PO Box 505  
Eureka, Montana 59917  
Crystal @CrystalCox.com

- by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;
- by causing a copy thereof to be e-mailed to said party at her last-known email address on the date set forth below;

DATED this 27th day of April 2011

TONKON TORP LLP

By /s/ David S. Aman

David S. Aman, OSB No. 962106

Direct Dial: 503.802.2053

Fax: 503.972.3753

E-Mail: david.aman@tonkon.com

Attorneys for Plaintiffs