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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – CENTRAL DIVISION

10
11 JOSHUA BILLAUER,)
12 Plaintiff,)
13 vs.)
14 OLGA MARCELA ESCOBAR-ECK; and DOES 1)
15 through 1,000,)
16 Defendants;)
17 and related cross-action.)

CASE NO. 37-2021-00006367-CU-DF-CTL
FIRST AMENDED COMPLAINT FOR DAMAGES
Action Filed: February 16, 2021
Department: C-66 (Medel)
[Filed by right pursuant to Code of Civil Procedure Section 472(a)]

18
19 Plaintiff JOSHUA BILLAUER ("PLAINTIFF") alleges as follows:

20 **Parties**

- 21 1. PLAINTIFF is a natural person who resides in the City of San Diego.
- 22 2. Defendant OLGA MARCELA ESCOBAR-ECK ("ECK"), also known as "Marcela
23 Escobar-Eck," is a natural person who resides in the City of Carlsbad. All wrongdoing alleged herein
24 by ECK and the other Defendants was done knowingly and intentionally.
- 25 3. The true names and capacities of the Defendants identified as DOES 1 through 1,000
26 are unknown to PLAINTIFF, who will seek the Court's permission to amend this pleading in order to
27 allege the true names and capacities as soon as they are ascertained. PLAINTIFF is informed and
28 believes and on that basis alleges that each of the fictitiously named Defendants encouraged,

1 participated in, distributed, or was otherwise involved in the wrongdoing that is the subject of this
2 lawsuit.

3 4. PLAINTIFF is informed and believes and on that basis alleges that, at all times stated
4 in this pleading, each Defendant was the agent, servant, or employee of every other Defendant and was,
5 in doing the things alleged in this pleading, acting within the scope of said agency, servitude, or
6 employment and with the full knowledge or subsequent ratification of his/her/its principals, masters,
7 and employers. Alternatively, in doing the things alleged in this pleading, each Defendant was acting
8 alone and solely to further his/her/its own interests.

9 **Venue**

10 5. Venue in this Court is proper because the obligations, liabilities, and violations of law
11 alleged in this pleading occurred in the County of San Diego in the State of California.

12 **Background**

13 6. On the online social-media platform Twitter, PLAINTIFF controls and operates an
14 account known as “@SaveDelCerro.” At all times relevant to this lawsuit, Defendants have known that
15 PLAINTIFF operates that account and have associated him with that account.

16 7. PLAINTIFF is a professional financial advisor and is employed by Wells Fargo.
17 Attached hereto as Exhibit “A” is a true and correct copy of PLAINTIFF’s professional profile
18 published on his employer’s website.

19 8. On or about December 10, 2020, ECK electronically published a “tweet” on Twitter that
20 was directed at PLAINTIFF’s employer – “@WellsFargo” – and asserted that PLAINTIFF is “[a] racist
21 person who is engaging in cyberbullying” (the “Criminal Tweet”). At the time of the Criminal Tweet,
22 ECK had hundreds of “followers” on Twitter who could read her tweet about PLAINTIFF. ECK
23 subsequently re-published the Criminal Tweet by “re-tweeting” it. Attached hereto as Exhibit “B” is
24 a true and correct copy of the Criminal Tweet; as Exhibit “C,” a true and correct copy of ECK’s Twitter
25 profile; and as Exhibit “D,” a true and correct copy of Wells Fargo’s Twitter profile.

26 **FIRST CAUSE OF ACTION:** 27 **Recovery of Damages** (Against All Defendants/Respondents)

28 9. The preceding allegations in this pleading are fully incorporated into this paragraph.

1 10. PLAINTIFF is entitled to recover damages from Defendants based on multiple theories
2 of recovery. By way of example and not limitation:

3 A. Plaintiff is informed and believes and on that basis alleges in support of a theory
4 of libel:

5 i. Cyberbullying is a crime throughout the United States of America and
6 its various territories.

7 ii. Defendants' assertion in the Criminal Tweet that PLAINTIFF "is
8 engaging in cyberbullying" was false at the time it was published on Twitter, has always been false, and
9 remains false. The Criminal Tweet was therefore libelous on its face.

10 iii. PLAINTIFF's employer and others who read the Criminal Tweet knew
11 immediately that ECK was referring to PLAINTIFF and understood that ECK was charging him with
12 engaging in the crime of cyberbullying and other serious misconduct directly associated with his
13 employment.

14 iv. The publication of the Criminal Tweet was not privileged.

15 v. As a result of the publication and/or re-publication of the Criminal Tweet,
16 PLAINTIFF has been exposed to hatred, contempt, ridicule, and/or obloquy; has been shunned or
17 avoided; and/or has tended to be injured in his occupation.

18 B. Plaintiff is informed and believes and on that basis alleges in support of a theory
19 of intentional infliction of emotional distress:

20 i. Defendants' publication and/or re-publication of the Criminal Tweet was
21 outrageous.

22 ii. When publishing and/or re-publishing the Criminal Tweet, Defendants
23 intended to cause harm to PLAINTIFF and/or acted with reckless disregard for the likelihood that
24 PLAINTIFF would suffer emotional distress as a result of the publication and/or re-publication.

25 iii. As a result of the publication and/or re-publication of the Criminal Tweet,
26 PLAINTIFF has suffered severe emotional distress. The publication and/or re-publication constituted
27 a substantial factor in causing such distress.

28 11. Plaintiff is informed and believes and on that basis alleges:

1 A. Defendants published and/or re-published the Criminal Tweet maliciously,
2 oppressively, and fraudulently in retaliation for PLAINTIFF’s lawful expression of opinions about
3 economic growth and development in his community and the impact thereof on the quality of life in his
4 community.

5 B. As recently as February 6, 2021, Defendants published and/or re-published a
6 separate tweet that ominously warned PLAINTIFF to “remember your karma.”

7 C. As recently as February 8, 2021, ECK recognized that she had engaged in
8 improper conduct against PLAINTIFF on Twitter and therefore tweeted that she would be “[s]hutting
9 down social media for a while.”

10 D. PLAINTIFF is therefore entitled to punitive damages according to proof.

11 12. In addition:

12 A. PLAINTIFF is informed and believes and on that basis alleges:

13 1. ECK was knowingly and intentionally referring to PLAINTIFF when she
14 published and/or re-published the Criminal Tweet.

15 2. ECK knew when she published and/or re-published the Criminal Tweet
16 that Wells Fargo was not in any way involved or otherwise interested in any activity in which ECK was
17 professionally or personally involved.

18 3. ECK published and/or re-published the Criminal Tweet knowingly and
19 intentionally on Twitter so that she would have “something on the record” informing Wells Fargo that
20 she believed PLAINTIFF was harassing her, but she never notified any law-enforcement agency about
21 any of the misconduct that the Criminal Tweet accused PLAINTIFF of committing.

22 4. ECK did no research to determine whether the accusations she made
23 against PLAINTIFF when she published and/or re-published the Criminal Tweet were true.

24 5. Shortly after the Criminal Tweet was published and/or re-published by
25 ECK, Wells Fargo immediately, and without resorting to any additional information or resource,
26 understood that the Criminal Tweet was accusing PLAINTIFF of engaging in the crime of cyberbullying
27 and other serious misconduct directly associated with his employment by Wells Fargo, after which
28 PLAINTIFF was subjected to adverse treatment as a professional financial advisor.

1 6. The Wells Fargo Employee Handbook states: “Your actions must always
2 reflect the highest possible standards of business conduct and ethics. You’re expected to use good
3 judgment and common sense in making work-related decisions and to be accountable for your actions.
4 You are expected to act with integrity and always do the right thing. This includes avoiding obscene,
5 threatening, harassing, discriminatory or abusive conduct that is likely to damage Wells Fargo’s
6 business or reputation, negatively affect coworkers, or that could be disparaging to customers. * * *
7 Unprofessional and inappropriate employee behavior includes but is not limited to: . . . Bullying . . .
8 Any form of harassment. . . .”

9 7. ECK believed or suspected at the time she published and/or re-published
10 the Criminal Tweet that Wells Fargo had a workplace policy like that which is described in the
11 preceding paragraph.

12 8. The California Attorney General’s Office maintains a website dedicated
13 to the topic of “cyberbullying.”

14 9. Criminal-defense lawyers maintain internet sites dedicated to educating
15 the public that cyberbullying is a crime, citing California Penal Code Section 653.2 (among other
16 statutes). Other internet sites similarly dedicated also cite Section 653.2 when explaining that
17 cyberbullying is a crime in California.

18 B. Shortly after the Criminal Tweet was published and/or re-published by ECK,
19 multiple people contacted PLAINTIFF and informed him that they believed immediately upon seeing
20 the Criminal Tweet, and without resorting to any additional information or resource, that it was accusing
21 PLAINTIFF of engaging in the crime of cyberbullying and other serious misconduct directly associated
22 with his employment by Wells Fargo, after which PLAINTIFF was subjected to adverse treatment as
23 a professional financial advisor.

24 C. Although adults can be the victims of cyberbullying, the majority of its victims
25 are children. The persons who saw the Criminal Tweet, including Wells Fargo, believed that
26 PLAINTIFF was being accused of harming children. At the time she published and/or re-published the
27 Criminal Tweet, ECK knew that most victims of cyberbullying are children and thus knowingly,
28 fraudulently maliciously, and oppressively used the term “cyberbully” in her Criminal Tweet to give

1 the false and outrageous impression to all who would see it that PLAINTIFF harmed children even
2 though she knew that he did no such thing.

3 D. At no time prior to publishing and/or republishing the Criminal Tweet had ECK
4 ever met, spoken to, or otherwise communicated with PLAINTIFF, who is not a racist, and at no time
5 ever has ECK had any relationship (intimate or otherwise) with PLAINTIFF.

6 E. The Criminal Tweet is still accessible to the public.

7 F. As a result of ECK's publication and/or re-publication of the Criminal Tweet,
8 PLAINTIFF has suffered extensive, severe, excruciating, and at times debilitating irritability, horror,
9 grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, and/or worry that has
10 prevented him from fulfilling ordinary and routine tasks both in his private life and in his employment;
11 relationships that he previously cherished with others have soured, and activities that he once found
12 meaningful and rewarding are no longer satisfying, as a result; and such emotional and psychological
13 injuries continue to this day. In addition, ECK's publication and/or re-publication of the Criminal
14 Tweet require(s) him to incur expenses to repair the false, negative public impression that the
15 permanence of the Criminal Tweet on the internet has created against him.

16 **Prayer**

17 FOR ALL THESE REASONS, PLAINTIFF respectfully prays for the following relief against
18 all Defendants (and any and all other parties who may oppose PLAINTIFF in this lawsuit) jointly and
19 severally:

- 20 A. General damages;
- 21 B. Special damages according to proof;
- 22 C. Punitive damages according to proof; and
- 23 D. All court costs incurred by PLAINTIFF in connection with this lawsuit; and
- 24 E. Any further relief that this Court may deem appropriate.

25 Date: September 20, 2021.

Respectfully submitted,

BRIGGS LAW CORPORATION

27 By: Cory J. Briggs
28 Cory J. Briggs

Attorneys for Plaintiff and Cross-Defendant Joshua
Billauer

FIRST AMENDED COMPLAINT FOR DAMAGES

Exhibit "A"

Sign On | wellsfargo.com

JOSH BILLAUER, MBA

Financial Advisor

Managing Director - Investments

Address: 888 PROSPECT STREET, SUITE 320 , LA JOLLA , CA 92037

Phone: 858-454-0595 | 800-966-1732 **Fax:** 858-454-0931

Email: josh.billauer@wellsfargoadvisors.com



My Background

Josh Billauer has been with Wells Fargo Advisors (and its predecessor firms) since 1998. A Managing Director - Investments and Senior PIM Portfolio Manager, Josh helps to manage in excess of \$900 million for select high net worth individuals and institutional clients. In addition to overseeing the portfolio management process, including the asset allocation models, rebalancing, tax management and implementation, Josh works closely with clients in navigating and planning for critical financial events.

Since 1996, Josh has sat on the Board of Directors for the Natural High Foundation, a San Diego nonprofit whose mission is to spread the message of an drug free lifestyle to our nation's youth. Josh also served as Board Chair for the Life Rolls On Foundation, an organization that hosts a nationwide series of programs for those with spinal cord injury. Additionally, Josh serves as a Sergeant with the San Diego Honorary Deputy Sheriff's Association.

Josh completed his undergraduate work at University of California at San Diego (UCSD) and later earned a Masters of Science in Business Administration with an emphasis in Financial and Tax Planning from San Diego State University. Josh also earned a substitute teaching credential with the San Diego Unified School District, allowing him the occasional opportunity to substitute teach at the elementary school level.

Josh and his wife Ricki have two daughters, Lexi and Sadie, as well as three "fur-kids", Juicy the English Mastiff, Monkey the Terrier and Mochi the Miniature Schnauzer. His personal interests include fishing, photography, surfing and travel.

Resident state: California

My Associate(s): Belinder Aurther, Operations Clerk ; Juliana Najor, Senior Registered Client Associate ; Krisztina Rollins, Senior Registered Client Associate ; Laura Gladhill, Senior Client Associate

My Experience

1998 - Present : Wells Fargo Advisors

My Education & Credentials

Bachelor Degree, University of California at San Diego
Masters in Business Administration, San Diego State University
Senior PIM Portfolio Manager

My Areas of Focus

[Business Services](#)
[Estate Planning Strategies](#)
[Retirement Planning](#)

My Community Involvement

Board Member, Life Rolls On Foundation
Board Member, Natural High Foundation
Board Member, Green Elementary School PTA

Securities Registered in the following states: AK, AZ, CA, CO, CT, DC, DE, FL, ID, IN, MA, ME, MN, MT, NC, NH, NJ, NV, NY, OR, PA, SC, TX, UT, VA, VT, WA, WI

Insurance licensed in the following states: CA (Lic. # 0C46478)

JOSH BILLAUER: Financial Advisor: Wells Fargo Clearing Services, LLC

United States: California : [LA JOLLA Branch](#)

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FIRST AMENDED COMPLAINT FOR DAMAGES

Exhibit "B"

Marcela Escobar-Eck 🦊 @SanDiegoLandUse
@savedelcerro Joshua Billauer, mini dorm
developer. You don't know me. If you want to
discuss face to face, happy to. Keep spreading
lies. It's great to see a racist anti-religion person
calling out someone they don't even know behind
anonymous accounts. Keep spreading your lies.

Marcela Escobar-Eck 🦊 @SanDiegoLandUse
@savedelcerro @WellsFargo is this the kind of
adviser you want working for you? A racist
person who is engaging in cyberbullying?



Marcela Escobar-Eck 🙊

@SanDiegoLandUse



[@WellsFargo](#) is this the kind of adviser you want working for you? A racist person who is engaging in cyberbullying?

21:55 · 12/10/20 · [Twitter for iPhone](#)





Marcela Escobar-Eck 🦊 Retweeted



Marcela Escobar-Eck 🦊 🔒 · 12/10/20 ...

Replying to [@SanDiegoLandUse](#) and [@savedelcerro](#)

[@WellsFargo](#) is this the kind of adviser you want working for you? A racist person who is engaging in cyberbullying?



FIRST AMENDED COMPLAINT FOR DAMAGES

Exhibit "C"



Marcela Escobar-Eck 🖊️ 🔒

@SanDiegoLandUse

Lscp Arch/Planner •• 2 keep San Diego informed of Land Use & Regulatory trends 🧑
'dat weird liberal friend U R not sure about. Kobayashi Maru 🚫 in Land Use

📍 San Diego 🔗 AtlantisSD.com 📅 Joined April 2009

1,216 Following **660** Followers

FIRST AMENDED COMPLAINT FOR DAMAGES

Exhibit "D"



Follow

Wells Fargo 

@WellsFargo

Follow along for all the latest company news and updates. For customer service queries, please follow [@Ask_WellsFargo](#).

 San Francisco, CA  stories.wf.com/scharf-we-must...  Joined March 2007

306 Following **322.8K** Followers

PROOF OF SERVICE

1. My name is Ruth Flores. I am over the age of eighteen. I am employed in the State of California, County of San Bernardino.

2. My business residence address is Briggs Law Corporation, 99 East "C" Street, Suite 111 Upland, CA 91786.

3. On September 20, 2021, I served an original copy a true and correct copy of the following documents: FIRST AMENDED COMPLAINT FOR DAMAGES

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

by personal service. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

by U.S. mail. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of _____, California.

by overnight delivery. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

by facsimile transmission. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

by e-mail delivery. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws _____ of the United States of the State of California that the foregoing is true and correct.

Date: September 20, 2021

Signature: Ruth Flores

SERVICE LIST

Joshua Billauer v. Olga Marcela Escobar-Eck et al.; and related cross-action
San Diego County Superior Court case no. 37-2021-00006367-CU-DF-CTL

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