

U.S. DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DISTRICT

JAMES G. ABOUREZK, an individual,)
JANE FONDA, an individual, and)
ROXANNE DUNBAR-ORTIZ, an individual,)

Plaintiff,)

v.)

PROBUSH.COM, INC., a Pennsylvania corporation,)
MICHAEL MARINO, an individual, and)
BEN MARINO, an individual,)

Defendant.)

Civil Action No.

**FIRST AMENDED COMPLAINT,
NOTICE OF APPEARANCE,
NOTICE OF PUNITIVE
DAMAGES and
NOTICE OF JURY TRIAL
DEMAND**

COMES NOW the Plaintiffs, James Abourezk, Jane Fonda, and Roxanne Dunbar-Ortiz for their First Amended Complaint against Defendants Probush.com Inc., Michael Marino, and Ben Marino they state and allege:

INTRODUCTION

The following action against the Defendants arises from libel of the Plaintiffs. Plaintiffs discovered that they were called a traitor on Defendants website. Under South Dakota Law, such a statement is considered libel per se.

PARTIES

1. Plaintiff is a resident of Sioux Falls, county of Minnehaha, state of South Dakota. He is a former U.S. Senator from South Dakota.
2. Plaintiff Jane Fonda, is a resident of Atlanta, county of Fulton, state of Georgia. She is a renowned film actress and civic activist.
3. Plaintiff Roxanne Dunbar-Ortiz, is a resident of San Francisco, county of San Francisco, state of California. She is an author, historian and professor in the Department of Ethnic Studies at California State University.
4. On information and belief, Defendant, Probush.com Inc. is located at P.O. Box 16, in the city of West Point, state of Pennsylvania. The administrative contact is listed as Michael Marino. See Exhibit A, a true and correct copy of a Whois search, attached hereto and incorporated herein.

5. On information and belief, Defendant, Michael Marino is the editor and publisher of the probush.com website.
6. On information and belief, Defendant Ben Marino resides in the state of Pennsylvania. He is co-owner of Probush.com, Inc.

JURISDICTION and VENUE

7. This Court has jurisdiction over the matter and the parties under 28 USC § 1332. The Plaintiffs request damages in excess of \$75,000. Plaintiff Abourezk is a resident of the state of South Dakota, Plaintiff Fonda is a resident of Georgia, and Plaintiff Dunbar-Ortiz is a resident of California, and the Defendants are, under information and belief, residents of the state of Pennsylvania.
8. Personal jurisdiction over the Defendant's is appropriate in South Dakota under SDCL 15-7-2(1), as they are transacting business in South Dakota by the sale of merchandise from Defendant's website, probush.com, and/or SDCL 15-7-2(2), the accrual in this state of a tort against the Plaintiffs the Defendants committed, and/or SDCL 15-7-2(14), the Defendants maintenance of a website accessible by South Dakota residents.

GENERAL ALLEGATIONS COMMON to all COUNTS

9. On or about April 9, 2003, Plaintiff Abourezk discovered a website, owned and operated by the Defendants, which contained a picture of him and stated he was a traitor. See Exhibit B, a true and correct copy of partial pages from probush.com, alleged hereto and incorporated herein.
10. According to Black's Law Dictionary (6th Ed. Abridged, 1991) at 1040, a traitor is "one who is guilty of treason."
11. Treason is a felony under federal law, 18 USCA § 2381, and South Dakota law, SDCL 22-8-1.
12. The Defendant's statement about the Plaintiffs is libelous under SDCL 20-11-3.
13. Plaintiff Abourezk is an honorably discharged veteran of the United States Navy, a former United States Congressman, and a former U.S. Senator. He also is admitted to practice law before the courts of South Dakota, the District of Columbia, and the U.S. Supreme Court. He has taken oaths to uphold the Constitution of the United States in these positions.
14. Plaintiff's Fonda and Dunbar-Ortiz also knew of Defendant Probush.com, Inc.'s website, which contained pictures of them and stated that they were

traitors. See Exhibit C, a true and correct copy of the "Traitor" list, specifically pages 14 and 15, attached hereto and incorporated herein.

15. Plaintiff Fonda is a highly successful and well-respected actress. She is the daughter of actor Henry Fonda.
16. Plaintiff Dunbar-Ortiz was a founding member of the early women's movement.

COUNT I ---DEFAMATION PER SE


17. The Plaintiffs incorporate the above paragraphs and restates them herein.
18. Defendants have made a false statement by calling the Plaintiffs traitors.
19. Such a statement is libelous per se under South Dakota law as it accuses the Plaintiffs of a criminal act they did not commit.
20. Defendant's disclaimer on its website, probush.com, is ineffective and meaningless.
21. Defendant's libelous statement is intended to injure Plaintiff Abourezk's legal profession and standing in the community.
22. Defendants' libelous statement is intended to injure Plaintiff Fonda's acting career and standing in the community.
23. Defendants' libelous statement is intended to injure Plaintiff Dunbar-Ortiz's career as a professor and author and her standing in the community.
24. Defendants were not privileged to make such false statements about the Plaintiffs.

PRAYER FOR RELIEF

THEREFORE, each Plaintiff prays for the following relief:

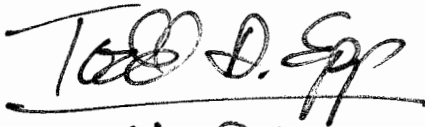
- A. Actual damages in the amount of \$ 2 million.
- B. Punitive damages in the amount of \$ 3 million.
- C. The cost and attorney's fees of this action.
- D. Removal of any reference to Plaintiff on Defendant's website.
- E. Any other just and equitable relief.
- F. Public Apologies.

Dated this 29th day of April, 2005



James Abourezk
Plaintiff

Dated this 29th Day of April, 2005



Todd P. Esp
Attorney for Plaintiffs

Dated this _____ day of _____, 2004.

Jane Fonda
Plaintiff

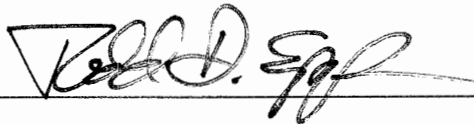
Dated this 2 day of June, 2004.

Roxanne Dunbar Ortiz
Roxanne Dunbar-Ortiz
Plaintiff

NOTICE OF APPEARANCE

Todd D. Epp, Esq., of Todd D. Epp Law Office, Prof. LLC, d/b/a Abourezk & Epp Law Offices, PO Box 1164, Sioux Falls, SD 57101-1164, hereby notes his appearance on behalf of the above-named plaintiffs.

TODD D. EPP LAW OFFICE, PROF. LLC
d/b/a ABOUREZK & EPP LAW OFFICES

By: _____

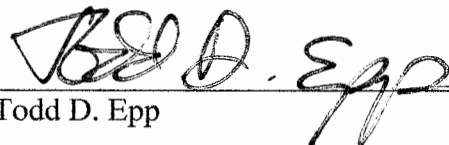
Todd D. Epp
SD Bar #2700
Attorney for Plaintiffs
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Sioux Falls, SD 57101-1164
(o) 605.334.8402
(f) 605.334.9404
Email: tdepp@aol.com

NOTICE OF DEMAND FOR PUNITIVE OR EXEMPLARY DAMAGES

The Plaintiffs hereby notify the Defendants and the Court that they are seeking punitive or exemplary damages since they reasonably believe the Defendants' actions against them are willful, wanton, and/or malicious.

NOTICE OF JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues triable by a jury.



Todd D. Epp

EXHIBITS ARE ATTACHED AND FILED SEPARATELY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April 2005, a true and correct copy of the above noted pleading and exhibits was transmitted to the District of South Dakota CM/ECF system for filing and notification of counsel so registered with the Court's electronic filing system.

In addition, on the same date, this pleading was served via US Mail, prepaid to the following:

Charlie Abourezk Abourezk Law Offices, P.C. PO Box 9460 Rapid City, SD 57709 Attorney for Plaintiff	Michael Abourezk Abourezk Law Offices, P.C. PO Box 9460 Rapid City, SD 57709 Attorney for Plaintiff
Ronald A. Parsons, Jr. Johnson, Heidepriem, Miner, Marlow & Janklow PO Box 1107 Sioux Falls, SD 57101-1107 Attorney for Defendant	



Todd D. Epp