

COMMONWEALTH OF VIRGINIA



SUMMONS - CIVIL ACTION

Case No. CL08000197-00

BUCKINGHAM CIRCUIT COURT
PO BOX 107 BUCKINGHAM, VA 23921
ADDRESS

TO:

BETTER PUBLICATIONS LLC
GARRETT M SMITH, REG. AGENT
500 COURT SQUARE, STE 300
CHARLOTTESVILLE, VA. 22902-0298

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia.

DECEMBER 22, 2008

DATE

MALCOLM A. BOOKER, JR.

by Brenda Kitchen
DEPUTY CLERK

Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BUCKINGHAM

THOMAS L. GARRETT, JR.,

Plaintiff,

v.

Case No. _____

BETTER PUBLICATIONS, L.L.C.,

Serve: Garrett M. Smith

Registered Agent

500 Court Square, Ste 300

Charlottesville, VA 22902-0298

LINDSAY BARNES and

COURTENEY STUART,

Defendants.

COMPLAINT FOR DEFAMATION

Thomas L. Garrett, Jr., by and through his undersigned counsel, brings this Complaint for Defamation against Better Publications, L.L.C., Lindsay Barnes, and Courteney Stuart, stating as follows:

Parties, Jurisdiction and Venue

1. Plaintiff, Thomas Garrett is an individual who is a native and resident of the County of Buckingham, Virginia, and who works as a Hollywood publicist, talent agent, author, editor, actor, and radio personality.

2. Defendant Better Publications, L.L.C. is a Virginia corporation having its principal place of business in Charlottesville, Virginia. Defendant Better Publications is engaged in the business of publishing a weekly newspaper called *The Hook*, which is made available in

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Brenda Kitcher D.C.

Charlottesville and the surrounding areas, including Buckingham County. Defendant Better Publications also publishes a related website, www.readthehook.com, accessible in Buckingham County, among other localities.

3. Upon information and belief, Defendant Lindsay Barnes is an individual residing in Charlottesville, Virginia, who has written articles for *The Hook*.

4. Upon information and belief, Defendant Courteney Stuart is an individual residing in Charlottesville, Virginia, who has written articles for *The Hook*.

5. All subsequent references herein to *The Hook* are allegations against Defendant Better Publications, L.L.C. in its role as owner and publisher of *The Hook* and its related website www.readthehook.com, as well as against Barnes and/or Stuart as the individual authors of the articles and defamatory content referenced.

6. This Court has jurisdiction over this dispute pursuant to Va. Code Ann. § 17.1-513.

7. Venue is proper in this Court pursuant to Va. Code Ann. § 8.01-262(3) and (4).

Factual Background

8. In 2006 and 2007, Plaintiff Garrett was enjoying a burgeoning career as a publicist, talent agent, author, editor, actor, and radio personality. Garrett had finished hosting and producing a movie retrospective show for WCAV CBS 19 in Charlottesville called *Somewhere in Time*, and was hosting and producing a radio segment entitled “Monday Afternoon From Hollywood,” on a top-rated radio program in Australia. Garrett’s business as an agent likewise was taking off, and he was in high demand throughout the entertainment world.

9. In February 2007, Garrett made his national television debut in an episode of the HGTV television program *Living With Ed*, starring Ed Begley, Jr. and his wife. This

appearance occasioned press reports favorable to Garrett, including a prominently featured in-depth article about Garrett in the February 15, 2007 edition of Charlottesville's premier newspaper, *The Daily Progress*. (Exhibit 1.)

10. Immediately after the appearance of the *Daily Progress* article, *The Hook*, which previously had taken virtually no interest in Garrett (apart from a brief mention in a December 2005 cultural calendar about Garrett's collection of winter clothing and boots for children in Afghanistan), published an article by Lisa Provence entitled "Publicist charged: 15 forgery counts continued," in its February 22, 2007 print edition (Exhibit 2) and on line at <http://www.readthehook.com/Stories/2007/02/22/NEWS-garrett-B.rtf.aspx>. (Exhibit 3.)

11. The criminal charges referenced had been filed not by a Sheriff's office or a Commonwealth's Attorney but, rather, by a psychologically troubled individual whom Garrett was trying to help. The case involved no evidence of forgery, and all forgery counts later were dismissed. Garrett ultimately pleaded guilty to a single minor count akin to trespassing, which arose from Garrett's attempt to meet with the complainant to discuss the baseless forgery charges.

12. *The Hook's* article purported to report upon the criminal charges filed against Garrett. However, the principal purpose of the article seemingly was to provide a decidedly negative counterpoint to the positive coverage given to Garrett by *The Daily Progress* in its article the previous week, and to denigrate Garrett's career and impugn his credibility as a celebrity commentator and agent. To this end, much of the article did not deal with the charges against Garrett at all, but instead sought merely to portray Garrett as a charlatan, a bully and a troublemaker.

13. For example, the article in *The Hook* was accompanied by a photograph of the article in *The Daily Progress*, with the caption “Publicist Tommy Garrett’s picture in the *Daily Progress* includes a photo of Russell Crowe, who is not a client.” (Exhibits 2 and 3.) This gratuitous slap at Garrett’s credibility was completely unfounded, as Garrett never claimed Russell Crowe as a client. Garrett does know the actor, and the photograph in question was autographed by Crowe and personally addressed to Garrett. The photo was just one of several selected by the photographers of *The Daily Progress* in composing a collage for the cover photograph of their article. Although the nature of the Russell Crowe photo was perceptible from the large color photograph of Garrett in *The Daily Progress* itself, it was not evident from the tiny photograph of *The Daily Progress* re-printed in *The Hook*. The photo caption in *The Hook* thus purposely sought to mislead readers into thinking that Garrett himself falsely had claimed Russell Crowe as a client.

14. The article also included the following demeaning racial comment:

After the Hook spoke with Garrett and his lawyer – who advised Garrett not to comment – this reporter received an anonymous voice message from a woman claiming to be 85 years old and making allegations about the mental health of Garrett’s accuser in the current forgery case. The caller lambasted those who wanted to “ruin that poor little colored boy.”

(Exhibits 2 and 3.)

15. It strains reason to believe such an anonymous call was made inasmuch as it purportedly was made on the caller’s initiative while Provence merely was preparing the February 22, 2007 article for publication – a fact that would not have been known outside *The Hook*. More likely, and consistent with the tenor and intent of the article, Provence merely took the opportunity to attribute a derogatory racial epithet – calling Garrett a “poor little colored

boy” – to a mythical caller only for the purpose of furthering the mean spirited attack on Garrett’s character.

16. These are just two examples (out of many) of the misleading statements that *The Hook* made in its February 22, 2007, article solely in an attempt to impugn and damage Garrett in his name, reputation and profession.

17. The February 22, 2007, article resulted in substantial negative public reaction to Garrett, as typified by the comments to the article on the website of *The Hook*. (See Exhibit 3.) The volume and vigor of the debate over Garrett’s integrity and persona contained within these comments put Defendants on notice that any subsequent defamatory statements about Garrett also would gain widespread attention and have a serious effect upon his reputation.

18. Continuing its attack on Garrett’s integrity, name and reputation, *The Hook* published an article on February 1, 2008, by Lindsay Barnes entitled “Forgery trial continued for publicist to the stars” on line at <http://www.readthehook.com/blog/index.php/2008/02/01/forgery-trial-continued-for-publicist-to-the-stars/> (Exhibit 4), followed by similar and related articles by Lindsay Barnes entitled “Tommybrook: Publicist to the stars ready for trial” in the February 7, 2008 print edition of *The Hook* (Exhibit 5) and on line at <http://www.readthehook.com/stories/2008/02/07/NEWS-Garrett-B.rtf.aspx>, (Exhibit 6.)

19. Although using the not-so-newsworthy event of a continuance of Garrett’s court proceedings as an excuse for the articles, in each, Barnes lampoons Garrett and his attorney over one matter or another. Included within the fodder is a magazine cover and feature article in which Garrett appeared, but which *The Hook*, for some reason, sought to denigrate as a contrived story by Garrett, saying “. . . he released another statement heralding a cover story

about him in *Senior Magazine* (a publication of which the Hook can find no evidence).”

(Exhibits 4, 5 and 6.)

20. Although the articles state that *The Hook* could “find no evidence” to support the existence of the publication *Senior Magazine*, it became clear from a subsequent article that Defendants had ample evidence of the existence of the magazine in question, and falsely stated this in order merely to impugn and disgrace Garrett further.

21. Not willing to stop there, Barnes took the opportunity to resurrect and republish in full the February 22, 2007 quote calling Garrett a “poor little colored boy,” as if the full and complete denigration and emasculation of Garrett was the real point of the piece, yet again.

22. In an article by Courteney Stuart published in the April 24, 2008 print edition of *The Hook* entitled “Senior moment: Garrett mystery solved?” (Exhibit 7) and on line at <http://www.readthehook.com/stories/2008/04/24/news-seniormagazine.aspx>, entitled “Senior Magazine: Garrett mystery solved?” (Exhibit 8), Defendants again implied that Garrett had lied about being featured on the cover of *Senior Arizona* magazine. Specifically, the article stated:

Four days after publicist to the stars and chicken farmer Tommy Lightfoot Garrett pled guilty to a reduced charge in Buckingham County Courthouse, some questions about his accomplishments remain. For instance, did he actually grace the cover of *Senior Magazine, the Arizona edition*, as at least one website claims?

....

If his books are easily discovered online, *Senior Magazine, the Arizona edition* has been far more elusive. Perhaps that’s best. The publisher and editor of *Senior Magazine-the North Central California Edition* says there is no official Arizona edition, and he’s not happy that someone could be using the name.

(Exhibits 7 and 8.) The clear import and implication from both the article title, “Senior moment” (Exhibit 7) and the text challenging the existence of the magazine was to suggest

Garrett had concocted the entire magazine and his appearance therein – an implication *The Hook* knew to be false.

23. Accompanying the same article was a fake image of the cover of “Senior Magazine,” which includes an image of Garrett. Furthermore, the website version of the article contained a link to a version of the image (Exhibit 9) that was large enough to permit readers easily to discern the obviously fake nature of the image. The fake nature of the image was clear from elements such as the amateurish typography and layout, the garish color scheme, the compression artifacts in the title, coupled with the absence of such artifacts in the photograph of Garrett, thus making it obvious that the title was clumsily overlaid upon Garrett’s photograph, and the lack of any date on the fake magazine cover.

24. In addition, the list of articles on the fake magazine cover included several banal and clichéd titles, such as “Books we really Love,” “Movies You Should See” and “Volunteering Helps You!” which made it even more obvious that the cover was a fake.

25. *The Hook* published the fake magazine cover without any caption, attribution or photo credit, and without any indication that it was a parody or satire. To the contrary, *The Hook* passed off the fake version as the actual cover of the real version of *Senior Magazine*, with the specific intent to degrade Garrett by his inclusion thereon and further Defendants’ insinuation that the magazine — and Garrett himself — both were frauds.

26. By publishing this obviously fake magazine cover without attribution and without labeling it as a parody, *The Hook* sought to damage Garrett’s reputation by misleading readers into believing that Garrett himself had created the fake magazine cover and/or that Garrett himself was as much a fraud as the obviously false cover appeared to be. Knowing Garrett’s

profession depended upon his reputation and credibility, *The Hook* could foresee the natural consequences of such an attack on Garrett's livelihood.

27. Indeed, it was apparent from the comments on *The Hook*'s website version of the article that several readers in fact had been misled into thinking that Garrett had himself created the fake magazine cover. (See Exhibit 8.)

28. The fake magazine cover also bears a close superficial resemblance to the actual cover of *Senior Arizona* magazine upon which Garrett, in fact, did appear in August 2005 (Exhibit 10.) In particular, the fake cover uses the same photograph of Garrett as the actual *Senior Arizona* magazine, which Defendants did not have any right or permission to use, and copies much of the layout of the actual *Senior Arizona* magazine, and even some of the article titles appearing on the cover are the same. (Compare Exhibit 9 with Exhibit 10.)

29. The close resemblance between the actual *Senior Arizona* magazine and the obviously fake magazine cover published by Defendants makes clear that despite Defendants' professed inability to uncover any evidence of the existence of the magazine, Defendants, in fact, were fully aware of the existence of the actual *Senior Arizona* magazine even while Defendants simultaneously were printing articles that strongly implied Garrett had lied about the magazine's existence. Defendants could not have contrived such a close mock-up of the original in their April 24, 2008 article without having seen the original magazine cover.

30. Garrett's livelihood as a Hollywood insider, publicist, author and commentator upon celebrity affairs depends upon his credibility. Accordingly, by suggesting that Garrett lied about his appearance on the cover of *Senior Arizona* magazine, and by creating a fake magazine cover in connection with this alleged lie for the purpose either of embellishing the lie that the magazine did not exist, or implying that Garrett had created the fake cover himself,

Defendants have injured Garrett in his name, reputation, profession and trade, both directly and by implication. The statements in these articles therefore constitute defamation *per se*.

31. At the same time, *The Hook* also published an article by Courteney Stuart entitled "Garrett's plea: Publicist guilty of reduced charge," in its April 24, 2008, print edition (Exhibit 11) and on line at <http://www.readthehook.com/stories/2008/04/24/news-garrettsentence-c.aspx>. (Exhibit 12). The article unequivocally attested to the evidence of Garret's guilt of forgery, notwithstanding the fact that no such evidence existed and the charges were dismissed for that very reason.

32. Specifically, the article falsely stated:

The plea deal, announced in court on Friday, kept court-watchers from hearing what promised to be riveting testimony detailing the allegations behind the charges-- that over the course of at least 18 months in 2004 and 2005, Garrett forged checks he'd stolen from Kimbell, whom he'd befriended several months before Kimbell's grandmother died in November 2002.

(Exhibits 11 and 12.) These words, the context in which they were written, and the reasonable inferences flowing therefrom, falsely attested to Garrett's guilt of the very crimes for which no evidence existed and improperly stated, both directly and by implication, that evidence existed to support the claim that Garrett had engaged in criminal activity and in the commission of a crime involving moral turpitude. This simply was untrue. These false words therefore are defamatory *per se*.

33. The article also falsely stated that Garrett had forged balance transfer checks sent to Garrett's accuser (the psychologically troubled individual whom Garrett was attempting to help) by credit card companies, even though no evidence of any such forged check ever existed. Specifically, the article stated:

"I'm a trusting person," says Kimbell, explaining he had no reason to doubt Garrett's celebrity connections or his honesty. Within months he had granted

Garrett "carte blanche" access to the New Canton home he shared with his dying grandmother. He had also, he later found out, given him carte blanche access to the balance transfer checks sent to him by credit card companies.

(Exhibits 11 and 12.) The second and third sentences just identified, the manner in which they are written (without attribution, as if they were factual) and the reasonable inferences flowing therefrom, falsely portrayed – both directly and by implication - Garrett's actions as criminal, including the commission of a crime involving moral turpitude. This simply was untrue. These false words therefore are defamatory *per se*.

34. Defendants published the February 1, 2008, February 7, 2008 and April 24, 2008 articles referred to above to third parties, both in *The Hook's* printed editions and on the related web site and, indeed, continue to publish them to third parties on such web site.

35. The February 1, 2008, February 7, 2008 and April 24, 2008 articles referred to above directly reference Garrett by name and include Garrett's photos and image, and would be recognized by any third party seeing or hearing them as referring to Garrett in a defamatory sense, both directly and by implication.

36. Defendants published the February 1, 2008, February 7, 2008 and April 24, 2008 articles referred to above either with knowledge of the falsity of the words and implications conveyed thereby, or with reckless and wholesale disregard for both the truth or falsity of the statements and words identified above and for the truth or falsity of the inferences that readers reasonably could be expected to draw therefrom. In fact, upon information and belief, Defendants acted with the specific intent that readers draw these false inferences, thereby continuing a pattern of such malicious and purposeful conduct that began with *The Hook's* February 22, 2007 negative article about Garrett which received such attention.

37. In publishing the false statements identified in the February 1, 2008, February 7, 2008 and April 24, 2008 articles referred to above, Defendants were motivated by personal spite, ill-will and malice, and Defendants published such statements in a knowing, deliberate and purposeful attempt to harm Garrett in his person, name, reputation and profession.

38. In fact, on more than one occasion, Garrett and/or his agent(s) informed Defendants or their representatives *prior to publication* that the information was incorrect, yet Defendants nevertheless published and republished the false and defamatory statements.

39. The defamatory statements in the February 1, 2008, February 7, 2008 and April 24, 2008 articles make Garrett appear odious or infamous, and proximately have caused substantial losses to Garrett's finances and prestige, causing him direct pecuniary loss, emotional upset, embarrassment and humiliation, the loss of reputation in the community and lost standing among his fans, business associates and professional peers, and lost business opportunities.

40. In particular and without limitation, Defendants' defamation has, among other things, caused Garrett to lose his position with the top radio program in Australia (where he had over seven million listeners); prevented Garrett from renting an apartment in Los Angeles County; jeopardized Garrett's standing and position as an editor and writer for the *Canyon News*; and impugned and damaged Garrett's relationship with a local Christian Academy in Buckingham County where Garrett had been a regular speaking guest for the children and whose staff previously had invited Garrett into their home, but who ceased to do so after reading *The Hook*.

41. In short, Defendants' defamation has succeeded in its purpose and intent—third parties hearing and reading *The Hook's* false statements of fact about Garrett materially have

changed their opinion of Garrett and altered their course of dealing with him, causing him personal loss, financial loss and other damage.

Count I
Defamation
(Against All Defendants)

42. The previous paragraphs of this Complaint are incorporated herein by reference.

43. On February 1, 2008, Defendants Better Publications and Lindsay Barnes published an article about Garrett entitled "Forgery trial continued for publicist to the stars, and on February 7, 2008, they published a similar article entitled "Tommybrook: Publicist to the stars ready for trial." (Exhibits 4 and 5.)

44. Included within these articles was the following statement:

he [Garrett] released another statement heralding a cover story about him in *Senior Magazine* (a publication of which the *Hook* can find no evidence);

45. On April 24, 2008, Defendants Better Publications and Courteney Stuart published an article about Garrett entitled "Senior moment: Garrett mystery solved?" and "Senior Magazine: Garrett mystery solved?" (Exhibits 7 and 8.)

46. Included within this article were the following statements:

Four days after publicist to the stars and chicken farmer Tommy Lightfoot Garrett pled guilty to a reduced charge in Buckingham County Courthouse, some questions about his accomplishments remain. For instance, did he actually grace the cover of *Senior Magazine, the Arizona edition*, as at least one website claims?

. . . .

If his books are easily discovered online, *Senior Magazine, the Arizona edition* has been far more elusive. Perhaps that's best. The publisher and editor of *Senior Magazine-the North Central California Edition* says there is no official Arizona edition, and he's not happy that someone could be using the name.

47. The article also contained a fake image of a cover of "Senior Magazine," by which Defendants Better Publications and Stuart sought to mislead readers into believing that Garrett himself had created the fake magazine cover and/or that Garrett himself was as much a fraud as the obviously false cover appeared to be.

48. The statements in the articles referred to above, and the collective implication – either direct or suggested – that Garrett concocted the Senior Magazine and his appearance therein - are false statements of material fact concerning Garrett, and they were false and untrue when written and published. As such, they are actionable as defamation. To the extent that these statements and implications are directed and intended to cause, and have caused, specific injury to Garrett not just in his name and reputation, but in his occupation, profession and trade, they constitute defamation *per se*.

49. At the time of the publication of these statements and of the collective implication that Garrett created the fake magazine and continuing thereafter, Defendants knew that the statements were false or published such statements with knowing and reckless disregard for the truth or falsity thereof.

50. Defendants published such false statements of fact with malice — *i.e.*, actual malice as defined in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) —and ill-will, and with the purposeful intent to impugn, degrade, injure and damage Garrett in his person, name, reputation, trade and profession.

51. Defendants published such false statements of fact with the intention that third parties would receive such information, believe such information and materially change their opinion of Garrett and change their conduct and relationships with Garrett as a result.

52. In fact, third parties receiving the false statements of fact published by Defendants have believed such statements, changed their opinion of Garrett as a result and changed their conduct and relationships with Garrett as a result.

53. The defamation committed by Defendants proximately has caused Garrett personal and financial loss, injury and damage, including damage and injury to Garrett's name and reputation and damage and injury to Garrett's occupation, trade and profession.

WHEREFORE, Plaintiff moves this honorable Court for judgment against Defendants for compensatory damages in an amount to be determined at trial, but in no event less than \$5,000,000, together with punitive damages in the amount of \$350,000, or as allowed by law. Plaintiff also seeks such interest and costs as the Court deems appropriate and as are allowed by law, including prejudgment interest pursuant to Virginia Code § 8.01-382, running from the date of publication of each respective article.

Count II
Defamation
(Against Defendants Better Publications, L.L.C. and Courteney Stuart)

54. The previous paragraphs of this Complaint are incorporated herein by reference.

55. On April 24, 2008, Defendants Better Publications and Stuart published an article about Garrett entitled "Garrett's plea: Publicist guilty of reduced charge." (Exhibits 11 and 12.)

56. Included within the article were the following statements:

The plea deal, announced in court on Friday, kept court-watchers from hearing what promised to be riveting testimony detailing the allegations behind the charges-- that over the course of at least 18 months in 2004 and 2005, Garrett forged checks he'd stolen from Kimbell, whom he'd befriended several months before Kimbell's grandmother died in November 2002.

and

“I’m a trusting person,” says Kimbell, explaining he had no reason to doubt Garrett’s celebrity connections or his honesty. Within months he had granted Garrett “carte blanche” access to the New Canton home he shared with his dying grandmother. He had also, he later found out, given him carte blanche access to the balance transfer checks sent to him by credit card companies.

57. These statements are false statements of material fact concerning Garrett; they were false and untrue when written and published; and, as such, they are actionable as defamation. To the extent that these statements allege the commission of a crime or are directed and intended to cause, and have caused specific injury to Garrett not just in his name and reputation, but in his occupation, profession and trade, they constitute defamation *per se*.

58. At the time of the publication of these statements, and continuing thereafter, Defendants Better Publications and Stuart knew that the statements were false or published such statements with knowing and reckless disregard for the truth or falsity thereof.

59. Defendants Better Publications and Stuart published such false statements of fact with malice — *i.e.*, actual malice as defined in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) — and ill-will, and with the purposeful intent to impugn, degrade, injure and damage Garrett in his person, name, reputation, trade and profession.

60. Defendants Better Publications and Stuart published such false statements of fact with the intention that third parties would receive such information, believe such information and materially change their opinion of Garrett and change their conduct and relationships with Garrett as a result.

61. In fact, third parties receiving the false statements of fact published by Defendants Better Publications and Stuart have believed such statements, changed their opinion of Garrett as a result and changed their conduct and relationships with Garrett as a result.

62. The defamation committed by Defendants Better Publications and Stuart proximately has caused Garrett personal and financial loss, injury and damage including damage and injury to Garrett's name and reputation, and damage and injury to Garrett's occupation, trade and profession.

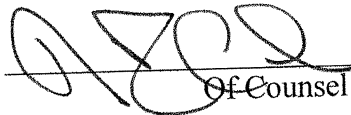
WHEREFORE, Plaintiff moves this honorable Court for judgment against Defendants for compensatory damages in an amount to be determined at trial, but in no event less than \$5,000,000, together with punitive damages in an amount of \$350,000, or as allowed by law. Plaintiff also seeks such interest and costs as the Court deems appropriate and as are allowed by law, including prejudgment interest pursuant to Virginia Code § 8.01-382, running from the date of publication of each respective article.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL ISSUES.

Respectfully submitted,

THOMAS L. GARRETT, JR.

By:


Of Counsel

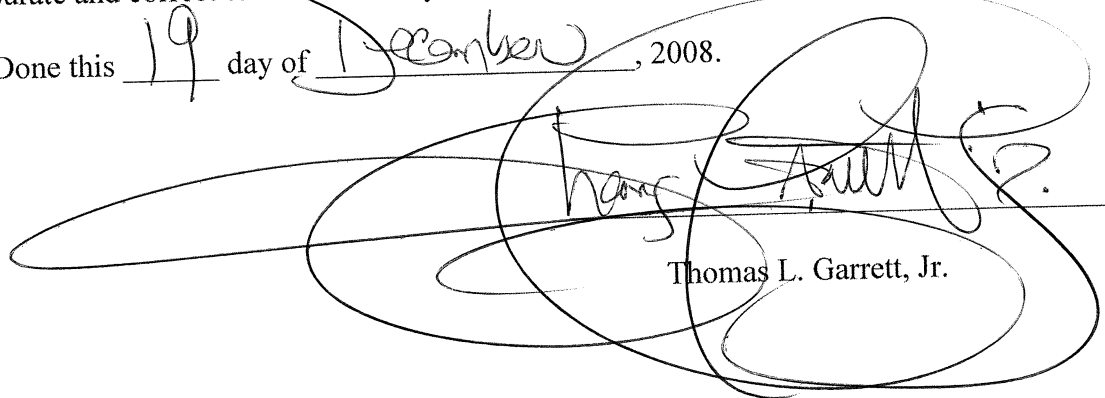
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(540) 966-2504 (phone)
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Counsel for Plaintiff, Thomas L. Garrett, Jr.

VERIFICATION

I, Thomas L. Garrett, Jr., Plaintiff on the foregoing Complaint for Defamation, have read the allegations of fact contained therein and hereby attest, under penalty of perjury, that I am personally familiar with the facts set forth therein, and that all such allegations of fact are true, accurate and correct to the best of my knowledge, information and belief.

Done this 19 day of December, 2008.



Thomas L. Garrett, Jr.