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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND CIRCUIT  
McHENRY COUNTY, ILLINOIS**

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THE B. F. SHAW PRINTING COMPANY,	)	
	)	
Plaintiff,	)	No. 2009 LA 217
	)	
vs.	)	
	)	Honorable Maureen P. McIntyre,
CAL SKINNER, JR.,	)	Judge Presiding
	)	
Defendant.	)	

**DEFENDANT'S ANSWER TO COMPLAINT,  
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO  
THE B. F. SHAW PRINTING COMPANY'S COMPLAINT**

June 29, 2009

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NOW COMES Defendant, CAL SKINNER, JR. (the “Defendant”), by his attorneys, SARLES & OUMET LLP, and for his ANSWER, AFFIRMATIVE DEFENSES and COUNTERCLAIMS to Plaintiff’s, The B. F. SHAW PRINTING COMPANY’s (“B. F. Shaw” or the “Plaintiff”), COMPLAINT, states as follows:

### INTRODUCTION

In its statement of “Editorial Principles”, the Northwest Herald professes, in part, to the following:

- Our integrity is our most valuable asset. Without it, we lose the public trust invested in us by the First Amendment of the U.S. Constitution.
- We are committed to the highest standards of truth and honesty; accuracy and fairness; accessibility, accountability and independence We will diligently pursue truth in the public interest, without regard to special or personal interest.
- We will never knowingly mislead readers by publishing falsehoods or unquestioned truth.

*See [http://www.nwherald.com/editorial\\_principles/](http://www.nwherald.com/editorial_principles/).*

Unless the words integrity, truth, honesty and accuracy include the filing of sham lawsuits, and the publication of known falsehoods by B. F. Shaw against online internet competitors in the field of journalism, the Northwest Herald’s “Editorial Principles” are a bit overstated.

On June 11, 2009, plaintiff, B.F. Shaw, owner of the Northwest Herald, a daily newspaper published in McHenry County, Illinois, filed a lawsuit seeking compensatory and punitive damages against defendant, Cal Skinner, Jr. (“Mr. Skinner”), the owner and publisher of the McHenry County Blog, an online internet “journal of news and opinion designed to bring to light matters of public interest and to encourage public participation in the governmental process.” *See*

<http://mchenrycountyblog.com>.

The gist of plaintiff's claims concern a loan made by the County of McHenry to the Shawmor Limited Partnership ("Shawmor"), a partnership owned, managed and controlled by the Shaw family media empire. In the lawsuit and elsewhere in print, plaintiff categorically denied that a loan was ever made, or that it ever participated in or received benefit of any such loan. Based on these denials, plaintiff charged Mr. Skinner with defamation, false light and commercial disparagement. Plaintiff's denials are, and were, at the time made, deliberately fabricated, or at a minimum, entirely misleading.<sup>1</sup>

The loan transaction in question consisted of a \$2.6 million bond issued and sold by the County of McHenry to the Dixon National Bank (the "Bond") for the purpose of providing funds to finance the costs of acquisition, construction and equipping of a printing, warehousing and office facility located at State Route 31 and Three Oaks Road in Crystal Lake, McHenry County, Illinois (the "Project").

The owner of the Project was Shawmor. The Project was leased to the Shaw Free Press Media, Inc. (the "Shaw Free Press"). The cost of acquisition, construction and equipping the Project was financed through a Promissory Note (the "Note") issued by Shawmor to the County of McHenry. The proceeds of the Bond sale were deposited in an account called the "Project Fund" created for the purpose of financing Shawmor's costs of acquiring, constructing and equipping the Project. Payment of the rent due under the lease was guaranteed by B. F. Shaw. According to tax

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<sup>1</sup> To be sure, the transaction documents repeatedly refer to the County of McHenry as the "Lender", Shawmor as the "Borrower", and the transaction itself as a "Loan". *See Ex. "1", Resolution (R-8511-02-86), §4; Ex. "4", Bond Purchase Agreement, p. 1; Ex. "7", Guaranty Agreement, p. 1; Ex. "10", Security Agreement, p. 1.*

records filed with the Internal Revenue Service, the “Initial Principal Users” of the Bond proceeds were Shawmor, Shaw Free Press and B. F. Shaw.

Thus, plaintiff’s lawsuit is a sham; filed solely to intimidate, harass and destroy an online internet marketplace competitor of news and opinion. Furthermore, plaintiff knew prior to the filing of the lawsuit and the publication of Northwest Herald’s article entitled “Northwest Herald’s owner sues blogger, claims defamation” that the statements, allegations, and legal claims made against Mr. Skinner were completely fabricated or, at a minimum, entirely misleading. Plaintiff knew as far back as fall of 1985 that the County of McHenry authorized and issued the loan and that plaintiff directly participated in and benefitted from it. With these background facts in mind, defendant-counterplaintiff, Cal Skinner, Jr., responds to the charges filed against him as follows.<sup>2</sup>

**ANSWER TO COMPLAINT**

**COUNT I - DEFAMATION**

1. Plaintiff is an Illinois corporation, and is the owner of a daily newspaper, the NORTHWEST HERALD, published in Crystal Lake, Illinois.

**ANSWER:** Defendant admits the allegations of paragraph 1.

2. Defendant, Cal Skinner, Jr., is a resident of McHenry County, and publishes commentary on the McHenry County Blog.

**ANSWER:** Defendant admits that he is a resident of McHenry County. Defendant denies

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<sup>2</sup> Mr. Skinner does not, expressly or impliedly, question the integrity or professionalism of any reporter or member of the editorial board of the Northwest Herald or counsel for plaintiff. Mr. Skinner’s investigation reveals, at this time, that no party other than The B. F. Shaw Printing Company and its agents knew or had reason to believe that the statements contained in the lawsuit and the June 11, 2009 Northwest Herald article entitled “Northwest Herald’s owner sues blogger, claims defamation” were false, deceptive and made for the sole purpose of harassment and intimidation.

the legal conclusion that he publishes commentary on the McHenry County Blog.

3. On June 3, 2009, at approximately 10:36 a.m., Defendant posted to the McHenry County Blog an article headlined "Borrowing on Borrowing", which is attached hereto and incorporated herein as Exhibit A.

**ANSWER:** Defendant admits that the article "Borrowing on Borrowing" was posted on the McHenry County Blog at approximately 10:36 a.m. on June 3, 2009.

4. That posting includes the following language:

**Perhaps a look at this 2006 article about example of the business judgment of the McHenry County Board might be instructive:**

**McHenry County Board Backs and Fills  
...After the Primary Election**

**The result:**

**The State's Attorney's Office advised the county board to write off \$177,470 of the \$200,000 loaned to Contempos Industries after the election.**

**Don't recognize that name? How about Woodstock Gardens, 455 Borden Street, Woodstock (near the Illinois National Reserve Armory)?**

**Significantly, the recommendation came after the fall election. Democratic Party county board candidates didn't figure out this fiasco in time to attack Republicans' bad judgment.**

**Oh, well.**

**The money didn't come from county taxpayers anyway.**

**It was recycled State of Illinois dollars. We know we didn't pay any of that.**

**And, who could forget the multimillion loan to the Northwest Herald at sub-market rates?**

**I filed a Freedom of Information request for the details a couple of years and got nothing. Guess it's time to try again.**

**In any event, the NW Herald was not an "in extremis" condition then. The excuse for loaning the money was to keep the county newspaper from moving out of the county.**

**The real reason was to put the paper in the back pocket of the Republican Party. (Anyone want to deny the strategy worked?)**

**ANSWER:** Paragraph 4 of count I of the complaint does not contain an allegation of fact to which an answer is required. To the extent an answer is required, defendant states that Exhibit "A" speaks for itself in its entirety.

5. The posting contains false and defamatory statements about plaintiff and its commercial property, THE NORTHWEST HERALD.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 5 of count I of the complaint.

6. Plaintiff has never been the recipient of a multi-million dollar loan from McHenry County at sub-market rates.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 6 of count I of the complaint.

7. Plaintiff has never been the recipient of any loan, from any public body, at market or sub-market rates.

**ANSWER:** Defendant denies the allegations and legal conclusions contained in paragraph 7 of Count I of the complaint.

8. Plaintiff is not, and never has been, 'in the back pocket' or under the control or influence of the McHenry County Republican Party, or any other political party or organization.

**ANSWER:** Paragraph 8 of count I fails to allege any fact, and therefore, defendant denies

the legal conclusion contained in paragraph 8 of count I of the complaint.

9. Plaintiff is not now, and has never been “in extremis” condition.

**ANSWER:** Defendant is without sufficient information or knowledge regarding whether plaintiff has ever been “in extremis” condition, and therefore, denies the allegation contained in paragraph 9 of count I of the complaint. However, defendant admits and accepts plaintiff’s judicial admission, that in 1985 the Northwest Herald was not then “in extremis” condition.

10. Plaintiff does not now and has not considered moving the NORTHWEST HERALD from McHenry County.

**ANSWER:** Defendant is without sufficient information or knowledge as to whether the Northwest Herald has ever considered moving from McHenry County, and therefore, denies the allegation contained in paragraph 10 of count I of the complaint.

11. There are no public records which would support the statements published by Defendant.

**ANSWER:** Defendant denies the allegation of paragraph 11 of count I of the complaint.

12. There are no documents recorded with the County Recorder which would support the statements published by Defendant.

**ANSWER:** Defendant denies the allegation of paragraph 12 of Count I of the complaint.

13. There are no minutes of any public meeting of any public body which support the statements published by Defendant.

**ANSWER:** Defendant denies the allegation of paragraph 13 of count I of the complaint.

14. The statements published by Defendant are false.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph

14 of count I of the complaint.

15. The statements published by Defendant are of and concerning Plaintiff.

**ANSWER:** Defendant denies the allegation contained in paragraph 15 of count I of the complaint.

16. The statements published by Defendant were published by without a recognized privilege.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 16 of count I of the complaint.

17. The statements published by Defendant were published with knowledge that the statements were false.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 17 of count I of the complaint.

18. The statements published by Defendant were published with reckless disregard for the truth.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 18 of count I of the complaint.

19. The statements published by Defendant were published with common law malice, or ill will towards the Plaintiff, based on the publication by Defendant of a series of news articles about Defendant and his contentious divorce and child custody proceedings.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 19 of count I of the complaint. Further answering, defendant states that the allegation and conclusion contained in paragraph 19 of count I of the complaint are irrelevant and interposed for the purpose



of harassment.

20. The statements made by Defendant constitute defamation *per se*.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 20 of count I of the complaint.

21. The statements published by Defendant are damaging to Plaintiff in that the statements question Plaintiffs financial viability and ability to continue to publish a newspaper in McHenry County Illinois.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 21 of count I of the complaint.

22. The statements published by Defendant are damaging to Plaintiff in that the article impugns the financial and editorial integrity of Plaintiff and the NORTHWEST HERALD.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph 22 of count I to the complaint.

### **COUNT II - FALSE LIGHT**

1 -22. Plaintiff restates and incorporates ¶¶1-22 in Count I as ¶¶1-22 in Count II of the Complaint.

**ANSWER:** Defendant incorporates his Answers to paragraphs 1 through 22 in count I as his answer to paragraph 22 of count II of the complaint.

23. The false statements about Plaintiff by Defendant place Plaintiff in a false light before the public, as purported "mouthpiece" for the Republican party, rather than as an award-winning member of the independent press.

**ANSWER:** Defendant denies the allegation and legal conclusion contained in paragraph

23 of count II of the complaint.

### **COUNT III - COMMERCIAL DISPARAGEMENT**

1-23. Plaintiff repeats and realleges ¶¶1-23 in Count II as ¶¶1-23 in Count III of the Complaint.

**ANSWER:** Defendant incorporates his answers to paragraphs 1 through 23 in count II as his Answer to paragraph 23 of count III of the complaint.

24. The statements by Defendant are about the news product offered by Plaintiff to the citizens of McHenry and surrounding counties.

**ANSWER:** Defendant denies the allegation of paragraph 24 of count III of the complaint.

25. The statements made by Defendant were intended to deter members of the public from purchasing the news products offered by Plaintiff, and to undercut the news products offered by Plaintiff.

**ANSWER:** Defendant denies the allegation of paragraph 25 of count III of the complaint.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiff is not entitled to the relief sought in count I of the complaint as defendant's statements are true, substantially true, or protected opinion, in and as the plaintiff was a participant in and beneficiary of a \$2.6 million dollar loan, with interest at 80% of prime, from the McHenry County Board, under Resolution R-8511-02-86, a copy of which is attached hereto and incorporated herein as Exhibit ("Ex.") "1".

#### **Second Affirmative Defense**

Plaintiff is not entitled to recovery as defendant's statements, in and of themselves, are not

so obviously and naturally harmful to make proof of special damages unnecessary, especially since defendant's statements do not (1) impute the commission of a criminal offense; (2) impute infection with a loathsome communicable disease; (3) impute an inability to perform or want of integrity in the discharge of duties of office or employment; or (4) prejudice plaintiff, or impute lack of ability, in his or her trade, profession or business.

**Third Affirmative Defense**

Plaintiff is not entitled to the relief sought in counts I, II, or III of the complaint as defendant's statements are true, substantially true and/or protected opinion.

**Fourth Affirmative Defense**

Plaintiff is not entitled to recovery on counts I or III because defendant's statements are protected under the First Amendment to the United States Constitution, and Article 1, Section 4 of the Illinois Constitution of 1970.

**Fifth Affirmative Defense**

Plaintiff is not entitled to recover on counts I or III as defendant's statements are expressions of non-actionable opinion.

**Sixth Affirmative Defense**

Plaintiff is not entitled to recovery as to counts I or III because defendant's statements are reasonably capable of an innocent construction.

**Seventh Affirmative Defense**

Plaintiff is not entitled to recovery under count II as plaintiff can not establish that defendant's statements were made with actual malice, as defendant's statements were not false or made in reckless disregard of the truth. *See Ex. "I"*.

**Eighth Affirmative Defense**

Plaintiff is not entitled to recovery under count II as defendant's statements are non-actionable opinion.

**Ninth Affirmative Defense**

Plaintiff is not entitled to recovery as to count II as it can not establish any economic loss or special damages.

**Tenth Affirmative Defense**

Plaintiff is not entitled to recovery on count III as plaintiff can not demonstrate that the defendant made false and demeaning statements about the quality of plaintiff's good or services.

**Eleventh Affirmative Defense**

Plaintiff is not entitled to recovery on counts I or III as defendant's statements relate to matters of governmental affairs and proceedings and are protected by the fair reporting privilege, as well as being a fair comment on a matter of public interest.

**Twelfth Affirmative Defense**

Plaintiff is not entitled to recovery on counts I, II or III of its complaint as it was filed in violation of the Illinois Citizen Participation Act, *735 ILCS 110/1, et seq.*

**Thirteenth Affirmative Defense**

Plaintiff is not entitled to recovery on counts I, II or III as it has not sustained an actual injury.

**Fourteenth Affirmative Defense**

Plaintiff is not entitled to recovery on counts I, II or III as it has unclean hands.

### **Fifteenth Affirmative Defense**

Plaintiff is not entitled to recovery on counts I, II or III as it has failed to mitigate its damages.

**WHEREFORE**, for the above foregoing reasons, Defendant/Counterplaintiff, CAL SKINNER, JR., requests that this Honorable Court:

- A. Enter judgment against the Plaintiff/Counterdefendant, The B. F. Shaw Printing Company, and in favor of Defendant/Counterplaintiff, Cal Skinner, Jr., on Counts I, II, and III of plaintiff's complaint;
- B. Award Cal Skinner, Jr., all reasonable attorney fees and costs incurred; and
- C. Grant Cal Skinner, Jr., all such further and additional legal and equitable relief to which he is entitled to under Illinois law.

### **COUNTERCLAIMS**

NOW COMES Defendant-Counterplaintiff, CAL SKINNER, Jr., by and through his attorneys, SARLES & OUIMET LLP, and pursuant to section 2-608(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-608(a), files the following Counterclaims against Plaintiff-Counterdefendant, The B. F. Shaw Printing Company.

### **Facts Common To All Counts**

#### **The Parties**

1. Counterplaintiff, Cal Skinner, Jr. ("Mr. Skinner"), is a former Republican State Representative and County Treasurer of McHenry County, Illinois. Mr. Skinner is also the owner and publisher of the online internet publication known as the "McHenry County Blog". *See* <http://www.mchenrycountyblog.com/>

2. Counterdefendant, The B. F. Shaw Printing Company (“B. F. Shaw”), is an Illinois corporation engaged in, *inter alia*, newspaper publishing and printing. See Complaint, ¶1.

3. The Northwest Herald (“Northwest Herald”) is a daily newspaper published in McHenry County owned by B. F. Shaw. Id.

4. B. F. Shaw commenced a lawsuit against Cal Skinner, Jr. in the Circuit Court of the Twenty-Second Judicial Circuit, McHenry County, Illinois, on or about June 11, 2009 (the “Lawsuit”).

5. In connection with the filing of the Lawsuit, the Northwest Herald, on June 11, 2009, published a front page story concerning the Lawsuit entitled “Northwest Herald’s owner sues blogger, claims defamation” (the “Article”). See Ex. “2”, “Northwest Herald owner sues blogger, claims defamation.”

### **The Claims**

6. The Lawsuit and Article respectively assert and report B. F. Shaw’s and the Northwest Herald’s claims that Mr. Skinner lied and defamed them when he wrote that the Northwest Herald benefitted from a loan from the County of McHenry. See Complaint, ¶¶ 5–22; Ex. “2”.

7. Prior to filing the Lawsuit and publication of the Article, B. F. Shaw knew that the County of McHenry made a loan to a Shaw managed and controlled entity, that B. F. Shaw was involved in and benefitted from the loan, and that all claims and statements that Mr. Skinner lied or defamed B. F. Shaw were completely fabricated.

## The Loan

8. In or about the fall of 1985, Shawmor Limited Partnership (“Shawmor”) approached and requested that the McHenry County Board financially assist Shawmor in its efforts to acquire, construct and equip a newspaper print facility and office located at State Route 31 and Three Oaks Road. *See Ex. “1”, McHenry County Board Resolution (Resolution No. R-8511-002-86).*

9. On November 12, 1985, the County of McHenry authorized and approved the issuance of a \$2.6 million dollar bond bearing interest at a per annum rate of 80% of the Prime Rate (the “Bond”). *Ex. “1”, Resolution (R-8511-02-86).*

10. Pursuant to Resolution R-8511-02-86, the County of McHenry issued the Bond in order to provide funds to Shawmor for the acquisition, construction and the equipping of a newspaper printing facility and office located at or about State Route 31 and Three Oaks Road. *Ex. “1”, Resolution (R-8511-02-86), pp. 1-2; Ex. “3”, “Bond”.*

11. The Bond was sold to the Dixon National Bank at a purchase price of 100% of the principal amount of the Bond, or for \$2.6 million dollars. *See Ex. “1”, §§5, 6; Ex. “4”, Bond Purchase Agreement.*

12. The proceeds of the Bond sale (\$2.6 million) were deposited in a fund called the “Project Fund” controlled by the County of McHenry. *See Ex. “4”, §6, Bond Purchase Agreement.*

13. The County of McHenry, as lender, loaned the Bond proceeds to Shawmor, as borrower, for the purposes of financing the costs of the Project. *See Ex. “1”, §10; Ex. “4”, §I.*

14. As security for the loan, Shawmor executed and delivered to the County of McHenry a non-recourse promissory note (the “Note”) secured, *inter alia*, by a Mortgage on the Project. *See Ex. “1”, §4; Ex. “5”, “Agency Agreement and Assignment”.*

15. As security for the Bond, the County of McHenry assigned all of its right, title and interest to the Note and Loan Agreement to the Dixon National Bank. *Ex. "1", §§2, 4, 5; Ex. "5", §3, the "Agency Agreement and Assignment"*.

16. Shawmor's payments to the County of McHenry on the Note were secured by revenues generated from a Lease Agreement entered into between Shawmor and Shaw Free Press Media Inc. *See Ex. "6", "Lease"*. The rent payments due under the Lease Agreement were guaranteed by B. F. Shaw pursuant to a Guaranty Agreement. *See Ex. "1", p. 1; Ex. "5, §6; "Ex. "7", "Guaranty Agreement"*.

17. Pursuant to the transaction plan, the lease payments made by Shaw Free Press Media Inc. to Shawmor and Shawmor's payments to the County of McHenry on the Note were to be at least equal to the County of McHenry's required principal and interest payments to the Dixon National Bank on the Bond. *See Ex. "5", §2*.

18. According to documents filed by the County of McHenry with the Internal Revenue Service ("IRS"), the "Initial Principal Users" of the Bond proceeds were: (1) Shawmor Limited Partnership, (2) Shaw Free Press Media, Inc., and (3) counterdefendant, The B. F. Shaw Printing Company. *See Ex. "8", "Information Return for Private Activity Bond Issues"*.

### **The McHenry County Blog**

19. The McHenry County Blog is an internet based website "journal of news and opinion designed to bring to light matters of public interest and to encourage public participation in the governmental process."

20. On June 3, 2009, Mr. Skinner posted a piece on the McHenry County Blog entitled "Borrowing on Borrowing" (the "Piece"). *See Ex. "9"*. The Piece stated in full, the following:



Wednesday, June 03, 2009

Borrowing on Borrowing

I'm not even going to read the Northwest Herald article before posting this.

It's front page headline tells much too much:

## **County eyes bonding power**

Stimulus act empowers governments to issue federal economic recovery bonds

This is so wrong on so many levels.

First, the borrowing authorized and unauthorized by Congress (remember the Federal Reserve) is going to cause rampant inflation unless I miss my bet. That's the usual result of running the printing presses at the U.S. Mint.

Now, the McHenry County Board is thinking about borrowing money with the expectation that the big sugar daddy in Washington will continue sending sugar plums to his children in all 3,000 counties.

And the McHenry County Board is going to play sugar daddy to business and local governments.

Sounds like a lot of opportunities for campaign fund solicitation there.

Perhaps a look at this 2006 article about example of the business judgment of the McHenry County Board might be instructive:

## **McHenry County Board Backs and Fills ...After the Primary Election**

The result:

The State's Attorney's Office advised the county board to write off \$177,470 of the \$200,000 loaned to Contempos Industries after the election.

Don't recognize that name? How about Woodstock Gardens, 455 Borden Street, Woodstock (near the Illinois National Reserve Armory)?

Significantly, the recommendation came after the fall election. Democratic Party county board candidates didn't figure out this fiasco in time to attack Republicans' bad judgment

Oh, well.

The money didn't come from county taxpayers anyway.

It was recycled State of Illinois dollars. We know we didn't pay any of that.

And, who could forget the multimillion loan to the Northwest Herald at sub-market rates?

I filed a Freedom of Information request for the details a couple of years and got nothing. Guess it's time to try again.

In any event, the NW Herald was not an "in extremis" condition then. The excuse for loaning the money was to keep the county newspaper from moving out of the county.

The real reason was to put the paper in the back pocket of the Republican party: (Anyone want to deny the strategy worked?)

See Ex. "9", "Borrowing on Borrowing"

### **The Lawsuit and Re-Publication**

21. In response to the Piece “Borrowing on Borrowing”, B. F. Shaw filed a lawsuit in the Circuit Court of McHenry County against Mr. Skinner. *See Complaint, The B. F. Shaw Printing Company v. Cal Skinner, Jr., filed on June 11, 2009 (the “Lawsuit”)*.

22. In its Lawsuit, B. F. Shaw claimed it and its commercial property, the Northwest Herald, were defamed, placed in a false light, and commercially disparaged by the “false and defamatory statements” contained in the Piece entitled “Borrowing on Borrowing”. *See Complaint, ¶5.*

23. Specifically, B. F. Shaw claimed the following statements contained in the article “Borrowing on Borrowing” were false, defamatory, made with knowledge of their falsity or in reckless disregard of the truth, and otherwise were published without a recognized privilege:

- And who could forget the multimillion loan to the Northwest Herald at sub-market rates?
- In any event, the NW Herald was not an “in extremis” condition then. The excuse for loaning the money was to keep the county newspaper from moving out of the county.
- The real reason was to put the paper in the back pocket of the Republican party. (Anyone want to deny the strategy worked?)

*See Complaint, ¶¶ 6, 7, 8, 9, 10.*

24. On the same day the Lawsuit was filed, the Northwest Herald published on its front page an Article entitled “Northwest Herald’s owner sues blogger, claims defamation.” *See Ex. “2” Northwest Herald’s owner sues blogger, claims defamation”, dated June 11, 2009.*

25. The Article essentially parroted the allegations set forth in the Lawsuit, but also contained the following additional specific statement by John Rung:

Northwest Herald Publisher John Rung said Skinner's assertions were 'reckless and completely fabricated'.

*Id.*

#### The Fraud

26. Contrary to its claims, B. F. Shaw knew prior to filing of the June 11, 2009 Lawsuit and the publication of the Article that each statement contained in Mr. Skinner's Piece "Borrowing on Borrowing" which was alleged to be false and defamatory was, in fact, true, constituted privileged communications, or both.

27. B. F. Shaw deliberately caused the Lawsuit to be filed and the Article to be published for the purpose of perpetrating a fraud on the court and public by charging Mr. Skinner with publishing lies when B. F. Shaw knew that prior to the Lawsuit's filing and the publication of the Article that:

- B. F. Shaw Printing Company, Shawmor Limited Partnership and the Shaw Free Press Media, Inc. not only participated in and benefitted from a loan from the County of McHenry, but each, according to the IRS records, were "Initial Principal Users" of the loan proceeds as well;
- That the loan was issued at 80% of the prime rate;
- That Mr. Skinner's statement that "In any event, the NW Herald was not an 'in extremis' condition then" was a true statement;
- That "[t]he excuse for loaning the money was to keep the county newspaper from moving out of the county" was a true statement; and
- That "[t]he real reason was to put the paper in the back pocket of the Republican Party. (Anyone want to deny the strategy worked?)" was protected opinion and not actionable under Illinois law.

28. B. F. Shaw also knew that all statements charging Mr. Skinner with publishing

falsehoods were untrue, defamatory themselves, and made for the sole purpose to intimidate and harass Mr. Skinner from exercising his right to speak freely and to petition government through the filing of additional FOIA requests in order to obtain additional documents concerning the loan.

29. In addition, B. F. Shaw's assertions charging Mr. Skinner with publishing false and defamatory statements were made in reckless disregard for the truth.

30. The real reason that B. F. Shaw filed the Lawsuit and caused the Northwest Herald to publish the Article was not for the purpose of seeking legal redress of any alleged wrong, but for the purpose of: (1) forcing Mr. Skinner to incur the unnecessary and burdensome expense of defending a frivolous lawsuit; (2) blackmailing Mr. Skinner into retracting his Piece on the McHenry County Blog and issuing a public apology that the statements published were false when, in fact, plaintiff knew they were true and/or privileged from legal process; (3) to suppress Mr. Skinner's right to publish his opinions and news stories on the McHenry County Blog; and (4) to harass and intimidate Ms. Skinner from petitioning his government for more information related to the loan or other loans made to or for the benefit of B. F. Shaw, the Northwest Herald, or any other owned or controlled Shaw affiliate.

31. The statement published by the Northwest Herald attributed to Mr. Rung and those contained in the Lawsuit itself are defamatory *per se* of and concerning Mr. Skinner.

32. The statements published in the Northwest Herald in the Article and those contained in the Lawsuit filed by B. F. Shaw are damaging to Mr. Skinner in that the statements call into question Mr. Skinner's integrity, professionalism and honesty.

33. The statements contained in the Lawsuit and those published in the Article were made and communicated by B. F. Shaw and its agents of and concerning Mr. Skinner.

## COUNT I

(SLAPP Lawsuit Against The B. F. Shaw Printing Company)

34. Counterplaintiff realleges and reincorporates paragraph 1 through paragraph 33 above as paragraph 34 of this Count I.

35. B. F. Shaw filed the Lawsuit for the sole purpose of maliciously interfering, intimidating and/or silencing Mr. Skinner's right to petition government through use of the Freedom of Information Act ("FOIA") as stated in the Piece and to silence any and all further discussion surrounding the \$2.6 million loan transaction from the McHenry County Board to the Shaw affiliates.

36. B. F. Shaw knew prior to the filing of the Lawsuit that the statements contained in the Piece "Borrowing on Borrowing" were true and/or privileged from legal process.

37. Despite such knowledge, B. F. Shaw filed a frivolous Lawsuit against Mr. Skinner not for the purpose of advancing any legitimate legal claims, but for the purpose of intimidating and silencing Mr. Skinner from legitimately exercising his lawful right to speak freely and petition government.

38. B. F. Shaw's conduct violates Section 110/5 of the Illinois Code of Civil Procedure, 735 ILCS 110/5, in that the filing of the Lawsuit against Mr. Skinner constitutes an abuse of the judicial process and was used as a means to intimidate, harass and/or punish Mr. Skinner for exercising his right of free speech and to petition government.

WHEREFORE, for the above foregoing reasons, Defendant/Counterplaintiff, CAL SKINNER, JR., respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff/Counterdefendant, The B. F. Shaw Printing Company, together with the following

legal and equitable relief:

A. Award Defendant/Counterplaintiff compensatory damages in excess of \$50,000 (U.S. Dollars);

B. Award Defendant/Counterplaintiff punitive damages in the amount of \$1,000,000 (U.S. Dollars);

C. Award Defendant/Counterplaintiff all attorney fees and costs for the defense of the lawsuit and prosecution of all counterclaims;

D. Award Defendant/Counterplaintiff any and all other legal and equitable relief this Honorable Court deems fair, just and reasonable.

## **COUNT II**

(Defamation Against The B. F. Shaw Printing Company)

39. Counterplaintiff realleges and incorporates paragraphs 1 through paragraph 38 above as paragraph 39 of this Count II.

40. Counterplaintiff is a resident of McHenry County, Illinois, and publishes news, opinion and commentary on a web-blog known as the McHenry County Blog.

41. A weblogger, such as counterplaintiff, has the same constitutional protections as do members of mainstream media, such as that of the counterdefendant.

42. On June 3, 2009, counterplaintiff posted a Piece on his blog headlined "Borrowing on Borrowing".

43. The Piece contained factually true, correct and accurate information and statements about a \$2.6 million loan that an entity owned or controlled by the counterdefendant received from the County of McHenry for the acquisition, construction and equipping of a newspaper and office

located near the intersection of State Route 31 and Three Oaks Road in McHenry County, Illinois.  
*See Ex. "1", Resolution (R-8511-02-86).*

44. Counterdefendant, however, and notwithstanding the factual and historical accuracy of counterplaintiff's June 3, 2009 Piece, maliciously, frivolously, and without a legitimate legal or factual basis, cause or reason, filed a three count Complaint against counterplaintiff alleging that counterplaintiff had lied and published deliberate falsehoods against the counterdefendant.

45. At the time of the filing of its Lawsuit, counterdefendant knew that its Lawsuit was frivolous and based upon false statements, information and allegations.

46. At the time of the filing of its Lawsuit, counterdefendant knew, or in the exercise of reasonable care should have known, that its statements both in its Lawsuit, and the corresponding Article were false, and that there was no legitimate basis or reason for the filing of the Lawsuit, or the publication of the Article appearing in the Northwest Herald, a newspaper owned and controlled by counterdefendant.

47. Counterdefendant acted in reckless disregard for the truth, and commenced its Lawsuit with the malicious and wrongful intent and purpose to injure and destroy counterplaintiff's good name and reputation.

48. Counterdefendant's publication of the deliberately false accusations and allegations contained in its Lawsuit and Article was deliberate, wilful and malicious and intended for the purpose of stifling and suppressing counterplaintiff from exercising his legitimate and constitutionally protected rights to free speech and expression.

49. No recognized privilege exist including, but not limited to, the fair reporting privilege for counterdefendant's wilful, deliberate, intentional and malicious assassination and



assault upon counterplaintiff's good character and reputation or its publication or republication of false statements against the counterplaintiff or his participation in matters involving and relating to public and governmental affairs and interest in either its Lawsuit or the Article.

WHEREFORE, for the above foregoing reasons, Defendant/Counterplaintiff, CAL SKINNER, JR., respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff/Counterdefendant, The B. F. Shaw Printing Company, together with the following legal and equitable relief:

A. Award Defendant/Counterplaintiff compensatory damages in excess of \$50,000 (U.S. Dollars);

B. Award Defendant/Counterplaintiff punitive damages in the amount of \$1,000,000 (U.S. Dollars);

C. Award Defendant/Counterplaintiff all attorney fees and costs for the defense of the lawsuit and prosecution of all counterclaims;

D. Award Defendant/Counterplaintiff any and all other legal and equitable relief this Honorable Court deems fair, just and reasonable.

**COUNT III**  
(False Light)

50. Counterplaintiff realleges and incorporates paragraphs 1 through 49 above as paragraph 50 of this Count III.

51. Counterdefendant filed a Lawsuit and published an Article containing false statements ascribing plaintiff as an offensive, reckless, malicious and unmitigated liar.

52. The false statements published by counterdefendant in its Lawsuit and in the Article

identified the counterplaintiff directly.

53. Counterdefendant's untrue statements, accusations and allegations placed counterplaintiff in a false light before the public that are highly offensive and distressing to a reasonable person.

54. Counterdefendant, in reckless disregard of the truth, knowing, or in the exercise of reasonable care should have known, that the statements, accusations and allegations it published in its court filing and in the Article about the counterplaintiff were false and/or constituted protected opinion.

55. Counterdefendant is at fault for publishing the knowingly false statements, accusations and allegations about the counterplaintiff.

56. Counterdefendant's conduct in filing a frivolous Lawsuit and in publishing the Article was intentional, malicious, inexcusable, vexatious, harassing, in bad faith, and sanctionable.

WHEREFORE, for the above foregoing reasons, Defendant/Counterplaintiff, CAL SKINNER, JR., respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff/Counterdefendant, The B. F. Shaw Printing Company, together with the following legal and equitable relief:

A. Award Defendant/Counterplaintiff compensatory damages in excess of \$50,000 (U.S. Dollars);

B. Award Defendant/Counterplaintiff punitive damages in the amount of \$1,000,000 (U.S. Dollars);

C. Award Defendant/Counterplaintiff all attorney fees and costs for the defense of the lawsuit and prosecution of all counterclaims;

D. Award Defendant/Counterplaintiff any and all other legal and equitable relief this Honorable Court deems fair, just and reasonable.

**JURY DEMAND**

Defendant/Counterplaintiff, CAL SKINNER, JR., hereby demands a trial by jury on all claims.

Dated: June 29, 2009

Respectfully submitted,

/s/ PATRICK MARTIN OUIMET

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One of Defendant/Counterplaintiff's attorneys