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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

INTERNATIONAL ASSOCIATION OF
UNITED WORKER'S UNION, et al.,

Plaintiffs,

vs.

UNITED MINE WORKERS OF
AMERICA, et al.,

Defendants.

Case No. 2:04CV00901

***THE MILITANT'S MOTION TO DISMISS
ALL CLAIMS ASSERTED AGAINST IT IN
PLAINTIFFS' SECOND AMENDED
COMPLAINT***

Judge Dee V. Benson

Pursuant to Rules 8(a) & (e)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and this Court's order at the June 14, 2005, hearing on the prior motions to dismiss filed by *The Militant* and the other media defendants (the "June 14 Hearing"), *The Militant*,¹ by and through undersigned counsel, hereby moves this Court for an order (i) dismissing, with prejudice, all of

¹ Plaintiffs' Amended Complaint named the *Socialist Workers Party* ("SWP") as a defendant, inaccurately claiming that the SWP owned and controlled *The Militant* and was therefore derivatively liable for *The Militant's* allegedly defamatory publications. See Amended Complaint at 4, ¶ 33. The SWP therefore joined in *The Militant's* prior motion to dismiss. These allegations have been dropped from the Second Amended Complaint, however, and the SWP is no longer named as a defendant. Accordingly, the SWP does not join this motion.

the claims asserted against it in Plaintiffs'² Second Amended Complaint, and (ii) awarding *The Militant* all of the reasonable attorneys' fees and costs incurred in defending this frivolous action.³

At the June 14 Hearing, this Court concluded that Plaintiffs' first Amended Complaint "[i]n its present form . . . [was] sufficiently vague and insufficiently precise to stand as a complaint upon which relief can be granted and from which litigation can proceed." Tr. of Motion Hearing ("Tr.") at 74. It therefore ordered Plaintiffs to simplify their confusing 70-page, 106-paragraph (excluding sub-paragraphs) first Amended Complaint, and to submit a second amended complaint that (i) pulls out of their numerous and lengthy block quotes in the Amended Complaint those specific statements which Plaintiffs believe to be actionable and to explain why each of those identified statements are not only false, but defamatory under the law, and (ii) identifies exactly which Plaintiffs are claiming defamation against which Defendants for which of these discrete statements. *See id.* at 68-74. This Court specifically cautioned Plaintiffs that it expected to see a second amended complaint that would "parse this down to a manageable

² The plaintiffs in this case (collectively referred to herein as "Plaintiffs") are (i) C.W. Mining Company d/b/a the Co-Op Mine (the "Co-Op Mine"), (ii) some of the Co-Op Mine's officers and employees, (iii) the International Association of United Workers Union ("IAUWU") (an association currently operating at the Co-Op Mine), and (iv) a number of IAUWU officers.

³ In light of this Court's comments at the June 14 Hearing, *The Militant* has considered whether it should file a motion to dismiss pursuant to Rule 12(b)(6) or a motion for summary judgment pursuant to Rule 56(c), and has determined that a motion to dismiss is more appropriate at this time. This decision is based, in part, on *The Militant's* interpretation of controlling case law which allows this Court to consider the articles/editorials in question on a 12(b)(6) motion to dismiss (without converting it to a motion for summary judgment) because they are referenced and specifically relied upon by Plaintiffs in their Second Amended Complaint. *See, e.g., GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997) ("[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss. If the rule were otherwise, a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied."). Should this Court disagree with *The Militant's* analysis, it should of course exercise its power under Rule 12(b) to convert this motion to dismiss into a motion for summary judgment under Rule 56(c).

lawsuit,” and avoid the “scatter gun approach” that plagued the first Amended Complaint. *Id.* at 73. (The “June 14 Order”).

Instead of complying with the June 14 Order, Plaintiffs filed a 70-page, 224-paragraph (excluding sub-paragraphs) Second Amended Complaint, alleging entirely new causes of action, and adding approximately eight new articles/editorials to its already extensive list of alleged defamations by *The Militant*. Contrary to this Court’s clear admonitions, Plaintiffs’ Second Amended Complaint against *The Militant* (i) attempts to complicate, rather than simplify this lawsuit, and (ii) continues the same “scatter gun” approach previously rejected by this Court. The Second Amended Complaint against *The Militant* is as “vague and insufficiently” pled as the first Amended Complaint (if not more so), fails to meet the most basic requirements of Rule 8(a) & (e) of the Federal Rules of Civil Procedure, and violates this Court’s June 14 Order. For these reasons alone, Plaintiffs’ Second Amended Complaint against *The Militant* should be dismissed with prejudice.

Moreover, the Second Amended Complaint still fails to state claims against *The Militant* upon which relief can be granted. As set forth more fully in the accompanying memorandum in support, and for the reasons set forth in the prior memoranda filed by *The Militant* and the other media defendants (*The Salt Lake Tribune* and *The Deseret Morning News*), Plaintiffs’ defamation claims against *The Militant* are meritless and should be dismissed because: (1) *The Militant*’s allegedly defamatory statements are not capable of sustaining defamatory meaning, (2) *The Militant*’s allegedly defamatory statements are statements of opinion, and not verifiable statements of fact; (3) *The Militant*’s allegedly defamatory statements are protected by the official proceedings privilege; and/or (4) with few exceptions, *The Militant*’s allegedly

defamatory statements are not “of and concerning” the individually named plaintiffs. Plaintiffs’ secondary tort claims for invasion of privacy by false light, civil conspiracy, negligence and intentional interference with economic relations arise solely from the publication of the allegedly defamatory statements and, as such, are similarly deficient, and should likewise be dismissed.

By ignoring this Courts June 14 Order the Plaintiffs have further revealed their undeviating course to harass *The Militant*, squelch its First Amendment rights of free speech and of the press, and chill further reporting considered negative by Plaintiffs about the very public, ongoing labor dispute at the Co-Op Mine. Accordingly, their claims should be dismissed *with prejudice*, and they should be ordered to reimburse *The Militant* all of the reasonable attorneys’ fees and costs incurred in defending this frivolous action.

DATED this 16th day of August, 2005.


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Attorneys for The Militant

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2005, I caused to be mailed, first class, postage prepaid, a true and correct copy of **THE MILITANT'S MOTION TO DISMISS ALL CLAIMS ASSERTED AGAINST IT IN PLAINTIFF'S SECOND AMENDED COMPLAINT**, to the following:

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