

1 HILL & TRAGER, LLP  
2 Attorneys at Law  
3 800 Presidio Avenue  
4 Santa Barbara, CA 93101  
5 Telephone: (805) 963-1453  
6 Facsimile: (805) 963-1457

7 Gary J. Hill, State Bar No. 61504  
8 Timothy J. Trager, State Bar No. 145419

9 Attorneys for Plaintiff and Cross-Defendant Marianne Partridge

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SANTA BARBARA  
12 ANACAPA DIVISION

13 MARIANNE PARTRIDGE,

14 Plaintiff,

15 v.

16 RANDY CAMPBELL,  
17 and DOES 1 through 40, inclusive,

18 Defendant.

19 RANDY CAMPBELL,

20 Cross-Complainant,

21 v.

22 MARIANNE PARTRIDGE and ROES 1  
23 through 50, inclusive

24 Cross-Defendant.

CASE NO. 1341942

Assigned for all purposes to the Honorable  
Denise de Bellefeuille

Complaint Filed: February 11, 2010  
Cross-Complaint Filed: March 12, 2010

Trial Date: November 18, 2010

**PLAINTIFF/CROSS-DEFENDANT  
MARIANNE PARTRIDGE'S  
OPPOSITION TO RANDY  
CAMPBELL'S APPLICATION FOR  
LEAVE TO FILE FIRST AMENDED  
CROSS-COMPLAINT**

Date: November 4, 2010

Time: 9:30 a.m.

Dept.: 6

1 Plaintiff/Cross-Defendant, Marianne Partridge, hereby submits this Opposition to  
2 Defendant/Cross-Complainant Randy Campbell's Motion for Leave to File First Amended  
3 Cross-Complaint in this matter.

4 I. STATEMENT OF FACTS

5 A. Campbell's Secret Deal With Flannery

6 In 2009, the Santa Barbara Independent ("The Independent") like many newspapers was  
7 experiencing economic difficulties. There was no money for distributions to the owners. In June  
8 of 2009, Randy Campbell asked for a \$5,000 per month raise claiming that with no profit  
9 distributions he could not make ends meet. The other shareholders, including Partridge, voted  
10 "no" both because Campbell was not working full-time and because other employees were  
11 facing salary cuts. Mr. Campbell was admittedly angry with this result and started looking for  
12 alternatives.

13 For the next several months Randy Campbell held a series of secret meetings with his  
14 long-time friend, Mr. Flannery, who owned Valley Printers, the printer for The Independent as  
15 well as a rival publishing company, Southland Publishing. Campbell asked Flannery if he was  
16 interested in buying Campbell's partners out. It was always understood that Flannery's purchase  
17 would be as a majority interest and that Randy Campbell would stay on as publisher at an  
18 enhanced salary.

19 In early November, Flannery, Campbell and Flannery's attorney, Bolkin, went over the  
20 terms of the proposed deal. The deal was structured in two pieces as is reflected in the following  
21 two separate documents, each dated November 4, 2009:

22 (1) An offer to purchase 100% of the stock of The Independent by Southland  
23 Publishing for a purchase price of \$2,700,000 with Campbell receiving \$1,377,000 for his 51%  
24 ownership with payment in installments over a one-year period of time; and

25 (2) A separate option whereby Southland would rescind the purchase of all but 2% of  
26 Randy Campbell's shares and give him \$50,000 for that 2% as well as a guaranteed employment  
27 contract as publisher for three years at \$110,000 per year.  
28

1 The net effect of the two documents is exactly what Randy Campbell had originally  
2 asked for. The other shareholders would be bought out (without knowing about Campbell's  
3 continuing interest); Flannery would have 51% control and Campbell would have his lucrative  
4 employment contract for three years with 49% interest in the company. None of this was ever  
5 disclosed to the other shareholders.

6 **B. The Offering Notice**

7 On November 10, 2009, Campbell sent a letter to the other shareholders which came "out  
8 of the blue." In the letter Campbell states "We have received a serious offer for our newspaper  
9 from Southland Publishing" and "It is an offer I plan to accept." The letter encloses the  
10 Southland Offer dated November 4, 2009. It does not disclose the other document dated the  
11 same date containing Southland's Option Proposal and Campbell's employment offer. To cover  
12 his bets, in the November 10, 2009 letter, Campbell expressly invoked the provisions of the  
13 Shareholders' Buy-Sell Agreement with respect to the sale of his stock. Pursuant to that  
14 Agreement, Campbell sent an "Offering Notice" stating his intent to sell all of his shares in The  
15 Independent "as outlined in the Southland Offer Sheet attached." Mr. Campbell has admitted in  
16 his deposition that pursuant to the Buy-Sell Agreement, Mr. Campbell was the "offering  
17 shareholder" and that his 1,530 shares were the "noticed shares" to which the company and the  
18 shareholders had a right of first refusal. In response to a question from Mr. Grand-Jean on  
19 November 20, 2009, Mr. Campbell stated:

20  
21 "If the offer is matched for my shares, I would be obligated to sell to the Board,  
22 Shareholders, or any combination of the two (which is explained in the Buy-Sell),  
23 should I still want to sell my shares. That sale must be in cash... If the offer is  
24 not matched, shares may be sold to Southland should I wish to sell."

25 In short, Campbell was giving both the corporation and the other shareholders their one and only  
26 opportunity to pass on this deal while at the same time concealing both his employment and  
27 option agreement with Southland.

28 Marianne Partridge, faced with the prospect of loss of control of the company to  
Southland, scrambled to find a backer who would loan her the money to purchase all of

1 Campbell's shares. Between November 10<sup>th</sup> and November 22<sup>nd</sup>, Ms. Partridge reached an oral  
2 agreement with Joe Cole, past publisher of the New-Press, to back her purchase on an unsecured  
3 basis. On November 23, 2009, the Board of Directors meeting was held to act on Campbell's  
4 Offering Notice of his shares. Both at the commencement of the meeting and then during the  
5 course of the meeting, Partridge delivered a written Notice exercising her option under the Buy-  
6 Sell Agreement. Campbell did not object to this exercise and went forward with the meeting. At  
7 the meeting the Board voted not to purchase Campbell's shares. Partridge, as secretary of the  
8 corporation, was directed by The Independent's attorney, Joe Howell, to give notice to the  
9 shareholders of their rights of first refusal of Campbell's shares. Partridge prepared such a notice  
10 which expressly stated that the company voted not to purchase all or any portion of the noticed  
11 shares offered by Randy Campbell and that the shareholders now had an election right to do so.  
12 The notice was delivered to Campbell on November 24, 2009. Campbell never objected to this  
13 Notice or asked that it be modified or rescinded nor did he ever give any notice of his withdrawal  
14 of his offer at any point in time. Instead, he simply ignored the entire process.

15 Following the exercise of the option, Ms. Partridge tracked the provisions of the Buy-Sell  
16 Agreement giving Campbell the required notices including the Notice of a Closing Date on  
17 January 12, 2010. At the time of Closing, Cole honored his oral agreement with Partridge and  
18 funded the purchase price placing the money into the attorneys' trust account. Cole saw this as  
19 essentially a demand obligation in the form of a line of credit. If the deal closed, further  
20 discussions could be had regarding what happened next.

21 Campbell refused to attend the January 12, 2010 Closing or tender his stock. When the  
22 deal did not close, the money was refunded to Cole who agreed to fund the cash bond for the  
23 Preliminary Injunction in this case as part of his original commitment.

### 24 C. The Preliminary Injunction

25 Plaintiff sought and obtained both a TRO and Preliminary Injunction in this matter. In  
26 opposing the Preliminary Injunction, Campbell filed a declaration with the Court discussing his  
27 receipt of the Southland proposal to purchase 100% of the shares of The Independent but  
28 concealing from the Court Southland's written proposal of the same date to put 49% of that stock

1 back to Campbell and grant him a three-year employment contract. Also in opposing the  
2 Preliminary Injunction, Campbell asserted that his Offering Notice was, in effect, “a notice of  
3 my intention to vote my 51% shares in favor of selling to Southland.” [Campbell Dec., p. 2: 27-  
4 3:3] In its Tentative Ruling the Court noted that this Notice “does not appear on its face to be  
5 susceptible to that categorization.” The Court found Partridge had made a sufficiently strong  
6 showing of a probability of success on the merits and that the balance of harm tipped in favor of  
7 Partridge. Discussing potential of delay of litigation, the Court concluded “the factual issues  
8 presented by the Offer, the Board Meeting, Partridge’s acceptance, and the terms of the Buy-Sell  
9 Agreement do not appear to be complex. It appears that this matter can be scheduled for trial in  
10 the near future.”

#### 11 **D. Discovery**

12 On April 29, 2010, Partridge took the deposition of Mr. Bruce Bolkin, president of  
13 Southland Publishing, and attorney of its owner, Mr. Flannery. At this deposition it was  
14 disclosed for the first time that Mr. Campbell’s agreement with Southland always involved Mr.  
15 Campbell staying on as the publisher of The Independent and that Mr. Campbell received two  
16 communications from Southland on November 4, 2009 to effectuate this. The second  
17 undisclosed communication between Southland and Campbell was to “leave the door open for  
18 the possibility of allowing Southland to let Campbell stay on as a minority shareholder” and  
19 contained the agreement that Campbell receive a guaranteed contract as publisher at \$110,000  
20 per year. [Hill Dec., Ex. A]

21 On May 28, 2010 Ms. Partridge produced documents in this case. Those documents  
22 included all emails between her and Mr. Cole during the relevant time period, and copies of the  
23 emails she received between Mr. Cole and the other shareholders. Ms. Partridge’s deposition  
24 was taken on June 30 and July 1, 2010. In that deposition she discussed details of every meeting  
25 she had had with Mr. Cole, the nature of the loan agreement and the fact that Mr. Cole funded  
26 the undertaking. Ms. Partridge testified that Mr. Cole’s agreement to loan her money was an oral  
27 agreement. Though the subject has been discussed, no agreement has been reached between  
28 Partridge and Cole for Cole to purchase any of the stock she acquires from Campbell, nor has

1 any agreement been reached for Cole to act as the publisher of The Independent. [Hill Dec., Ex.  
2 B] Ms. Partridge's testimony on these points has been corroborated by Mr. Cole as well as by  
3 Mr. Grand-Jean and Mr. Parker.<sup>1</sup>

4 On July 6 and again on July 22, 2010, Partridge took the deposition of Mr. Campbell. In  
5 that deposition Mr. Campbell made the following admissions:

6 1. Shareholders of The Independent were not told of the Southland  
7 option/employment proposal dated November 4, 2009. [Hill Dec., Ex. C, p. 166:15-25]

8 2. When Mr. Campbell wrote his "Offering Notice" he believed that as the offering  
9 shareholder he was offering to sell his stock. [Hill Dec., Ex. C, p. 179:15-25]

10 3. Mr. Campbell's Offering Notice was a formal notice to the corporation of its  
11 rights to purchase his 1,530 shares at the price of \$1,377,000 on terms outlined in the Southland  
12 Offer. [Hill Dec., Ex. C, p. 246:16 – 247:10]

13 4. Mr. Campbell understood that if The Independent and the shareholders passed and  
14 did not collectively buy his 1,530 shares he would have the ability to sell them to Southland on  
15 those terms and conditions. [Hill Dec., Ex. C, p. 247:22-248:2]

16 These admissions are inconsistent with the repeated claim in Campbell's papers filed  
17 with this Court that Mr. Campbell's Offering Notice was only indicating his tentative willingness  
18 to vote his shares as part of a sale of all of the shares of The Independent to Southland.

19 On October 1, 2010, Mr. Campbell took the deposition of Joseph Cole. At that  
20 deposition, Mr. Cole was examined at length regarding his involvement in providing financial  
21 backing to Partridge's acceptance of Campbell's offer and his efforts to do due diligence  
22 regarding the paper and its ownership. In connection with that deposition Defendant marked  
23 approximately 450 pages of emails and attachments as deposition exhibits. All of those  
24 documents bore a Bates reference as having been produced by Partridge and having been in the  
25 possession of Defendant since May 28, 2010. At his deposition Mr. Cole confirmed he had  
26 made an oral bridge loan to Ms. Partridge which he considered to be a line of credit and he had

27 <sup>1</sup> Defendant's contention in his moving papers that in return for Cole's loan, Cole "would be issued all or a large  
28 portion of the shares Plaintiff hoped to obtain from Campbell" is contradicted by oral testimony of all of the parties  
in this case.

1 no agreement with either Partridge, Grand-Jean or Parker to purchase any of the shares which  
2 Ms. Partridge acquired in the transaction. [Hill Dec., Ex. D]

3 **II. ADDING NEW PARTIES AND CLAIMS TO THIS CASE IS NOT IN THE**  
4 **INTEREST OF JUSTICE.**

5 Defendant argues great liberality should be allowed in permitting amendments to  
6 pleadings citing California Code of Civil Procedure, section 473. This section is inapposite.  
7 Defendant is not seeking to correct a clerical error or add a DOE defendant. He is seeking to add  
8 wholly new causes of action against a third party, Mr. Cole. As the proposed pleading  
9 demonstrates, Defendant has simply tacked a new lawsuit against Cole onto the back of the  
10 existing complaint against Partridge. To accomplish this Defendant must comply with the  
11 requirements of CCP § 428 pertaining to the filing of cross-complaints. First the Defendant must  
12 show that the proposed cross-complaint meets the requirements of CCP § 428.10(b)(1) by  
13 demonstrating that it “arises out of the same transaction, occurrence, or series of transactions or  
14 occurrences as the cause brought against him.” Second, since the date has been set for trial in  
15 this matter, Defendant must meet the requirements of CCP § 428.50(c) which requires leave of  
16 Court to file the cross-complaint upon a showing that the late filing is in the interest of justice.  
17 Discussing the interest of justice requirement, Rutter Group Practice Guide points out:

18 A greater showing of ‘interest of justice’ is required to obtain leave to file a cross-  
19 complaint against a co-defendant or some third person not yet a party to the  
20 action. Here, the court will be concerned that the cross-complaint not  
21 unreasonably burden and complicate plaintiff’s lawsuit with cross-actions to third  
22 parties. (Rylaarsdam & Edmon (formerly Wile and Brown) Cal. Prac. Guide: Civ.  
23 Pro. Before Trial (Rutter Group 2010) Ch. 6-D, ¶ 6:565).

22 Defendant seeks to add a new party and claims on the eve of trial for possibly ulterior  
23 motives.<sup>2</sup> A strong showing should be required as to the diligence in bringing this matter before  
24 the Court and the need to have the new claims as part of the present dispute.

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27 \_\_\_\_\_  
28 <sup>2</sup> Defendant’s motives for wanting to attack Ms. Partridge’s financial backer and disrupt her ability to close the  
transaction should be obvious.

1           **A. Defendant Has Unreasonably Delayed in Bringing The Present Motion.**

2           The Judge may deny leave to file a cross-complaint if the cross-complainant fails to  
3 explain any delay in seeking permission to file it. (Cal. Judges Bench Book, Civ. Proc. Before  
4 Trial, Chapter 12, § 12.94, citing *Crocker Nat. Bank v. Emerald* (1990) 221 Cal.Ap.3d, 852, 864.

5           Defendant attempts to justify his delay in bringing his claim against Mr. Cole by  
6 contending that he was delayed in taking Mr. Cole's deposition due to Cole's illness and by  
7 suggesting that it was at Mr. Cole's deposition on October 1, 2010 where his involvement in this  
8 transaction was first discovered. Defendant does not present a single fact or document disclosed  
9 for the first time at Mr. Cole's deposition nor could he do so. All the exhibits used at the Cole  
10 deposition were documents previously produced by Partridge. [Hill Dec., p. 3] Defendant  
11 simply avoids mentioning to this Court that all of the material documents detailing Mr. Cole's  
12 involvement were produced to him on May 28, 2010, and that the nature of Mr. Cole's  
13 involvement with Ms. Partridge was the principal subject of her deposition on June 30 and July  
14 1, 2010. [Hill Dec., p. 2] Thus, all material facts regarding new claims now asserted against  
15 Cole were known by Defendant before the Case Management Conference in this case on June  
16 15, 2010. No explanation is given for Defendant's failure to file a cross-complaint before that  
17 date or to advise the Court of its intention to do so at the Case Management Conference.

18           Defendant has also provided no credible explanation for his continuing delay thereafter.  
19 Defendant's tactic of waiting to take Mr. Cole's deposition as a percipient witness before  
20 disclosing the intent to sue him does not serve as a justification for delay. Moreover, the  
21 assertion that Mr. Cole's involvement was discovered at his deposition is refuted by Mr. Rydell's  
22 telephone conversation with Mr. Trager days before the deposition warning that "Joe might be  
23 getting himself in some sort of trouble with the State Bar" and an expert designation filed before  
24 the deposition listing as a topic for the expert the reasonableness of Mr. Cole's behavior in the  
25 transaction. [Hill Dec., p. 3]

26 ///

27 ///

28 ///

1           **B.       Allowing the Proposed Amendment Will Require A Continuation of the**  
2                       **Trial and Result in A Substantial Injustice to Partridge.**

3           Delay alone may be sufficient to “preclude the granting of the request to file a cross-  
4 complaint when it appears that a delayed cross-complaint, if allowed, would work a substantial  
5 injustice to the opposing party and would prejudice the party’s position in some way.” *)Foots*  
6 *Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, 903.)

7           Plaintiff has from the outset pressed for an early trial of this matter and Defendant has  
8 consistently resisted. Self-evidently, delay in the trial now set will be prejudicial to the plaintiff  
9 who has \$250,000 of borrowed money on deposit with the Court, and must go to work each day  
10 with the uncertainty of her future and the future of the paper she has devoted over 25 years.  
11 Defendant’s claim that “the delay in this case will be minimal” is incorrect. Defendant is  
12 seeking to graft an entirely new lawsuit against Mr. Cole onto the present action and change the  
13 focus of the inquiry from what happened in November of 2009 to circumstances and events  
14 occurring in 1997 and 1998. Mr. Cole should be entitled to the full scope of his right to select  
15 independent counsel, test the sufficiency of the pleadings, conduct discovery, and to seek  
16 summary adjudication. The Court can certainly anticipate Mr. Cole will seriously challenge  
17 Plaintiff’s novel contention that providing financing to a willing buyer is somehow adverse to the  
18 interests of a willing seller who voluntarily gave notice of an intent to accept a specified price  
19 and terms for sale of his stock. Discovery, which is now closed in this case, will have to be re-  
20 opened to search for documents and witnesses relating to the scope of Mr. Cole’s representation  
21 of Campbell in 1997, with respect to a separate now defunct corporation, Ventura Independent,  
22 in order to test Mr. Campbell’s somewhat far fetched contention that he disclosed confidential  
23 information a decade ago which has now somehow been compromised. If the claims against Mr.  
24 Cole were filed in a separate action today, the parties could reasonably anticipate a trial to occur  
25 in 9 months to a year. The Partridge suit will be held hostage for that entire period.

26           Since the requested amendment coming within 30 days of trial will, of necessity, require  
27 a continuation of the trial, it should be considered under the standards applicable to motions for  
28 continuance of trial, set forth in California Rules of Court 3.1332. This rule points out that

1 “continuance of trials are disfavored” that a court may grant a continuance only on an affirmative  
2 showing of good cause requiring the continuance.

3 In the present case, the prejudice to Plaintiff associated with the delay necessitated by  
4 bringing Mr. Cole into this action is being exacerbated by the voluntary and wrongful conduct of  
5 Defendant Campbell during the pendency of the litigation. As the attached Declaration of  
6 Partridge indicates, since the January 12, 2010 date for Closing of this transaction, Mr. Campbell  
7 has elected to act unilaterally to distribute monies from The Independent without any Board  
8 action or approval, taking 51% of those monies for himself. To date Mr. Campbell has taken  
9 more than \$150,000 of “distributions” as the majority shareholder without any Board approval  
10 and over the written objection of Partridge. In short, while the price of Mr. Campbell’s stock is  
11 purportedly set in the Offering Notice, he is looting the value of that stock to fund his lifestyle  
12 and this litigation. As such he has a direct economic motive to delay these proceedings as long  
13 as possible.

14 **C. Further Delay Causes Prejudice to The Independent.**

15 In his November 10, 2009 Offering letter, Mr. Campbell acknowledged that the subject of  
16 sale of the paper was “a highly sensitive and destabilizing issue for our employees.” The dispute  
17 between the founders of the paper affecting its future and control obviously is a destabilizing  
18 influence not only for The Independent’s 60-plus employees, but also for its advertisers. This is  
19 exacerbated by the close coverage this matter is being given by the media. Moreover, The  
20 Independent is being injured due to the lack of leadership of any effective publisher during the  
21 pendency of the litigation. As the Declaration of Marianne Partridge demonstrates, while Mr.  
22 Campbell continues to pay himself a salary as president and supposed publisher, he has  
23 essentially stopped working at The Independent. He has disappeared almost entirely from The  
24 Independent’s offices and neglected the basic duties and responsibilities as a publisher. Mr.  
25 Campbell is not giving guidance to the sales and marketing representatives, giving little direction  
26 to either web or print sales staff and managers, and has been singularly absent at many of the  
27 special events sponsored by The Independent. Mr. Campbell’s abandonment of his job has  
28

1 placed a continuing burden on the editorial and business staffs and endangers the entire paper. It  
2 in the interest of this community that this matter come to a speedy trial.

3 **III. MR. CAMPBELL SHOULD BE LEFT TO FILE A SEPARATE ACTION**  
4 **AGAINST MR. COLE.**

5 California Rule of Court, Rule 3.1332(d) sets forth a number of factors to be considered  
6 in passing on a request for continuance for trial. Among those factors is: (4) "availability of  
7 alternative means to address the problem that gave rise to the motion or application for a  
8 continuance." Obviously when the party has an alternative which causes less harm, it is in the  
9 interest of justice that it be pursued. The claims against Mr. Cole are wholly independent of the  
10 claims against Partridge and can be pursued in a separate action. Campbell, in fact, recognizes  
11 this in his motion Mr. Campbell has set forth no argument as to why he would be prejudiced by  
12 following this simple step.

13 **IV. CONCLUSION**

14 For the foregoing reasons it is respectfully requested that Defendant's Motion for Leave  
15 to Amend be denied.

16  
17 DATE: November 2010

HILL & TRAGER, LLP

18  
19 By: 

Gary J. Hill

Timothy J. Trager

20 Attorneys for Plaintiff and Cross-Defendant  
21 Marianne Partridge  
22  
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24  
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28

**DECLARATION OF SERVICE**

I, the undersigned, say that I am a citizen of the United States, over 18 years of age, and not a party to the within action. I am employed by the law firm of Hill & Trager, LLP, El Presidio Building, 800 Presidio Avenue, Santa Barbara, California 93101-2210.

On November 2, 2010, I served the within: **PLAINTIFF/CROSS-DEFENDANT MARIANNE PARTRIDGE'S OPPOSITION TO RANDY CAMPBELL'S APPLICATION FOR LEAVE TO FILE FIRST AMENDED CROSS-COMPLAINT** on the interested parties listed below, as follows:

John Rydell, Esq.  
Griffith & Thornburgh, LLP  
8 E. Figueroa, Suite 300  
Santa Barbara, CA 93101  
Telephone: (805) 965-5131  
Email: rydell@g-tlaw.com  
*Attorney for Defendant Randy Campbell*

☐ **(By Mail)**

I caused such document to be mailed in a sealed envelope, by first-class mail, postage fully prepaid. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing as stated in this declaration.

☒ **(By Personal Service)**

I caused such document to be delivered by hand.

☐ **(By FAX)**

I caused such document to be sent via facsimile transmission to the above-listed addressee(s) and FAX number(s). This transmission was reported as complete and without error.

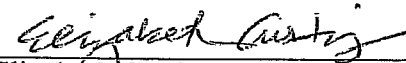
☐ **(By E-Mail)**

I caused such document to be sent via email to: Rydell@g-tlaw.com

☒ **(State)**

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed November 2, 2010, at Santa Barbara, California.

  
Elizabeth Curtis