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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BC397417

12	HOWARD K. STERN, an individual,)	Case No.:
13)	
14	Plaintiffs,)	COMPLAINT FOR DEFAMATION
15	vs.)	
16	MARK SPEER, an individual, JACQUELINE)	
17	ELIZABETH HATTEN also known as)	
18	JACKIE HATTEN, an individual, and DOES)	
19	1-20, inclusive,)	
20	Defendants.)	

COMES NOW Plaintiff HOWARD K. STERN, who alleges as follows:

THE PARTIES

1. Plaintiff HOWARD K. STERN ("Stern") is, and at all times materia
an individual residing in the County of Los Angeles, State of California.
2. Stern is informed and believes and thereon alleges that Defendant MARK : (E)
("Speer") is, and at all times material hereto was, an individual residing in the County of L
Angeles, State of California.

1 3. Stern is informed and believes and thereon alleges that Defendant JACQUELINE
2 ELIZABETH HATTEN also known as JACKIE HATTEN ("Hatten") is, and at all times
3 material hereto was, an individual residing in the County of Los Angeles, State of California.

4 4. The true names and capacities of those Defendants sued herein as Does 1 through
5 20, inclusive, are unknown to Stern, who therefore sues said Defendants by such fictitious
6 names. Stern will amend this Complaint to allege their true names and capacities when the same
7 have been ascertained.

8 5. Stern is informed and believes, and thereon alleges, that at all times material
9 hereto, each of the Defendants, including those named herein as DOES, were the agents,
10 representatives, servants and employees of Defendants, and that all of the acts herein alleged
11 were done in the course and scope of such agency and employment.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 6. Stern is a licensed attorney in good standing, admitted to practice law in all of the
14 Courts of the State of California.

15 7. Stern was the longtime personal attorney, friend and companion of Vickie Lynn
16 Marshall, better known as Anna Nicole Smith ("Anna"), an internationally acclaimed model,
17 actress, corporate spokeswoman, producer, reality television star and celebrity. Stern became
18 Anna's personal attorney in 1997. Their personal relationship began in 2000, which they kept
19 secret until 2006.

20 8. Anna's 20 year old son, Daniel Wayne Smith ("Daniel"), tragically, suddenly and
21 accidentally died on September 10, 2006 in the Bahamas. A Bahamian inquest before jury
22 determined that the cause of his death was an accident by "nondependent use of drugs."

23 9. At no time were any criminal charges filed against any person in connection with
24 Daniel's death.

25 10. On February 8, 2007, Anna tragically, suddenly and accidentally died in
26 Hollywood, Florida. The Chief Medical Examiner investigating Anna's death determined that
27 the cause of her death was an accident. Anna's death was also investigated by the Seminole
28 Police Department and Charles Tiger, the Chief of Police, declared that Anna's death was "an

1 accidental overdose with no other criminal element present.”

2 11. At no time were any criminal charges filed against any person in connection with
3 Anna's death.

4 12. Anna's untimely death in 2007, as well as the ensuing legal proceedings
5 concerning the custody hearings regarding Anna's body, and the paternity and custody hearings
6 regarding her infant daughter Dannielynn, became the subject of intense media frenzy with
7 literally around-the-clock coverage by members of the print and broadcast media.

8 13. On September 4, 2007, Rita Cosby ("Cosby") and Hachette Book Group, USA,
9 Inc. ("Hachette"), published a highly publicized book entitled *Blonde Ambition: The Untold*
10 *Story Behind Anna Nicole Smith's Death* ("*Blonde Ambitton*"). Stern filed a \$60 million libel
11 lawsuit against Cosby and Hachette, stating that *Blonde Ambition* falsely accuses Stern of a
12 number of salacious and criminal acts, which is currently pending in the United States District
13 Court for the Southern District of New York, *Howard K Stern v. Rita Cosby, et al.*, Case No. 07-
14 Civ-8536.

15 14. Stern is informed and believes and thereon alleges that Hatten and Speer knew
16 that Cosby was writing a book, and that Hatten and Speer were the sources for many of the false
17 and defamatory statements contained in *Blonde Ambition*.

18 **SPEER'S DEFAMATORY STATEMENTS**

19 15. Stern is informed and believes and thereon alleges that Speer is a long-time, loyal
20 friend and associate of attorney Deborah Opri ("Opri"). Opri represented Larry Birkhead
21 ("Birkhead") in legal proceedings concerning the paternity of Dannielynn and the custody of
22 Anna's body, and Opri retained Speer to serve as Birkhead's bodyguard. Plaintiff is informed
23 and believes and thereon alleges that Birkhead terminated Opri in March 2007, which was
24 followed by contentious legal proceedings between the two, and that Opri blames Stern for the
25 breakdown in her relationship with Birkhead.

26 16. Plaintiff is informed and believes and thereon alleges that prior to the publication
27 of *Blonde Ambition*, Speer published to Cosby, in substance, verbally and/or in writing, the
28 following statements regarding Stern:

1 a. That Speer, who was doing security for Birkhead between October 2006
2 and March 2007, saw first-hand some dramatic and very telling revelations. That Speer attended
3 and witnessed a meeting with Birkhead and the Bahamian police. That Birkhead made some
4 shocking allegations. That Birkhead provided verbal and written statements with explosive
5 details of money funneling. That going on record, Birkhead told police that Howard was
6 funneling approximately \$15,000 at least every other week, wiring it to his parents in offshore
7 accounts. That according to Birkhead, several million dollars had been wired.

8 b. That Birkhead had also told Bahamian police that Stern, "was stealing
9 money from Anna, sending money to his parents and offshore banks in the amount of \$15,000
10 every week or two weeks." That Birkhead further said that millions of dollars were funneled
11 from Anna's accounts to Howard's. That Birkhead said, "I saw [Stern] signing checks to himself
12 and his banks in the States and offshore." That Birkhead said that his mission at the time was to
13 get Howard arrested and convicted for the death of Daniel and the continued drugging of Anna
14 Nicole. That the Bahamian police told Birkhead that this information would be very helpful with
15 the inquest into Daniel's death, "you'll be important to the case." That by the way the officers
16 were acting, you could tell they felt the information was big.

17 c. That on a drive home from a secret meeting between Stern and Birkhead
18 during the hearings regarding the custody of Anna's body in Florida, Speer who was in the car,
19 overheard discussions taking place between Birkhead and another individual. That they were
20 talking about Stern's offer to Birkhead behind closed doors. That the deal was if Birkhead
21 agreed not to contest Stern remaining as executor of Anna's estate, then Birkhead could have his
22 baby. That Birkhead seemed receptive to the idea. That as conversations with Stern continued
23 over the next few days, Stern sweetened the deal. That if Birkhead agreed not to contest the will
24 and allowed Stern to remain executor of Anna's estate as well as keep control of Anna's 'name
25 and likeness,' Stern would: drop all legal claims for custody of Dannielynn and give Birkhead
26 his baby, allow Birkhead to 'run the show' in California, let Birkhead live in Anna's Studio City
27 house, pay all the bills and provide several thousand dollars a month in allowance and pay for a
28 rental car. That Stern also promised Birkhead that he would take care of him the way he took

1 care of Anna.

2 d. That Speer was at the house in the Bahamas, a few feet from Birkhead and
3 Stern, and saw and heard virtually every detail when Birkhead later met Dannielynn for the first
4 time. That Birkhead and Stern gave each other a big full-armed embrace as soon as Birkhead
5 walked in the door. That it seemed like a familiar embrace, it wasn't an awkward moment in any
6 way. That it stunned Speer. That Stern presented Dannielynn and said, "here's your baby."
7 That Stern forced Birkhead to use a towel to keep her mouth from touching Birkhead. That
8 Dannielynn spit up and Stern said, "I bet you'd like to have this towel." That Speer heard first
9 hand Stern's proposal to Birkhead: "I will give you your baby, if you leave me as executor of the
10 (Anna's) estate." That Speer said he wanted to arrest Stern then and there for kidnapping and
11 holding the baby for ransom, if he could have. That Birkhead responded to Howard: "I'm not
12 going to leave you as executor." That Howard then said to Birkhead: "It only makes sense if I
13 keep running her businesses. I'll also pay you an ongoing fee." That Birkhead said, "You don't
14 have to pay me a fee because whatever's there is mine anyway. This is not going to happen."
15 That Speer thought this was strange to say because Dannielynn would inherit Anna's estate, not
16 Birkhead. That despite Birkhead's reticence at the house, an astonishing alliance was beginning
17 to form.

18 e. That Speer warned Birkhead as a law enforcement officer to be careful,
19 Stern's clearly trapping you.

20 f. That Speer is skeptical about Birkhead and Stern's "friendship." That
21 Speer said there is no way after what he heard at the Bahamian police station and at the house in
22 the Bahamas, no way Birkhead would he even be civil to him unless he's in cahoots with Stern
23 and has a deal.

24 17. Each and every statement that Speer published to Cosby that is set forth in
25 Paragraph 16 of this Complaint is false. For example, Stern never stole any money from Anna,
26 much less millions of dollars. Stern did not transfer large sums of money from Anna's accounts
27 to his parents' accounts, his own accounts or to himself. Neither Stern nor his parents ever had
28 an off shore account. Further, Birkhead never made any such claims to the Bahamian police.

1 Moreover, Stern never offered to give Birkhead Dannielynn if he would leave Stern as the
2 executor of his estate, and no such deal was made. Instead, Stern believed Dannielynn to be his
3 biological daughter, and he was Dannielynn's legal father under Bahamian law, having been
4 identified as her father on the birth certificate. When it was determined by a Court ordered
5 paternity test that Birkhead was Dannielynn's biological father, Stern did not contest custody.
6 Stern and Birkhead acted in the best interests of Dannielynn by facilitating a smooth transition of
7 the child to her biological father. Unrelated to the paternity of Dannielynn, Stern was the
8 nominated executor under Anna's will. Thus, once the will was filed for probate, Stern became
9 executor of Anna's estate.

10 18. Speer knew, at the time he published to Cosby the statements set forth in
11 Paragraph 16, that each and every statement was false, and he had no reason to believe
12 otherwise. For instance, Speer never heard Birkhead report to the Bahamian police claims to the
13 effect that Stern engaged in theft, money laundering or wire fraud. Additionally, Speer was not
14 present in the house in the Bahamas the first time Birkhead met Dannielynn, nor was he in
15 earshot of any substantive conversation between Stern and Birkhead. Moreover, Speer was
16 never in a car with Birkhead when it was discussed that Stern would give Birkhead Dannielynn
17 in exchange for being the executor of Anna's estate, because there was no such offer.

18 19. Each and every statement that Speer published to Cosby that is set forth in
19 Paragraph 16, was false, defamatory, outrageous, and published with willful or callous disregard
20 for Stern's rights, with malice and oppression, and with the intent to injure Stern's reputation, his
21 character and his business as an attorney.

22 20. Stern did not discover, nor could he have discovered, that Speer published to
23 Cosby the false and defamatory statements set forth in Paragraph 16, until Cosby and Hachette
24 re-published the false and defamatory statements in *Blonde Ambition* on September 4, 2007 and
25 attributed Speer as the source.

26 **HATTEN'S DEFAMATORY STATEMENTS**

27 21. Hatten was an acquaintance of Anna's for a brief period until 2000. Hatten had
28 no contact with Anna or Daniel after 2002, when Hatten's brother, Mark Hatten, was arrested,

1 and subsequently convicted and sentenced to prison, for making criminal threats against Anna
2 and for battery with a deadly weapon against Anna's neighbor.

3 22. Plaintiff is informed and believes and thereon alleges that prior to the publication
4 of *Blonde Ambition*, Hatten published to Cosby, in substance, verbally and/or in writing, the
5 following statements regarding Stern:

6 a. That Hatten witnessed Stern giving Anna a medley of drugs: "Vicoden,
7 Valium, morphine, Demerol, you name it, he had it."

8 b. That Hatten spoke to Daniel a couple of months before he died. That
9 Daniel was scared of Howard and all the drugs he kept giving to Anna. That Daniel asked Jackie
10 if she would go to the Bahamas with him, saying he was scared to be alone with Howard there.
11 That Jackie warned Daniel not to go to the Bahamas alone. That Daniel told Hatten he was
12 under intense stress and he wanted to go down to the Bahamas to "save" his mother. That Daniel
13 told Hatten that Stern wouldn't let him talk to his mother and Stern had cut off communications
14 between them.

15 c. That Hatten flew to the Bahamas in October 2006 to "save" Anna. That
16 Stern killed Daniel and Anna was next. That Stern said, "Anna's not in shape for any visitors,"
17 and didn't want Jackie to see how drugged Anna was. That Anna was in imminent danger. That
18 Howard was increasingly drugging Anna so he could inherit her money. That someone needed
19 to save Anna's life by taking Anna away from Howard. That Stern may try to kill Anna. That
20 Stern is responsible for killing Daniel and Anna's next.

21 d. That Hatten was Daniel's Godmother, and Daniel confided in her that,
22 "he'd seen Stern give his mom uppers and downers and then guys would come to the house, talk
23 to [Stern] and go in his mom's bedroom and close the door." That Daniel called it the
24 "Millionaires Club," a reference to an episode on Anna's E! Entertainment Television reality
25 show. That Daniel told Hatten that the men he saw, at least fifty of them in a year, would go into
26 his Anna's bedroom for hours. That from Daniel's vantage point hiding behind the door in his
27 bedroom, he'd see the guys coming out adjusting their clothes and discretely palming Stern
28 money on the way out the door. That Daniel said he'd then see his mom being "all drugged out

1 and groggy" in her bedroom. That Hatten and Daniel firmly believed Anna had no idea Stern
2 was getting paid on the side. That when Anna was not sober, she was easy to take advantage of.
3 That Anna was Stern's cash cow. That Stern was taking advantage of Anna in every way, up
4 until, and including her death.

5 e. That shortly after Daniel died, Hatten spoke to Birkhead on the phone and
6 said that she "was worried about Anna, that she'll be next."

7 f. That Stern played the role of gatekeeper in Anna's life, determining who
8 would get access to her and who wouldn't.

9 g. That Anna told Hatten, "Eeeew! I'd never sleep with [Stern], if he's the
10 last person on earth. He's gay."

11 h. That one night at a friend's party in Los Angeles, Anna and Hatten walked
12 in on Stern being intimate with each other. That Stern and Birkhead had their shirts off and
13 Howard was down on his knees. That Birkhead was sitting in a big oversized loveseat chair and
14 both men had their pants down around their ankles. That Stern's head was down into Larry's
15 crotch. That their bodies were intermingled. That it was obvious what was happening. That
16 Anna walked up behind Hatten and laughed out loud when she saw what Stern and Birkhead
17 were doing. That Stern and Birkhead didn't stop. That Stern and Birkhead were engrossed and
18 making their own sounds. That Hatten and Anna watched the scene from about 15 feet away,
19 definitely close enough to see what was happening. That Jackie was shocked, but Anna wasn't.
20 That Anna grabbed Hatten's arm and said, "come here, come here, come here." That Anna told
21 Hatten, "[Stern], you know he's gay, I told you, and if [Birkhead] wants to do it, I can't
22 complain." That Anna laughed and said, "I guess anything goes." That the following day Jackie
23 and Anna talked about what they had seen, and Anna said "Oh, you were freaked out about last
24 night," giggling. That Jackie said she wasn't expecting to see that and Anna laughed and
25 laughed and thought it was the funniest thing ever that Birkhead was being intimate with Stern.

26 23. Each and every statement that Hatten published to Cosby that is set forth in
27 Paragraph 22 of this Complaint is false. For example, Stern never drugged Anna, and was not
28 involved criminally, or otherwise, in the death of Anna or Daniel. Additionally, Stern was never

1 a pimp, and never accepted money from any person in exchange for the person having sexual
2 relations with Anna. It would not have even been possible for Daniel, from his bedroom, to see
3 anyone entering or exiting Anna's bedroom, as Daniel's bedroom was on the first floor while
4 Anna's was on the third. Nor did Stern prevent Daniel, or others, from communicating with
5 Anna. Moreover, Stern is heterosexual, has never engaged in any type of sexual activity with
6 any male, much less Birkhead.

7 24. Hatten knew, at the time she published to Cosby the statements set forth in
8 Paragraph 22, that each and every statement was false, and she had no reason to believe
9 otherwise. For instance, Hatten knew that she was not Daniel's Godmother, and in fact, had no
10 communications with Daniel since before the time Anna's reality television show began filming
11 in 2002. Similarly, Hatten was well aware that she was out of Anna's life by 2002, long before
12 either Anna or Stern first met Birkhead, and that, to this day, Hatten has not been in the same
13 room with, or spoken to, Birkhead.

14 25. Each and every statement that Hatten published to Cosby that is set forth in
15 Paragraph 22, was false, defamatory, outrageous, and published with willful or callous disregard
16 for Stern's rights, with malice and oppression, and with the intent to injure Stern's reputation, his
17 character and his business as an attorney.

18 26. Stern did not discover, nor could he have discovered, that Hatten published to
19 Cosby the false and defamatory statements set forth in Paragraph 22, until Cosby and Hachette
20 re-published the false and defamatory statements in *Blonde Ambition* on September 4, 2007 and
21 attributed Hatten as the source.

22 **FIRST CAUSE OF ACTION**

23 **(DEFAMATION)**

24 **AS AND FOR A FIRST CAUSE OF ACTION FOR DEFAMATION AGAINST SPEER**
25 **AND HATTEN, AND EACH OF THEM, STERN ALLEGES AS FOLLOWS:**

26 27. Stern realleges and incorporates herein by reference Paragraphs 1 through 26,
27 inclusive of his Complaint with the same force and effect as though set forth in full.

28 28. Stern is informed and believes and thereon alleges that prior to the publication of

1 *Blonde Ambition*, Speer published to Cosby, in substance, verbally and/or in writing, the
2 statements regarding Stern that are set forth in Paragraph 16 of this Complaint.

3 29. Stern is informed and believes and thereon alleges that prior to the publication of
4 *Blonde Ambition*, Hatten published to Cosby, in substance, verbally and/or in writing, the
5 statements regarding Stern that are set forth in Paragraph 22 of this Complaint.

6 30. The statements that Speer published to Cosby that are set forth in Paragraph 16
7 are all false statements.

8 31. The statements that Hatten published to Cosby that are set forth in Paragraph 22
9 are all false statements.

10 32. Speer published to Cosby the false statements that that are set forth in Paragraph
11 16 with constitutional malice in that Speer knew, at the time the statements were published, that
12 the statements were false, or acted with reckless disregard for the truth of the statements.

13 33. Hatten published to Cosby the false statements that that are set forth in Paragraph
14 22 with constitutional malice in that Hatten knew, at the time the statements were published, that
15 the statements were false, or acted with reckless disregard for the truth of the statements.

16 34. Speer published to Cosby the false and defamatory statements that that are set
17 forth in Paragraph 16 with the expectation, and/or actual knowledge, that Cosby would re-
18 publish the statements in a book and/or other widely disseminated public media.

19 35. Hatten published to Cosby the false and defamatory statements that that are set
20 forth in Paragraph 22 with the expectation, and/or actual knowledge, that Cosby would re-
21 publish the statements in a book and/or other widely disseminated public media.

22 36. Cosby and Hachette re-published the false and defamatory statements that are set
23 forth in Paragraph 16 of this Complaint in *Blonde Ambition* and attributed Speer as the source.

24 37. Cosby and Hachette re-published the false and defamatory statements that are set
25 forth in Paragraph 22 of this Complaint in *Blonde Ambition* and attributed Hatten as the source.

26 38. The false statements that Speer published to Cosby that are set forth in Paragraph
27 16 are defamatory *per se*, in that they accuse Stern of offenses of moral turpitude, offenses which
28 may be punishable by imprisonment or death, and accuse him of conduct which would tend to

1 directly injure him, with respect to his profession as a lawyer. Specifically, the statements
2 falsely portray Stern as an attorney who lacks integrity, who is dishonest, who steals from his
3 clients, who is violent, who is malicious, and who commits numerous crimes in violation of the
4 laws of this State and Country.

5 39. The false statements that Hatten published to Cosby that are set forth in Paragraph
6 22 are defamatory *per se*, in that they accuse Stern of offenses of moral turpitude, offenses which
7 may be punishable by imprisonment or death, and accuse him of conduct which would tend to
8 directly injure him, with respect to his profession as a lawyer. Specifically, the statements
9 falsely portray Stern as an attorney who lacks integrity, who is dishonest, who steals from his
10 clients, who is violent, who is malicious, and who commits numerous crimes in violation of the
11 laws of this State and Country.

12 40. The false and defamatory statements that Speer published to Cosby that are set
13 forth in Paragraph 16 were not privileged.

14 41. The false and defamatory statements that Hatten published to Cosby that are set
15 forth in Paragraph 22 were not privileged.

16 42. The false and defamatory statements that Speer published to Cosby that are set
17 forth in Paragraph 16, by their natural consequence, may cause and have caused Stern damages
18 to his reputation and standing in the community, as he has suffered public hatred, contempt and
19 ridicule. The statements have also damaged Stern in that they have impaired and may further
20 impair his ability to obtain or maintain gainful employment, including employment as an
21 attorney. The statements have also damaged Stern in that they have caused him to suffer adverse
22 physical consequences from stress, emotional distress, mental anguish, and mental pain and
23 suffering.

24 43. The false and defamatory statements that Hatten published to Cosby that are set
25 forth in Paragraph 22, by their natural consequence, may cause and have caused Stern damages
26 to his reputation and standing in the community, as he has suffered public hatred, contempt and
27 ridicule. The statements have also damaged Stern in that they have impaired and may further
28 impair his ability to obtain or maintain gainful employment, including employment as an

1 attorney. The statements have also damaged Stern in that they have caused him to suffer adverse
2 physical consequences from stress, emotional distress, mental anguish, and mental pain and
3 suffering.

4 44. The false and defamatory statements that Speer published to Cosby that are set
5 forth in Paragraph 16 were published with willful or callous disregard for the rights of Stern and
6 others, and with malice, fraud and oppression toward Stern. Speer's conduct warrants an
7 assessment of punitive damages in an amount appropriate to punish him and deter others from
8 engaging in similar wrongful conduct in accordance with proof at trial.

9 45. The false and defamatory statements that Hatten published to Cosby that are set
10 forth in Paragraph 22 were published with willful or callous disregard for the rights of Stern and
11 others, and with malice, fraud and oppression toward Stern. Hatten's conduct warrants an
12 assessment of punitive damages in an amount appropriate to punish him and deter others from
13 engaging in similar wrongful conduct in accordance with proof at trial.

14 46. As a result of Speer's wrongful conduct that is set forth in this Complaint, Stern
15 has suffered substantial general and special damages, including emotional distress, in an amount
16 in accordance with proof at trial.

17 47. As a result of Hatten's wrongful conduct that is set forth in this Complaint, Stern
18 has suffered substantial general and special damages, including emotional distress, in an amount
19 in accordance with proof at trial.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Stern prays for judgment against the Speer, Hatten and DOES 1 through
22 20, and each of them, for as follows:

23 FOR THE FIRST CAUSE OF ACTION BY STERN FOR DEFAMATION AGAINST
24 SPEER AND HATTEN, AND EACH OF THEM:

- 25 1. For general damages in an amount to be proven at time of trial;
26 2. For specific damages in an amount to be proven at time of trial;
27 3. For punitive and exemplary damages;
28 4. For reasonable attorneys' fees thereon;

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- 5. For costs of suit incurred; and
- 6. For such other and further relief as this Honorable Court deems just and

proper.

DATED: August 30, 2008

COGGAN & TARLOW
By: *David N. Tarlow*
David N. Tarlow
Attorneys for Plaintiff HOWARD K.
STERN

5/14/08