

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RUSSELL L. EBERSOLE,)	
d/b/a ABERDEEN ACRES PET)	
CARE CENTER,)	
)	
Plaintiff,)	Civil Action No. 1:12cv26
)	
v.)	
)	
BRIDGET KLINE-PERRY,)	
)	
Defendant.)	

NOTICE OF ACCEPTANCE OF REMITTITUR WITHOUT WAIVING OBJECTIONS

Comes now Plaintiff, by and through counsel, pursuant to the Court’s Order dated August 29, 2012 [Docket 106] directing the Plaintiff to accept or reject the remittitur of \$45,000 (thereby reducing the punitive damages award to \$15,000) on the defamation claim in lieu of a new trial, and notifies the Court that Plaintiff accepts the remittitur without waiving the following objections to the Court’s opinion and order on the matter:

Plaintiff respectfully submits that the Court’s opinion on this matter [Docket 105] and its order [Docket 106] granting remittitur or a new trial is in error and is contrary to the law and the facts including but not limited to the following.

1. The Court erroneously ordered remittitur of punitive damages, or in the alternative a new trial, in an amount greater than what was permitted or required under the Due Process Clause.
2. The Court erroneously determined that the damage involved mere economic harm, as the damage in this case involved personal harm, including but not limited to damage to Plaintiff’s reputation and that of his business.

3. The Court erroneously determined that the Defendant's conduct did not evince an indifference or reckless disregard for the health or safety of others, as Defendant sought to have the Plaintiff prosecuted, convicted, and imprisoned for conduct that was lawful.
4. The Court erroneously determined that this conduct was an isolated incident, even though it involved repeated and distinct allegations of continuing defamation over a period of time, and later attempts to facilitate the spread of the defamatory statements.
5. The Court erroneously determined, contrary to the jury's finding, that the intentional malice, trickery, or deceit of the Defendant was mitigated.
6. The Court misevaluated the potential Defendant's conduct had for causing damages in reducing the award of punitive damages to only twice the amount of actual damages awarded on the defamation claim, especially in this case where proof of actual damages was difficult under the circumstances.
7. The Court misevaluated Va. Code § 18.2-417 as a criminal penalty for slander and libel, and in evaluating it to be applicable to a determination of punitive damages in this case.
8. Insofar as the Court finds remarks of Plaintiff's counsel in the closing to be prejudicial, the Defendant failed to timely object, thereby waiving any objection and precluding the Court from addressing and remedying any alleged error prior to the jury deliberations and verdict.

RUSSELL L. EBERSOLE
d/b/a ABERDEEN ACRES
PET CARE CENTER
/s/ Andrew T. Bodoh, Esq.
By Counsel

Thomas H. Roberts, Esq. (VSB 26014)
tom.roberts@robertslaw.org
Andrew T. Bodoh, Esq. (VSB 80143)
andrew.bodoh@robertslaw.org
THOMAS H. ROBERTS & ASSOCIATES, P.C.
105 South 1st Street
Richmond, Virginia 23219
Telephone: (804) 783-2000 / Facsimile: (804) 783-2105
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Nicholas J. Lawrence, Esq., VSB No. 76964
nlawrence@bmhlaw.com
Steven W. Bancroft, Esq., VSB No. 18447
sbancroft@bmhlaw.com
3920 University Drive
Fairfax, Virginia 22030
Telephone: (703) 385-1000
Facsimile: (703) 385-1555
Counsel for Defendants

/s/ Thomas H. Roberts, Esq.

Thomas H. Roberts, Esq. (VSB 26014)
tom.roberts@robertslaw.org
Andrew T. Bodoh, Esq. (VSB 80143)
andrew.bodoh@robertslaw.org
THOMAS H. ROBERTS & ASSOCIATES, P.C.
105 South 1st Street
Richmond, Virginia 23219
Telephone:(804) 783-2000 /Facsimile:(804) 783-2105
Counsel for RUSSELL L. EBERSOLE
d/b/a ABERDEEN ACRES
PET CARE CENTER