

STATE OF NEW MEXICO
COUNTY OF LUNA
SIXTH JUDICIAL DISTRICT COURT

6TH JUDICIAL DISTRICT
LUNA COUNTY NM
FILED IN MY OFFICE
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MARGARITA GOMEZ
DISTRICT COURT CLERK
Miriam Davila

J. SCOTT CHANDLER,

Plaintiff,

v.

**No. D-619-CV-2019-00189
Judge Jennifer E. DeLaney**

**ADVANCE NEW MEXICO NOW PAC,
JAY McCLESKEY, JOHN DOE(S)
AND JANE DOE(S),**

Defendants.

**PLAINTIFF'S MOTION TO AMEND COMPLAINT
TO ADD DEFENDANT**

COMES NOW Plaintiff Scott Chandler, by and through undersigned counsel of record, and, pursuant to Rule 1-015, hereby moves the Court for an order allowing the Complaint in this matter to be amended to add former New Mexico Governor Susana Martinez as a defendant in this matter. A copy of the proposed Amended Complaint is attached hereto as Exhibit A. In support of this Motion, Mr. Chandler states as follows.

I. Introduction

The Complaint in this matter concerns two political flyers that were sent out during the 2016 Republican party primary, in which Mr. Chandler was running for election in State House of Representatives District 32. Shortly before the primary election, Defendant Advance New Mexico Now PAC [Political Action Committee] sent out flyers that Mr. Chandler alleges were defamatory. The Complaint, which was timely filed, names Jay McCleskey, the Advance New Mexico PAC (the PAC) and unknown John Does and Jane Does as defendants. The Complaint

alleges that “John Doe(s) and Jane(s) are individuals and residents of New Mexico who may have assisted in or funded the defamatory statements of Defendants.” (Complaint at ¶¶7, 15).

Based on a recent deposition given by Mr. McCleskey in a related case, in which he was deposed as the 30(b)(6) representative of the PAC, it is now clear that former Governor Susana Martinez (Governor Martinez) was closely involved in running the PAC and in the decisions regarding the political flyers. As will be shown, according to Mr. McCleskey’s deposition testimony, the PAC was Governor Martinez’s PAC and she was directly involved in authorizing and approving the content of the election flyers, which includes three defamatory statements that are the basis for this lawsuit. By approving both the precise defamatory content at issue in this case and the distribution of the mailers, Governor Martinez directly engaged in defamatory conduct. It was not until Mr. McCleskey gave his deposition on August 10, 2021, that Mr. Chandler learned that Governor Martinez had directly approved the defamatory content of the flyers and had actively participated in defamatory conduct thus providing a basis to name her as a defendant in this matter.

Given her leading role in the PAC and her direct conduct in approving the content and distribution of the defamatory election flyers, Mr. Chandler requests that the Court, pursuant to Rule 1-015 and in the interest of fairness and justice, grant him permission to amend the Complaint to add Governor Martinez as a defendant in this matter.

II. The McCleskey Deposition.

On August 10, 2021, Mr. McCleskey, as the 30(b)(6) representative of the PAC, gave a deposition in the related case of *Jay McCleskey v. The Hartford, All-Star Insurance and Terri Ketelsen*, D-202-CV-2020-04548. A copy of the deposition is attached hereto as Exhibit B. In the deposition, Mr. McCleskey testified as follows:

1. Governor Martinez authorized Mr. McCleskey to serve as the Rule 30(b)(6) deponent for the PAC. (Deposition at 5/ln25 to 6/ln7; 10/lns12-14).

2. When asked who was involved in setting up the PAC, Mr. McCleskey answered that it was Governor Martinez, specifically stating that “[t]he governor would have been involved.” He also testified that the PAC was “the Governor’s PAC.” (*Id.* at 7/lns15-23, 13/lns15-22).

3. Mr. McCleskey testified that he was the “general consultant” for the PAC and that “the governor would want certain objectives. It was the reason she wanted the PAC formed.” (*Id.* at 13/ln25 to 14/ln6).

4. The only named officer of the PAC is a treasurer. The PAC did not have an office and did not have a separate telephone number other than the contact information either for the treasurer or for Mr. McCleskey as the consultant to the PAC. (*Id.* at 8/ln23 to 9/ln5, 19/ln11-20; 37/ln7-13, 38/ln22 to 39/ln2).

5. Governor Martinez was involved in the running of the PAC, including decisions about proposed budgets, proposed targets, and proposed districts. She was involved in polling meetings and was presented with polling information. If the press had questions about the PAC, “they would ask the governor at a press conference.” (*Id.* at 18/ln22 to 19/ln7; 38/ln22 to 39/ln2).

6. The PAC is no longer active and its records are retained in storage by Mr. McCleskey and Governor Martinez. (*Id.* at 30/lns1-9).

7. When asked who authorized him to say “on behalf of Advance New Mexico that it didn’t consider Mr. Chandler to be a good candidate for the general election,” Mr. McCleskey answered “[t]he governor.” (*Id.* at 9/lns16-23).

8. When asked who was at the meeting that led to the flyers that are the subject of this case (referred to in the deposition as the underlying case), Mr. McCleskey testified that “[t]he governor obviously would have been the primary one.” (*Id.* at 9/lns6-15).

9. In regard to the decision to send out the election flyers, Mr. McCleskey testified that Governor Martinez, on behalf of the PAC, was consulted at each step of the process. Upon suggestion from Mr. McCleskey, Governor Martinez directed the PAC get involved in the primary election to oppose Mr. Chandler’s candidacy. She approved the content of the election flyers, including the defamatory statements, after they were developed and she made the final decision to send the flyers out. (*Id.* at 10/lns21 to 11/ln4, 16/ln18 to 17/ln1, 20/ln23 to 21/ln3; 21/lns12-15, 21/ln24 to 23/ln6, 48/ln14 to 49/ln15, 53/ln23 to 54/ln2).

10. Mr. McCleskey testified a company called Targeted Creative Communications drafted the content and designed the flyers and, after the content and design were reviewed by Mr. McCleskey and the final design was decided on, he took the flyers to Governor Martinez for final approval of the content of the flyers. (*Id.* at 21/ln24 to 23/ln6).

11. When specifically asked “are there key people that are deciding what’s going to be in the mailer,” Mr. McCleskey stated “the governor,” adding that “ultimately, the governor would have signed off on that, and then the mailer would have been sent.” (*Id.* at 48/ln17 to 49/ln15).

12. When asked who, on behalf of the PAC, authorized the flyers to be sent out, Mr. McCleskey testified that “[i]t’s essentially the governor’s approval” and “it would have been the governor.” (*Id.* at 20/ln23 to 21/ln3, 21/lns12-15,).

13. Mr. McCleskey identified himself and Governor Martinez “as being the ones most directly involved or approving the mailer.” (*Id.* at 53/lns23 to 54/ln1).

III. Argument

Amendments to pleading are governed by Rule 1-015 of the New Mexico Rules of Civil Procedure. Rule 1-015 provides that, after a responsive pleading has been served, “a party may amend its pleading only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice requires.” “New Mexico has consistently maintained a policy of allowing parties freely to amend their complaints so long as it does not interfere with the administration of justice.” *Snow v. Warren Power & Mech, Inc.*, 2015-NMSC-025, ¶17, 354 P.3d 1285.

Generally, a party is required to file an amended complaint adding an additional party within the period allowed under the statute of limitations. *Id.* at ¶18. However, Rule 1-015.C provides an exception to the general rule by allowing the complaint to be amended after the statute of limitations has run if specific conditions are met. ¶18. As the New Mexico Supreme Court has stated, the purpose of pleadings “is to facilitate a proper decision on the merits” and such a decision is not furthered “by denying the addition of a party who has a close identity of interest with the old party when the added party will not be prejudiced. Amendments should be granted freely as justice requires.” *Galion v. Conmaco Int’l, Inc.*, 1983-NMSC-006, ¶8, 99 N.M. 403 (internal quotations and citations omitted). The purpose of the relation back provisions “is to provide parties the opportunity to amend a claim that was filed when significant facts remained unknown so that the controversy will be decided on the merits of the case.” *Macias v. Jaramillo*, 2000-NMCA-086, ¶23, 129 N.M. 578 (internal quotations and citations omitted).

Rule 1-015.C, as amended in 2017 and titled “Relation Back of Amendments,” states:

(1) Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(3) When a party files a motion to amend a pleading after the statute of limitations has run, changing the party against whom a claim is asserted, a ruling granting the motion relates back to the date of the original pleading if Paragraph (C)(1) of this rule is satisfied and, within the period provided by Rule 1-004(C)(2) NMRA for serving process, the party to be brought in by amendment

(a) has received such notice of the institution of the action that it will not be prejudiced in maintaining its defense on the merits; and

(b) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it.

Because the Amended Complaint seeks to add Governor Martinez as a party and Governor Martinez has not previously been served, Mr. Chandler, as the movant, has the burden to demonstrate that the provisions of Rule 15.C(3), including the notice provisions of C(3)(a) and (b), are met. *Capco Acquisub, Inc. v. Greka Energy Corp.*, 2008-NMCA-153, ¶41, 145 N.M. 328; *Romero v. Bachicha*, 2001-NMCA-048, ¶12, 130 N.M. 610 (when the party to be added was not served and therefore is not before the court, a plaintiff must demonstrate compliance with Rule 15(C)). The provisions of Rule 15.C(3) are met in this case and the Amended Complaint, adding Governor Martinez as a defendant, relates back to the date the original Complaint was filed.

A. The Amended Complaint satisfies Paragraph (C)(1) of Rule 15

Pursuant to Rule 15.C(3), when adding a party after the statute of limitations has run, “a ruling granting the motion relates back to the date of the original pleading if Paragraph (C)(1) of this rule is satisfied...” Paragraph (C)(1) states that the amendment relates back to the date of the original pleading when “the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original

pleading.” The Amended Complaint does not add any additional claims against the Defendants and arises “out of the conduct, transaction or occurrence set forth...in the original pleading.”

Therefore, Paragraph (C)(1) is satisfied. *See Romero*, 2001-NMCA-048, ¶10.

B. The original Complaint was served within the reasonable time period provided by Rule 1-004 and this Rule 15 Motion is also being submitted within a reasonable time period.

Rule 15.C(3) also requires that the requirements of subparagraphs (a) and (b) be met “within the period provided by Rule 1-004(C)(2) NMRA for serving process.” As explained in the Committee Commentary to Rule 15, the rule was revised in 2017 “to make it consistent with the Court’s holding in *Galion v. Conmaco, Int’l, Inc.*, 1983-NMSC-006, 99 N.M. 403, 658 P.2d. 1130.” In regard to the new paragraph (C)(3), the Committee Commentary specifically states:

In *Galion*, 1983-NMSC-006, ¶ 6, the Court noted that in all cases, service of process may be made on a defendant after the statute of limitations has expired if the complaint was filed before the statute of limitations ran and if plaintiff exercises due diligence when serving process thereafter. *See Prieto*, 1980-NMCA-114, ¶ 12. The Court ruled that an amendment changing the defendant similarly should relate back “as long as service of process was effected within the reasonable time allowed under the rules of civil procedure even though the limitations period had expired.” *Galion*, 1983-NMSC-006, ¶ 12.

Paragraph (C)(3) amends the language of former Paragraph C to conform to the holding in *Galion*. *See also* F.R.C.P. 15(c)(1)(C) (containing similar language). The amendment is not intended to modify the *Galion* Court’s ruling limiting *Galion* to cases involving a close relationship between the named defendant and the new defendant. *See Galion*, 1983-NMSC-006, ¶ 12.

In *Galion*, the Court held that “Rule 15(c) permits relation back of an amendment to the complaint to substitute defendants as long as service of process was effected within the reasonable time period allowed under the rules of civil procedure even though the limitations period had expired.” 1983-NMSC-006, ¶12. “The rationale behind allowing an amendment to relate back is that the statute of limitations should not be used mechanically to prevent

adjudication of a claim where the real parties in interest were sufficiently alerted to the proceedings or were involved in them unofficially from an early stage.” ¶7.

In *Romero*, the plaintiff filed his complaint before the statute of limitations ran but misidentified the defendant and service was never completed. 2001-NMCA-048, ¶1. The Court reaffirmed the holding in *Galion*, stating that “the time for commencing an action under Rule 1-015(C) includes the time for service of process under Rule 1-004(F).” *Id.* at ¶15. “The basic rule in New Mexico is that all parties to an action must be actually or constructively served within a period of time that includes the statute of limitations period plus a reasonable time for service of process. This time period applies regardless of whether a party is named in an original or an amended complaint.” *Id.* at ¶17. When a plaintiff seeks to add or change a defendant after the limitations period has run, “the courts generally examine[] the facts of the case to ascertain whether the allowance of such an amendment would be inconsistent with the notice requirements inherent in such limitation.” *Chavez v. Regents of Univ. of N.M.*, 1985-NMSC-114, ¶18, 103 N.M. 606. “Under *Galion*, if there is an ‘identity of interest’ between the defendant originally sued and the defendants being added, notice to the **original** defendants within the limitation period or a reasonable time thereafter is sufficient and the relation back should be allowed.” *Rivera v. King*, 1988-NMCA-093, ¶24, 108 N.M. 5 (emphasis in original).

In this case, the statute of limitations was three years from the date that the flyers were mailed out, which occurred in June, 2016. *See* NMSA §37-1-8. The limitations period ran in June 2021. The Complaint was filed on May 20, 2019, prior to the running of the limitations period. The original Defendants were served on July 16, 2021, which constitutes a reasonable time period for service under Rule 1-004. As will be shown in the next section, Mr. McCleskey’s deposition demonstrates that there is a sufficient “identity of interest” between

former Governor Martinez and the PAC to conclude that service of the Complaint on the PAC on July 16, 2021, is sufficient to constitute notice to Governor Martinez and the relation back should be allowed.

This Motion is also being filed within a reasonable time period after the case was remanded back to this Court and after Mr. Chandler was made aware of the facts supporting the naming of Governor Martinez as a defendant. Although the Complaint was filed on May 20, 2019, the matter has only been pending before this Court for approximately eleven months (May 20, 2019 to December 10, 2019 and June 18, 2021 to present) because of the Defendants' appeal of the Court's denial of their Special Motion to Dismiss, which was filed on August 13, 2019 and denied by the Court on November 11, 2019. The Defendants filed their Notice of Appeal on December 10, 2019, at which time the District Court lost jurisdiction over the matter. The Court did not regain jurisdiction until June 18, 2021, when the Court of Appeals remanded the matter back to the District Court. During that time, the case was on hold pending the decision of the Court of Appeals and no discovery could have taken place, including discovery that would have disclosed the information Mr. McCleskey provided about Governor Martinez in his August 10, 2021 deposition.

Mr. Chandler could not have named Governor Martinez as a defendant until he knew that she had not only authorized the PAC's involvement in Mr. Chandler's primary race but had also specifically approved the content of the flyers, including the defamatory statements that are the subject of this lawsuit, and then directly authorized the mailing of the flyers. It was only after Mr. McCleskey's deposition that Mr. Chandler had the requisite information to identify former Governor Martinez as a proper defendant. Additionally, the Scheduling Order in this matter sets January 3, 2022 as the deadline for motions to amend pleadings. Filing a Rule 15.C motion less

than 5 months after the remand from the Court of Appeals, less than 3 months after Mr. McCleskey's deposition and within the time set by the Scheduling Order is within the "reasonable time period" provided under Rule 1-004.

C. The requirements of Paragraph C(3)(a) are met based on substantial identity of interests between the PAC and Governor Martinez

Rule 15.C(3)(a) requires a showing that the party to be brought in by amendment "has received such notice of the institution of the action that it will not be prejudiced in maintaining its defense on the merits." When the real parties in interest "received sufficient notice of the proceedings or were involved unofficially at an early stage, the statute of limitations should not be used mechanically to bar an otherwise valid claim." *Chavez*, 1985-NMSC-114, ¶14, 103 N.M. 606 (citing to *Galion*). In *Galion*, the Court held that when the party to be added has a "substantial identity of interest" with an existing defendant and has received notice within a reasonable time period, Rule 15(C) permits relation back to the date of the original complaint. 1983-NMSC-006, ¶¶10, 12. The two corporations in *Galion* had substantially similar names, with one being a wholly-owned subsidiary of the other. *Id.* at ¶11. They had the same officers, the same principal office and their activities were related. *Id.* The Court found that a parent company and a subsidiary had the requisite identity of interests to allow for the substitution of parties to relate back under Rule 15(C). *Id.*

In *Rivera*, the plaintiff moved to amend her complaint to add or substitute parties almost five years after the original complaint was filed. 1988-NMCA-093, ¶16. The Court of Appeals allowed the amendment for two additional defendants based on sufficient notice allowing a relation back. *Id.* at ¶22. The Court found that the defendants to be added had received notice because they shared an identity of interest with the original defendants and were represented by attorneys who were involved in the litigation from its inception. 1988-NMCA-093, ¶26. The

Court noted that “both the original defendants and the defendants plaintiff sought to add were sued for actions taken while holding official positions with the state of New Mexico before and during the 1980 [prison] riot. This fact alone suggests a strong identity of interests.” *Id.*

Based on the testimony provided by Mr. McCleskey, there is a strong identity of interest between the PAC and former Governor Martinez that leads to the conclusion that she “received notice of the institution” of this action when the PAC was served in July, 2019. The PAC was formed at the behest of Governor Martinez and was referred to as “the Governor’s PAC.” (Section II, ¶¶2, 3). The purpose of the PAC was to further the Governor’s political interests and she was involved in regular meetings with Mr. McCleskey and others regarding the goals and activities of the PAC. (*Id.* at ¶¶3, 5). Governor Martinez had the final say on decisions of the PAC and, based on her approval of Mr. McCleskey as the PAC’s 30(b)(6) witness, continues to control the decisions made on behalf of the PAC. (*Id.* at ¶¶1,6). Specifically in regard to the mailers, Governor Martinez, on behalf of the PAC, approved the involvement of the PAC in the primary race for House 32 and, after reviewing the final design and content, gave the final approval for the defamatory flyers to be sent out. (*Id.* at ¶¶8-13). Governor Martinez engaged directly in defamatory conduct by approving distribution of the flyers and by approving the precise defamatory content at issue in this matter.

Adding Governor Martinez as a defendant with the relation back to the date of the Complaint will not prejudice her in maintaining a defense on the merits of this case. The trial in this matter is set for February 3 to 10, 2023. (Rule 16B Scheduling Order, filed October 13, 2021). The first deadline set forth in the Scheduling Order is January 3, 2022, which is the deadline for Rule 12 motions, the joinder of parties and amendments to pleadings. Discovery is open until October 16, 2022. Governor Martinez will be in the same position as the current

Defendants to conduct discovery, file motions and prepare for and participate in the trial. Her case and defense will not be prejudiced by the relation back. *See Rivera*, 1988-NMCA-093, ¶29.

Under *Galion* and the subsequent cases that rely on the *Galion* decision, there is an “identity of interest” between the PAC and Governor Martinez such that notice to the PAC through service in compliance with Rule 1-004 “is sufficient” to serve as notice to Governor Martinez. If added as a defendant under Rule 16(C), she “will not be prejudiced in maintaining [her] defense on the merits.” The relation back should be allowed. *Rivera*, 1988-NMCA-093, ¶24; *Galion*, 1983-NMCA-006, ¶¶10, 12.

D. The requirements of Paragraph C(3)(b) are met in this matter.

Pursuant to Rule 15(C)(3)(b), it must be shown that the party to be brought in “knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it.” As explained by the Court of Appeals, “[t]he mistake provision is not limited to cases of misnamed or misdescribed parties, rather the rule is widely understood to allow the addition of new parties that were never originally named or described.” *Macias*, 2000-NMCA-086, ¶30 (internal quotations and citations omitted). Additionally, “a party who participated in conduct described in a complaint should reasonably expect to be named regardless of whether the caption refers to that party as ‘John Doe’ or as an unnamed defendant.” *Id.* The mistake aspect of Rule 15 “is designed to insure that, prior to the expiration of the limitations period, the new defendant knew (or should have known) that [her] joinder was a distinct possibility.” *Id.*

The Complaint clearly states that Mr. Chandler believed, at the time the Complaint was filed, that there were additional potential defendants who were involved in the decisions regarding the political flyers. The Complaint includes John Doe(s) and Jane Doe(s) as parties

and states that “[u]pon information and belief, at all times relevant hereto, John Doe(s) and Jane Doe(s) are individuals and residents of New Mexico who may have assisted in or funded the defamatory statements of Defendants.” (Complaint at ¶7). Paragraph 15 of the Complaint alleges that “[i]n 2016, days before the House 32 for New Mexico State Representative Republican primary election, Advance New Mexico Now PAC, Jay McCleskey, and John Doe(s) and Jane Doe(s) launched or assisted in a campaign of sending mailers to residents of Luna County, Hidalgo County, and parts of Grant Count with untruthful images...”

As shown by Mr. McCleskey’s deposition testimony, Governor Martinez was closely involved in the decision to become involved in the primary campaign and authorized the preparation and mailing of the flyers, including approval of the final content of the flyers. (Section II, ¶¶7-13). Mr. McCleskey testified that, after the flyers had been designed and reviewed by him, he presented the flyers to Governor Martinez for final approval of the content, including the three defamatory statements identified in the Complaint. (*Id.* at ¶¶9-11). Only Governor Martinez had the final approval of the content of the flyers. When directly asked who decided what would be in the flyers, he answered, unequivocally, “the governor.” (*Id.* at ¶11). Thus, she was clearly a person who “launched or assisted in” the campaign to mail the election flyers. Governor Martinez was on notice, based on the allegations in the Complaint, that Mr. Chandler expected to identify additional persons involved in the decisions regarding the flyers. *Macias*, 2000-NMCA-086, ¶30. As a party who participated in the conduct described in the Complaint, including her direct approval of the defamatory content of the flyers and their distribution, Governor Martinez knew or should have known that her joinder “was a distinct possibility.” *Id.*

III. Conclusion

Allowing Mr. Chandler to file the Amended Complaint to add former Governor Susana Martinez as a defendant and finding that the amendment relates back to the date of the original Complaint pursuant to Rule 15(C) is “in the interests of justice” and will further the adjudication of this case on its merits. *Macias*, 2000-NMCA-086, ¶31. The PAC was timely and properly served and Governor Martinez, based on her identify of interest with the PAC, had notice of the institution of this action. Governor Martinez engaged in direct defamatory conduct by approving the distribution of the flyers and by approving the precise defamatory content at issue in this case. Governor Martinez knew, or should have known, based on her involvement in the events underlying Mr. Chandler’s claims, that she was likely to be named as a defendant once the information about her direct and substantial involvement came to light. Based on the current pre-trial and trial schedule, she will not be prejudiced by applying the relation back provisions of Rule 15.

WHEREFORE, Plaintiff Scott Chandler requests an order of the Court allowing the Complaint to be amended to add former Governor Susana Martinez as a defendant in this matter and finding that the Amended Complaint relates back to the date of the filing of the original complaint.

Respectfully submitted,

DOMENICI LAW FIRM, P.C.

/s/ Pete Domenici

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I hereby certify that a true and correct copy of the foregoing was served on counsel via the Sixth Judicial District Court's electronic filing system on the 1st day of November, 2021.

/s/ Lorraine Hollingsworth
Lorraine Hollingsworth

STATE OF NEW MEXICO
COUNTY OF LUNA
SIXTH JUDICIAL DISTRICT COURT

J. SCOTT CHANDLER,

Plaintiff,

v.

No. D-619-CV-2019-00189

ADVANCE NEW MEXICO NOW PAC,
JAY McCLESKEY, SUSANA MARTINEZ,
JOHN DOE(S) AND JANE DOE(S),

Defendants.

AMENDED COMPLAINT

COMES NOW Plaintiff J. Scott Chandler (hereinafter "Scott Chandler") by and through undersigned counsel of record and for his causes of action against Defendants Advance New Mexico Now PAC, Jay McCleskey, Susana Martinez, John Doe(s) and Jane Doe(s), states and alleges as follows:

INTRODUCTION

1. This civil action involves the 2016 New Mexico State Representative primary election, and arises from Defendants Advance New Mexico Now PAC, Jay McCleskey, Susana Martinez, John Doe(s) and Jane Doe(s)' malicious and deliberate publication and written dissemination in election flyers to the public of untruthful statements about Scott Chandler.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under Art. VI, § 13 of the New Mexico Constitution and NMSA 1978, § 44-6-1 *et seq.*

3. Venue is proper in this Court pursuant to NMSA 1978, § 38-3-1 because Plaintiff is a resident of this county.

Exhibit A

PARTIES

4. At all times relevant hereto, Scott Chandler has been an individual over the age of majority and a resident of Luna County, New Mexico. Scott Chandler is the owner/operator of Tierra Blanca Ranch High Country Youth Program (“TBRHCYP”) and at all times relevant was a primary Republican candidate for House District 32 for the New Mexico State Representative.

5. At all times relevant hereto, Advance New Mexico Now PAC is a New Mexico political action committee company providing campaign services and a resident of New Mexico.

6. Upon information and belief, at all times relevant hereto, Jay McCleskey is an individual and resident of New Mexico and consultant to Advance New Mexico Now PAC.

7. Upon information and belief, Susana Martinez is a resident of New Mexico and is the former Governor of the State of New Mexico.

8. Upon information and belief, at all times relevant hereto, John Doe(s) and Jane Doe(s) are individuals and residents of New Mexico who may have assisted in or funded the defamatory statements of Defendants.

FACTS COMMON TO ALL COUNTS

9. Upon information and belief, a disgruntled parent who was involved in disagreements with his ex-wife on policies and practices of the TBRHCYP in regards to their son, began contacting state and county agencies including the Governor Martinez’s office. An investigation was launched by the Sierra County Sheriff’s Office who, upon information and belief, reluctantly turned the investigation over to the State Police due to high level pressure from the Executive Branch.

10. Upon information and belief, the Executive Branch was pressuring the investigation by pressuring State Police agents to gain access to obtain illegal interviews following an accident which resulted in the death of an 18 year old resident of TBRHCYP.

11. The Chandlers filed litigation in an attempt to avoid a disruptive and harmful situation for the youths of TBRHCYP. Upon information and belief the September 30, 2013 raid of TBRHCYP and subsequent Amber Alert were for theater and show using needless overwhelming resources for political and media gain by the Executive Branch. Upon information and belief the so called "Shadow Governor" was advising then Governor Martinez of policy and/or media strategies related to TBRHCYP/Scott Chandler.

12. When the investigation went nowhere, the Executive Branch appeared to have jumped the gun and doubled down in the attempt to harm or discredit Scott Chandler.

13. On June 5, 2014, Scott Chandler, family members and supporters were forcibly removed from a public political event with threat of arrest. Subsequently a lawsuit was filed by the Chandlers regarding the incident.

14. Once again, in 2016 when Scott Chandler chose to run for State Representative, the "Shadow Governor" through the Advance New Mexico Now PAC and other agents stated "We were monitoring the race, and when it became clear he was likely to win the primary, we chose to remind voters of Scott Chandler's controversial history so they could be fully informed." (emphasis added) (Exhibit A, Albuquerque Journal, June 22, 2016).

15. In 2016, Scott Chandler launched a campaign to run in the primary election as the Republican candidate for House 32 for the New Mexico State Representative.

16. In 2016, days before the House 32 for New Mexico State Representative Republican primary election, Advance New Mexico Now PAC, Jay McCleskey, Governor

Susana Martinez, and John Doe(s) and Jane Doe(s) launched or assisted in a campaign of sending mailers to residents of Luna County, Hidalgo County, and parts of Grant County with untruthful images about a closed criminal investigation showing a crime scene police line which never occurred. (See Exhibit B, mailer)

17. The mailers have untruthful images or statements that Scott Chandler's ranch or premises were covered with police crime scene tape. (See Exhibit B, mailer)

18. The mailers falsely and recklessly restate a quote of a third party untruthful defamatory statement that "They were threatened that they would be castrated if they didn't complete all the work." (Exhibit C, mailer)

19. The mailer stated recklessly and untruthfully that, "How did a business accused of child abuse and torture avoid government oversight?" (Exhibit B, mailer)(emphasis added) Scott Chandler and TBRHCYP did not avoid government oversight. In addition to the government oversight in place by statutes and regulations, February 21, 2014, two (2) years and four (4) months before the mailers, Scott Chandler and TBRHCYP entered into a public agreement clarifying CYFD oversight and requirements. This remained in effect by TBRHCYP until an additional permanent written Agreement between CYFD and Scott Chandler was entered December 20, 2017.

20. Upon information and belief Jay McCleskey was aware of the government oversight of TBRHCYP in 2013 and 2014 as political and media advisor to Governor Martinez. Governor Martinez had a high profile involvement with the execution and return of a sealed search warrant (government oversight) and an Amber Alert (government oversight) based on abuse and neglect petitions used to remove youths and shut down the TBRHCYP (government oversight). Defendants' untruthful mailers about government oversight combined with

untruthful statements or images about a police line and castration prove the malicious or reckless intent of Defendants' actions.

COUNT I
Defamation

21. Scott Chandler incorporates by reference the allegations contained in all paragraphs of this Complaint as though fully set forth in this paragraph.

22. Defendants proceeded intentionally with malice or in reckless disregard for the falsity of statements in the mailers described in paragraphs 16, 17, 18, and 18, above, for the express purpose of harming Plaintiff's reputation.

23. The statements published by Defendants were intended to expose Scott Chandler to public fear and contempt and harm his reputation and to harm Scott Chandler in his election and his general reputation. The recipients of Defendants' statements understood their defamatory meaning.

24. Defendants' false and defamatory statements have tarnished Scott Chandler's good name and character among friends, neighbors and acquaintances and have diminished his standing in the community, including with individuals who conduct business with Scott Chandler.

25. Statements created and caused to be published by the Defendants and the damage that Defendants have done to Scott Chandler's reputation have caused him personal humiliation, mental anguish and suffering.

COUNT II
Declaratory Relief

26. Scott Chandler incorporates by reference the allegations contained in all paragraphs of this Complaint as though fully set forth in this paragraph.

27. Scott Chandler seeks declaratory relief against Defendants finding that their statements regarding allegations and images set forth above in paragraphs 16, 17, 18, and 19 above, of youths at Tierra Blanca Ranch High Country Youth Program are false.

28. Scott Chandler seeks declaratory relief against Defendants finding that the statements disparaging his character are false.

COUNT III
Punitive Damages

29. Scott Chandler incorporates by reference the allegations contained in all paragraphs of this Complaint as though fully set forth in this paragraph.

30. As a result of Defendants' publication of false and defamatory statements with reckless disregard for the truth, or with knowledge of their falsity, Scott Chandler is entitled to an award of punitive damages.

DEMAND FOR JURY TRIAL

31. A request for demand of the issues triable by a jury of (6) six person is hereby concurrently made.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Scott Chandler prays that the Court: (1) enter declaratory and injunctive relief as described above; (2) enter an award of compensatory damages in an amount to be proven at trial; (3) enter an award of punitive damages; and for pre-judgment and post-judgment interest and such other legal or equitable relief as the Court may deem proper.

Respectfully submitted,

DOMENICI LAW FIRM, P.C.
/s/ Pete V. Domenici, Jr.
Pete V. Domenici, Jr., Esq.
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SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. D-202-CV-2020-04548

JAY MCCLESKEY,

Plaintiff,

vs.

THE HARTFORD, ALL-STAR
INSURANCE, and TERRI KETELSEN,

Defendants.

DEPOSITION OF JASON MCCLESKEY

August 10, 2021

10:10 a.m.

Jones, Skelton & Hochuli
100 Sun Avenue, NE, Suite 204
Albuquerque, New Mexico 87109

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE THIS DEPOSITION WAS:

TAKEN BY: MR. JOHN A. KLECAN
ATTORNEY FOR THE DEFENDANT THE HARTFORD

REPORTED BY: Penny E. McAlister, CCR, NM CCR #250
TRATTEL COURT REPORTING & VIDEOGRAPHY
P.O. Box 36297
Albuquerque, New Mexico 87176-6297

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1 somebody to speak on behalf of the deponent, and the actual
 2 deponent is Advance New Mexico Now. Okay?
 3 **A. Okay.**
 4 Q. Who authorized you to speak on their behalf?
 5 **A. I'm the general consultant to them. The -- I**
 6 **spoke to the governor.**
 7 Q. The former governor?
 8 **A. Former Governor Martinez. Sorry. I'm so sorry.**
 9 Q. I would be surprised if it was otherwise.
 10 **A. Yeah.**
 11 Q. Is Advance New Mexico Now -- can I -- I'd like to
 12 shorten that, just ANM. Would that work for you?
 13 **A. Okay.**
 14 Q. Is it still in existence?
 15 **A. I -- I believe it's closed, but I don't know.**
 16 Q. Were you involved in founding it and organizing
 17 it initially?
 18 **A. I was.**
 19 Q. When did that occur?
 20 **A. I believe it occurred in 2014.**
 21 Q. Was there a particular campaign for which that
 22 was organized?
 23 **A. It was organized to -- it was organized to**
 24 **support legislative campaigns in the 2014 legislative**
 25 **cycle -- or election cycle, primarily.**

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1 THE WITNESS: Do you have -- do you have the
 2 documents?
 3 MR. KENNEDY: I have plenty of documents.
 4 THE WITNESS: Of those --
 5 MR. KENNEDY: He hasn't asked you for them.
 6 THE WITNESS: Okay.
 7 Q. (By Mr. Klecan) We'll get to that.
 8 **A. Okay.**
 9 Q. I do want to go through -- eventually go through
 10 it --
 11 **A. Sure.**
 12 Q. -- but I want to get some background information
 13 first.
 14 **A. Sure.**
 15 Q. This is an area that's new to me. I'm not the
 16 political type. Let's talk first about the formation.
 17 who -- who -- it takes more than one person to set up a
 18 PAC, does it not?
 19 **A. It does.**
 20 Q. Who was involved in setting it up?
 21 **A. The governor, and when I refer to governor, I'm**
 22 **referring to Governor Martinez, former Governor Martinez.**
 23 **The governor would have been involved. I would have been**
 24 **involved, the fundraiser, her financial director. We would**
 25 **have had -- probably lawyers would have been involved.**

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1 Q. Besides talking to the governor -- and during the
 2 deposition, we'll refer to her as the governor, even though
 3 it's --
 4 **A. Sure.**
 5 Q. Former governor. It's just easier. And if we
 6 refer to the current governor, we'll do it by name.
 7 **A. Okay.**
 8 Q. All right. Besides talking to the governor, was
 9 there anybody else you talked to, besides counsel, in terms
 10 of this deposition?
 11 **A. Oh, in terms of this deposition?**
 12 Q. Right.
 13 **A. Just -- I'm pretty sure just my counsel.**
 14 Q. Yes. And counsel includes Jessica Hernandez, as
 15 well, but their firm?
 16 **A. Correct. I may have talked -- I don't know if it**
 17 **was about this deposition, but with Jessica Perez, who's**
 18 **the treasurer -- or was the treasurer of the -- the last**
 19 **treasurer of that -- that PAC.**
 20 Q. Jessica Perez?
 21 **A. Yeah.**
 22 Q. Are there officers of the organi- -- of the ANM?
 23 **A. There is a treasurer.**
 24 Q. Have there ever been any other officers?
 25 **A. No, not that I can recall.**

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1 Q. So do I understand, then, that it's not required
 2 by the finance -- campaign finance regulations that there
 3 be more than one officer?
 4 **A. Correct. It's just they're required to be a**
 5 **treasurer.**
 6 Q. Was the treasurer involved in the meeting that
 7 led to the campaign mailer that's the subject of the
 8 underlying case?
 9 **A. Yeah. The treasurer would have been involved to**
 10 **some degree? At that time, I don't -- at that time, I --**
 11 **it was either Melissa Rogers or Jessica Perez, and I'm not**
 12 **sure who was the treasurer then. I think Jessica Perez**
 13 **would have been involved, aware, at least, of that mailing,**
 14 **and she was the finance director. The governor obviously**
 15 **would have been the primary one.**
 16 Q. Following the campaign, you were quoted in the
 17 newspapers as saying on behalf of Advance New Mexico that
 18 it didn't consider Mr. Chandler to be a good candidate for
 19 the general election. You were saying something to that
 20 effect.
 21 **A. Correct, yes.**
 22 Q. Who authorized you to make that statement, or
 23 were you simply authorized as --
 24 **A. The governor.**
 25 Q. You gave a prior deposition, as we discussed, and

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1 you reviewed it recently. Are there any changes in any of
2 the testimony, as you look back on it now, that you want to
3 make?

4 **A. There are probably minor edits that I think are**
5 **typos, but --**

6 Q. Other than that?

7 **A. Not that I saw. I didn't review it exhaustively.**

8 Q. Yes. To the extent you did review it, there
9 would be no substantive change?

10 **A. Not that I saw.**

11 Q. We get a little technical about capacities as
12 lawyers. So in this deposition, you're speaking on behalf
13 of Advance New Mexico?

14 **A. Okay.**

15 Q. May I assume in that deposition, you were
16 speaking on your own behalf? You were answering questions
17 from your own -- on your own behalf --

18 **A. Yes.**

19 Q. -- rather than on behalf of Advance?

20 **A. Yes.**

21 Q. Is there any difference in opinion between
22 Advance New Mexico and yourself concerning the Chandler
23 lawsuit?

24 **A. I think the -- I mean, Advance New Mexico Now was**
25 **a client of mine, that I made a recommendation for them on**

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1 how who move forward. The governor directed that to
2 happen. I don't know legally what -- what difference -- if
3 there is a difference of opinion. I don't believe there is
4 a difference of opinion.

5 Q. Do you perceive that there is a difference in
6 responsibility for the mailer, that is, a mailer that is
7 put out by Advance New Mexico? Are you personally
8 responsible for the mailer, or is that, in your view,
9 Advance New Mexico's responsibility?

10 MR. KENNEDY: Object to form.

11 Q. Or both?

12 MR. KENNEDY: Object to form.

13 **A. I got some mailer that it's the -- I mean, it's**
14 **put out at the direction of -- you know, of its design and**
15 **the contents designed by McCleskey Media, or working**
16 **with -- you know, consulting with mail houses and**
17 **different -- on content and direction and message for**
18 **McCleskey Media, and overall, that it's approved by**
19 **Advance. I don't understand the legal distinction.**

20 Q. Does McCleskey Media -- I guess Media
21 Strategies -- let me break the question down. Sorry. Does
22 either your name or the name of Media Strategies appear
23 anywhere on the mailers that are at issue in this case?

24 **A. I don't know. I would have to look at the**
25 **mailers.**

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1 Q. We'll get to that. Did you -- did you consider,
2 on behalf of Advance New Mexico, whether it could shift the
3 responsibility for the mailers to Media Strategies?

4 **A. I -- I don't understand the question.**

5 Q. Well, so you're both Defendants. You
6 individually and Advance New Mexico are both Defendants in
7 the Chandler lawsuit; right?

8 **A. As I understand it, yeah.**

9 Q. And I just wonder, you know, on -- on either your
10 behalf or on behalf of Advance New Mexico, you considered,
11 well, really, it should be the other. Like from your
12 perspective, you could say -- did you consider whether you
13 could say, "It's not my responsibility. I'm not the
14 mailer. That's Advance New Mexico"?

15 MR. KENNEDY: Object to form.

16 **A. I didn't think about that. I left it -- you**
17 **know, once the lawsuit was served, I gave it to my lawyer**
18 **and left it to him.**

19 Q. And vice versa, on behalf of Advance New Mexico,
20 you haven't considered -- it did not consider whether it
21 could simply blame Media Strategies?

22 MR. KENNEDY: Object to form.

23 **A. Correct. I would rely on counsel.**

24 Q. Does Advance New Mexico have an insurance policy,
25 a liability insurance policy?

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1 **A. I don't believe so.**

2 Q. Is the only insurance policy that might apply
3 your policy with Hartford?

4 **A. That I'm aware of. I don't know if there is**
5 **other entities, the printer or anyone else that would get**
6 **dragged into it.**

7 Q. More directly to you, do you have any other
8 insurance that might apply, like an E&O, a consultant
9 policy, some other type of insurance policy that might
10 apply?

11 **A. Not that I'm aware of.**

12 Q. Nobody believes everything that's in the
13 newspapers. I'm sure you don't.

14 **A. Correct.**

15 Q. But you figure, predominantly, in a lot of the
16 newspaper articles, and being described as the person who
17 runs -- or is in control of Advance New Mexico, is that an
18 accurate or inaccurate description?

19 **A. I'm the general consultant for the -- was the**
20 **general consultant for Advance New Mexico Now. It was also**
21 **referred to as the Governor's PAC, except it would be**
22 **accurate.**

23 Q. As the general consultant, what have been your
24 responsibilities or roles?

25 **A. I would -- the governor would want certain**

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1 objectives. It was the reason she wanted the PAC formed.
2 It would have been to -- in this case, primarily did
3 other -- other things, but in this case, primarily, to
4 elect legislators who support her agenda and believe in,
5 you know, to take, you know, republican control of the
6 House of Representatives.
7 In 2014, my job as the general consultant would
8 have been to determine the political strategy, develop the
9 political strategy about how to go about accomplishing
10 that.
11 Q. In that election cycle, did Advance New Mexico
12 assist any other candidates?
13 A. I don't -- you mean for other races or --
14 Q. Yes, other races.
15 A. I -- I don't recall. It's possible. It's
16 possible it could have been involved in other state or
17 local races.
18 Q. Do you know why this race was -- was picked?
19 A. Well, in -- so in 2000- -- this is 2016 when
20 the -- when the Scott Chandler race, the one we're talking
21 about. I believe it's either House District 36 or 32. I
22 don't remember which one. In 2014, we were successful in
23 winning control of the house.
24 2016 was going to be a difficult year. You know,
25 holding onto the House was going to be a challenge. I

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1 believe that's Dona -- or Representative Irwin's former
2 seat. She -- it's, performance-wise, probably a leading
3 republican district that was held by a democrat.
4 We believed we could -- that was -- there were
5 very few races that we felt we had a chance of picking up.
6 That was one of them. We knew we were going to have
7 trouble holding onto a lot of the seats we won in 2014. So
8 that race was going to be a target for us to pick up,
9 especially when she retired, that we felt there was a good
10 chance of us winning that.
11 We were -- so that's why that race was targeted.
12 That's why that district was targeted.
13 Q. Was there any other activity that Advance New
14 Mexico did in that race, other than the mailer?
15 A. I don't recall if we did a -- if we did a very
16 cheap automated IVR poll. We may have done that, and I'm
17 talking about the primary.
18 Q. Right.
19 A. And I -- I don't -- I don't remember what all was
20 done in the general election that year.
21 Q. And I think I read that the primary ended up
22 being really close anyway, wasn't it?
23 A. Right, it was. I remember -- well, I don't
24 recall. It would have -- I'm sure it was competitive
25 before. I think we were feeling like that Chandler was

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1 likely to win that nomination. We do not feel that he
2 could win the general election, and we didn't feel like
3 either way, he would be supportive of the governor's
4 agenda, so we were -- that's why we got involved, and it
5 had to have been close for us to have gotten involved.
6 Q. Overall, what did happen in '16? Did you -- did
7 the republicans lose the House?
8 A. The republicans did lose the House.
9 Q. But won that race?
10 A. No. The -- a lot of factors went in, but that --
11 that race, no. Republicans did not win that race either.
12 Q. When did the idea of a mailer first surface?
13 A. It would have been when that race -- we
14 determined that race was close. There was -- direct mail
15 is the primary means of communication in most of these
16 legislative races. So if we were going to get involved in
17 a race, it's usually with direct mail.
18 Q. How did the idea originate? Was it your idea?
19 Was it the governor's? Was it somebody else's?
20 A. I would have gone to the governor and explained
21 where that race was, and that it was close, and that I felt
22 we needed to get involved. She approved that. I then
23 developed that mailer, came up with, you know, the idea we
24 were going to do the mailer on these subjects. It's pretty
25 obvious. And then that would have gone through design,

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1 research, and then to her for approval.
2 Q. Oh, okay. When you say pretty obvious, you're
3 referring to the history?
4 A. Correct.
5 Q. Was that history well known in the area?
6 A. Well, it was well known statewide. I don't
7 think -- I think people overestimate how much voters pay
8 attention to it. So I didn't believe voters necessarily
9 remembered it necessarily tight, you know, and, you know,
10 likely needed to be reminded of it.
11 Q. So there is obviously some strategy in timing.
12 What was your role, if any, in the timing of the mailer?
13 A. We would have planned to have done that, you
14 know, while voters are focused on the race, which would
15 have been the final, you know, couple weeks probably.
16 Q. In the final couple weeks, is that when it --
17 when it happened, that -- that the whole mailer was put
18 together, or was it something you put together earlier and
19 wait until the last couple weeks to release it?
20 A. It would have been put together those final
21 weeks.
22 Q. You said research. How is the research done, and
23 by whom?
24 A. It depends on the race. In this particular race,
25 since we didn't -- in other races, we will have, you know,

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1 contract researchers out, and Advance will hire researchers
 2 to put together research packages on various, you know,
 3 campaigns and candidates.
 4 In this case, that -- since it wasn't a target
 5 originally, and it came on late, we would have -- had done
 6 research on this, and myself and someone in my office would
 7 have produced -- you know, pulled the articles, looked at
 8 the -- and -- and decided what we were going to use in that
 9 case, or in that race.
 10 Q. You said originally, it wasn't a target race.
 11 What changed? What made it a target at the end?
 12 A. The fact that he -- that the race was perceived
 13 to be close. I believe we had discussions with the
 14 republican leadership about that, and they were of the same
 15 mind. They were concerned.
 16 Q. Did you know Mr. Chandler personally?
 17 A. No. No.
 18 Q. Can you identify a meeting where it came
 19 together, where the -- where the mailer came together, what
 20 was going to be included, that type of thing?
 21 A. No, I can't.
 22 Q. Were there any meetings involving Advance New
 23 Mexico about the mailer.
 24 A. I wouldn't know. I don't remember any meeting
 25 specific about the mailer. We had -- there were meetings

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1 all the time with -- or various times where we would go
 2 over proposed budgets, proposed targets, proposed districts
 3 with the governor, with the -- you know, the treasurer at
 4 the time, or Jessica Perez, who was the finance director,
 5 the state finance director, and others who were involved,
 6 polling meetings, where the polling would be presented to
 7 the governor on -- on the different races and where we were
 8 at, but I don't remember anything specific on -- on this
 9 mailer. A lot of that would have been done over the phone,
 10 or, you know, at various times.
 11 Q. I'll show my naivete. Does Advance New Mexico
 12 even have an office?
 13 A. No. Advance never had an office. As an
 14 independent expenditure committee, it's not able to
 15 coordinate with candidates, so there is really no need
 16 for -- for an office. We'd have a PO Box that receive
 17 contributions.
 18 Q. Telephone number?
 19 A. Not that I'm aware of. It was usually the
 20 contact information for the treasurer.
 21 Q. I saw one article that suggested your telephone
 22 number was the telephone number for Advance New Mexico.
 23 Would that have been accurate or inaccurate?
 24 A. I don't know.
 25 Q. So you talked about being the general consultant.

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1 Were you the general consultant for other PACs?
 2 A. Yes.
 3 Q. And is that kind of a common role that you --
 4 that you filled?
 5 A. Sometimes. I mean, I do general consulting.
 6 It's something I do.
 7 Q. So there are several PACs that end up with Now.
 8 Are those all related? Are those all PACs that you have
 9 some association with?
 10 A. I don't know about which ones you're referring
 11 to. Prior to Advance New Mexico Now, there was Reform New
 12 Mexico Now, and that one, and then Advance New Mexico Now.
 13 Reform New Mexico Now was the 2012 election cycle, and then
 14 Advance New Mexico Now was, basically, I think, the 2014,
 15 2016. I'm not sure of any others. There are other -- I
 16 see other PACs with names like that, but that I'm not
 17 affiliated with.
 18 Q. I thought there was a Las Cruces Now PAC, but
 19 that doesn't ring any bells with you?
 20 A. I know we did work for a Las Cruces PAC. I don't
 21 remember the name of it, that were involved in local
 22 elections.
 23 Q. Is there like a vote that has to be made to
 24 authorize a mailer?
 25 A. For -- are you talking specifically for Advance?

Page 21

1 Q. Yes, and for this mailer. Is there some sort of
 2 a vote?
 3 A. It's essentially the governor's approval.
 4 Q. And obviously, you're involved in that
 5 discussion.
 6 A. Yes.
 7 Q. Is Jessica Perez, or whoever was treasurer,
 8 involved in that discussion?
 9 A. I don't recall exactly who was involved,
 10 because -- but they would have been aware. I don't know if
 11 they would have been voting on it.
 12 Q. And is there anybody else, besides you and the
 13 governor, then, that are involved in the decision, let's
 14 send this mailer?
 15 A. In that case, it would have been the governor. I
 16 don't know who else was involved in that time. There would
 17 have been discussions made with political staff on content
 18 or what it would have been. I don't remember specifically
 19 on that case.
 20 Q. Would there have been a political staff person
 21 more familiar with southwest New Mexico that would have
 22 been involved?
 23 A. No.
 24 Q. I believe you used an outside company to do the
 25 printing?

Page 22

1 **A. Correct.**
 2 Q. What was the name of that company, please.
 3 **A. Well, it was designed by Targeted Creative**
 4 **Communication, which is an Alexandria, Virginia based firm.**
 5 **It would have been printed here, most likely, by Southwest**
 6 **Mail Center.**
 7 Q. Targeted Creative -- what was the last part?
 8 **A. Communications.**
 9 Q. Communications. Thanks. Did anybody from that
 10 organization have editorial review, approval and
 11 substantive oversight of the mailer?
 12 **A. They would have drafted much of the -- you know,**
 13 **they would have drafted a lot of the content and done the**
 14 **design.**
 15 Q. So did they determine the ultimate content of the
 16 mailer?
 17 **A. No. I mean, what would have happened is, I would**
 18 **have sent them this is what -- we need to do a mailer on**
 19 **this subject in this race. Here -- here is kind of the**
 20 **overall message, and here -- you know, I would have sent**
 21 **them the articles I wanted referenced in there.**
 22 **They would have then come back to me with -- with**
 23 **the design, with the first design, and it would have**
 24 **either -- we would have gone back and forth with my edits,**
 25 **or -- and then after that, I would have had probably**

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1 **Stephen Dinkel in my office, who would have -- just to**
 2 **double-check the substantiation on it.**
 3 **It's kind of a common procedural to make sure**
 4 **everything was accurate, and then I would have gone to the**
 5 **governor for approval, and that's how the file would have**
 6 **been sent.**
 7 Q. And then the printer, I think, you said was
 8 Southwest likely?
 9 **A. Yes.**
 10 Q. Do they have any editorial review, or they just
 11 take what's provided and print it for you?
 12 **A. They just print.**
 13 Q. So did you get any feedback from -- I guess it
 14 would have been creative -- Targeted Creative
 15 Communications, on the use, for instance, of the police
 16 tape on the illustration?
 17 **A. Any feedback from them?**
 18 Q. Yes.
 19 **A. I believe that's the design that was -- was**
 20 **originally sent over. I don't remember that we changed any**
 21 **of the design.**
 22 Q. And you know, there are two of the quotes for
 23 other parts of the mailer that are specifically mentioned
 24 in the Chandler suit. Do you know whether --
 25 **A. Can you remind what the specific quotes were?**

Page 24

1 Q. Yes. I'll tell you what. Let's get back to
 2 that. Let me show you what we've pre-marked as Exhibit 3.
 3 That's the Chandler Complaint, and it has the mailers
 4 attached. So if you would take a look at those mailers and
 5 see if that refreshes your memory about what the disputed
 6 parts were.
 7 MR. KENNEDY: What's the exhibit marked?
 8 MR. KLECAN: 3.
 9 **A. Yes.**
 10 Q. I think you're identifying certain paragraphs of
 11 the Complaint?
 12 **A. Yes. And I remember this. They -- I always**
 13 **believed in the beginning of this lawsuit that they**
 14 **attached the cover of one mailer with the backside of**
 15 **another, which made it confusing. I think these are two**
 16 **separate mailers, I believe.**
 17 Q. Oh, okay. You're referring to B and C?
 18 **A. Yes.**
 19 Q. Oh. So let's look at B. Is there -- are we
 20 missing something from that mailer?
 21 **A. The backside, I believe.**
 22 Q. All right. And then the same for C. Are we
 23 missing either front or back on that?
 24 **A. Missing the cover of C. If I remember this**
 25 **correctly, I believe they -- they used separate.**

Page 25

1 Q. Would you have a copy of that with you, or
 2 Counsel, of the complete mailer?
 3 **A. I don't believe I do.**
 4 Q. Do you have access to it?
 5 MR. KENNEDY: I don't think we do. It was
 6 attached to the -- all the appellate paperwork, and it was
 7 also attached to the 12(B)(6) motion -- or it was entered
 8 as an exhibit during the 12(B)(6).
 9 MR. KLECAN: Yes, I didn't think it was
 10 attached. Yes. Okay.
 11 MR. KENNEDY: But it went to the Court of
 12 Appeals, also, so they're around, but that's what they did.
 13 They did not attach both complete mailers to the Complaint.
 14 MR. KLECAN: And I couldn't figure out -- it
 15 may be just my ignorance, but I didn't what A -- why A was
 16 attached, since it's not part of the mailer, I would
 17 assume.
 18 MR. KENNEDY: That's not part of the mailer.
 19 MR. KLECAN: Yes. Okay.
 20 Q. (By Mr. Klecan) All right. So the question --
 21 then let's go back to certain paragraphs of Exhibit 3.
 22 First, if you could look at Paragraph 10. I'm not sure if
 23 this is one you identified, but the second sentence of that
 24 refers to "information and belief the so-called 'Shadow
 25 Governor.'" Are you the so-called shadow governor?

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1 **A. I've been referred to as that.**
2 Q. And then the quote in Paragraph 13, is that an
3 accurate quote of what you said? It's kind of a double
4 hearsay, because it's here in the -- in the Complaint, and
5 it's also in the article.
6 **A. Let me just check the article.**
7 Q. Sure.
8 **A. I believe that's accurate.**
9 Q. And then for Paragraph 14, that will clear up the
10 House District 32?
11 **A. Yes.**
12 Q. If you'd look at Paragraph 17 of the Complaint.
13 Do you know where that quote originated as part of the
14 mailer? I'll get you where it first originated later,
15 but --
16 **A. Right. I believe it was the Today show.**
17 Q. But including it in the mailer, was this
18 something you provided to Creative Strategies
19 Communications?
20 **A. Yes.**
21 Q. And you've answered the second one. You think
22 that this is just a repeat of something that showed up on
23 the Today show, or a report about the Today show?
24 **A. Yes.**
25 Q. Did you personally verify that, that this was

Page 27

1 a -- this was a quote from the Today show?
2 **A. I would have reviewed that transcript, yes.**
3 Q. And been satisfied that this was accurate?
4 **A. Yes.**
5 Q. And then for 18, that's the second quote that
6 they're complaining about in this Complaint. Do you know
7 where that originated, "How did a business accused of child
8 abuse and torture avoid government oversight?"
9 **A. I don't know what article they're referring to**
10 **there. That's a -- that's the cover of the mailer. I**
11 **believe that there was an -- there was an article about his**
12 **involvement in -- in -- his, being Scott Chandler's**
13 **involvement, in defeating a piece of legislation that would**
14 **have provided more government oversight of his ranch, and I**
15 **want to -- I want to say it was a New Mexico political**
16 **report, but I don't -- that's why it's not -- that's why I**
17 **know this isn't the -- this is the cover for a different**
18 **mailer, because it would have been on the backside of it.**
19 Q. What, the attribution of the quote?
20 **A. Correct. Well, I don't think -- I think this**
21 **quote is just a -- I don't believe this is a direct quote**
22 **out of an article.**
23 Q. And where I was really headed with that was
24 trying to find out if you're the one that came up with that
25 phrase or question, how did -- how did they avoid

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1 government oversight, or if that's something Creative
2 Strategies came up with?
3 **A. It could have been -- I don't -- I don't**
4 **remember. I don't remember changing this one. It came**
5 **from them.**
6 Q. And you don't remember that they made a
7 substantive change to that, ending up with that quote?
8 **A. I believe when they sent over the draft, I don't**
9 **recall making an edit like that to the cover.**
10 Q. So you think that that question that appeared on
11 the mailer may have originated with Creative Strategies
12 Communications?
13 **A. It could have. I just don't remember.**
14 Q. It could have originated with you, or it could
15 have originated with them?
16 **A. Yes.**
17 Q. So in this process of coming up with the mailer,
18 is there any -- ever a legal review? Do you ever go to a
19 lawyer and say is this okay?
20 **A. Yes. There are times where that will happen.**
21 Q. Did it happen in this case?
22 **A. I don't recall.**
23 Q. Did you have a particular lawyer you would go to
24 for a legal review of something like this?
25 **A. It just depends. I mean in 2014, the treasurer**

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1 **was Matt Chandler, who's an attorney. There were other**
2 **lawyers that we -- at various times would look at it. I**
3 **don't recall on this one. I -- I -- I do remember that the**
4 **House republican leadership was concerned in this race,**
5 **also.**
6 **I believe that Nate Gentry, who was the House**
7 **majority leader at the time, was aware of what was**
8 **happening. It's likely it was sent to him. I don't have a**
9 **specific recollection, though.**
10 Q. But as a matter of protocol, your protocol as the
11 general consultant for sending out a mailer like this, is
12 it protocol to have a lawyer review it?
13 **A. I mean, at times there is. There is -- this one**
14 **was pretty straightforward, and I don't -- and I don't**
15 **recall if the lawyer would have said it's not uncommon.**
16 **Lawyers would be -- not every mail piece. We provided 300**
17 **mailers during that election -- or during that election**
18 **cycle in 2014, so I don't recall specifically on -- on each**
19 **one had that happened.**
20 Q. Would there be records that would show whether or
21 not it was reviewed by a lawyer?
22 **A. No. I don't have any records of that.**
23 Q. If it was reviewed by a lawyer, would he or she
24 have been paid?
25 **A. Not always. Not always.**

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1 Q. Currently, where are the records for Advance New
2 Mexico?

3 A. They may be in a storage unit. I'm not sure how
4 many we still have, but they may be in a storage unit.

5 Q. Is it your storage unit or that of Media
6 Strategies?

7 A. Yes. There is one of mine, and then the governor
8 has one. I don't know which -- if they're there or which
9 one they may be in.

10 Q. Do you save drafts?

11 A. Not usually.

12 Q. So do you recall during the development of these
13 mailers anybody expressing reservations about sending them
14 out?

15 A. Not that I recall.

16 Q. I think in your -- in your prior deposition in
17 this case, you said that you're convinced that everything
18 in the mailers is 100 percent accurate.

19 A. I'm convinced they're accurate, yes.

20 Q. I believe there is various litigation that came
21 about involving child -- Child and Families --

22 A. Yes.

23 Q. -- the State Police and others. Did you ever --
24 did you give a deposition in any of the related litigation?

25 A. I did in one of those, and I don't remember if it

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1 was the -- something involving the detail, the State Police
2 detail for the governor. I believe I gave a deposition.

3 Q. Was Pete Domenici the one that was asking the
4 questions?

5 A. Yes.

6 Q. Did you testify at any hearing?

7 A. No.

8 Q. Did you get any feedback during the election
9 period on the mailer from anybody -- any constituents,
10 voters out there? Did you get any feedback from them?

11 A. Not that I recall.

12 Q. Since that time, hasn't there been some
13 criticism, even among the republicans, about the use of the
14 mailer and the tactic?

15 A. I mean, there's always -- I'm sure Scott
16 Chandler's supporters didn't appreciate it, but I don't --
17 not that I'm aware of.

18 Q. As a general consultant for Advance New Mexico,
19 were you paid personally, or was it Media Strategies that
20 was paid?

21 A. McCleskey Media Strategies.

22 Q. I'm sorry. Is McCleskey part of the title of
23 that company? I keep calling it Media Strategies because I
24 thought that was the name, but it's really McCleskey Media
25 Strategies?

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1 A. Correct.

2 Q. Okay. Thank you. Is it on an hourly basis that
3 it is compensated?

4 A. No. It would have been either -- it depends.
5 It's either there is a monthly fee for consulting, and then
6 there are also fees for media or, you know, different media
7 production stuff.

8 Q. I've seen in some articles, maybe your -- maybe
9 your own kind of bio article, that you personally have been
10 responsible for a -- have gotten national awards or
11 national recognition?

12 A. Yes.

13 Q. Did any of those apply to the mailers in this
14 case?

15 A. No.

16 Q. Let's go back to -- good, you're on Exhibit C.

17 A. Okay.

18 Q. What would be the flip side of Exhibit C? What
19 would have been on the other side of this mailer?

20 A. Without looking -- without knowing exactly, I
21 would think this mailer would have been the first mailer
22 that was basically restating what had happened with the
23 ranch, the basics of it. The second mailer would have been
24 the next kind of message progression, would have been
25 additional information, but I can't remember exactly the

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1 order. Looking at it, that's what I would expect.

2 Q. But specifically on Exhibit C, we know we don't
3 have the whole mailer, because there is a flip side to it?

4 A. Correct.

5 Q. Do you have any information of what would have
6 been on the backside of that?

7 A. I don't.

8 Q. On the other one, on Exhibit B, I think you told
9 us that on the other side would be -- I think you said that
10 there would be attribution of who -- to something, to some
11 organization?

12 A. There would have been attribution about the issue
13 of his involvement and bragging about how he was able to
14 work with a legislator to kill a piece of legislation that
15 would have been provided more oversight, that would have
16 included his ranch.

17 Q. In this Complaint, there is a reference to you
18 being the director, and I think in your answer to the
19 Complaint, you denied that capacity. You have not ever
20 been the director of Advance New Mexico?

21 A. That's correct.

22 Q. And from your previous testimony, I gather you've
23 never been an officer of --

24 A. That's correct.

25 Q. Because you've never been treasurer.

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1 **A. Right.**
 2 Q. Have you been an officer of any of the PACs in
 3 which you've been involved?
 4 **A. I don't -- I don't recall. I don't -- I don't**
 5 **remember any in particular.**
 6 Q. It sounds like, generally, what your role is to
 7 be the consultant?
 8 **A. Correct.**
 9 Q. Is that your profession?
 10 **A. As a political consultant, yes.**
 11 Q. Let's talk about what -- what documents there
 12 might be. So in the notice, which I'll give you a copy of,
 13 which is Exhibit 1, we asked the identification of all of
 14 the documents that identified the officers. What documents
 15 would there be?
 16 **A. There would be those registration documents, and**
 17 **I think that's what's referenced in that statute in**
 18 **Paragraph 1.**
 19 Q. And do you have copies with you?
 20 **A. Yes.**
 21 Q. Can I see?
 22 MR. KLECAN: Do you want to take a break,
 23 and we can just get those documents marked and --
 24 MR. KENNEDY: Sure. I did not -- of course,
 25 I wasn't going to admit them in as exhibits, so I did not

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1 brings copies for Mr. Winston.
 2 MR. WINSTON: That's fine.
 3 MR. KLECAN: We'll have copies made here.
 4 Why don't we just take a short break?
 5 MR. KENNEDY: Sure.
 6 (A recess was taken from 10:58 a.m.
 7 to 11:11 a.m.)
 8 (Exhibit 6 was marked for
 9 identification.)
 10 Q. Mr. McCleskey, while we were off the record, we
 11 got a copy of the Registration Form, and apparently, we
 12 have sort of an insert --
 13 **A. Yes.**
 14 Q. -- that's obviously copied from offline, and I
 15 just want you to verify that that insert is a duplicate --
 16 the duplicate information of what's contained in the
 17 original.
 18 **A. I believe so, yes.**
 19 Q. That's great. Okay. So tell us what this is.
 20 **A. These are the Political Committee Registration**
 21 **Forms that were filed with the Secretary of State's office,**
 22 **various years that would have -- to identify the -- to**
 23 **register the Political Action Committee, provide an**
 24 **address, and identify the treasurer, the bank account**
 25 **information, and it also included a statement of purpose.**

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1 **I don't believe it was required, but is what we**
 2 **submitted, that the lawyers put together to submit, for**
 3 **the -- for Advance.**
 4 Q. And this is for -- the top one is for '15, I
 5 think, and then there is a similar one for '14, 2015, 2014?
 6 **A. Yes.**
 7 Q. And then --
 8 **A. And I thought there was one for something in '16.**
 9 **You're not required to register every time, but when things**
 10 **would change, such as the treasurer, then we had to**
 11 **register again. I think Matt Chandler, who was the**
 12 **original treasurer, became a district judge, and so he**
 13 **obviously cannot be treasurer again. I think Missy Rogers**
 14 **took over then and then Jessica Perez.**
 15 Q. All right. So let's do it in the order that they
 16 appear.
 17 **A. Okay.**
 18 Q. So the first page -- first two or three pages of
 19 Exhibit 6 is the 2016 Registration Form?
 20 **A. Correct.**
 21 Q. So this is apparently filed in August, but this
 22 would cover the time period of the primary election in
 23 2016?
 24 **A. Or it might have been right after the primary.**
 25 Q. Would the information be any different for the

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1 primary?
 2 **A. No. I mean, this would have been filed. This**
 3 **may have been when -- when Jessica Perez became the**
 4 **treasurer in August of 2016. Generally, these are filed --**
 5 **your initial registration, and then if there is a change,**
 6 **that would be why something else would have been filed.**
 7 Q. So on the insert part, we can see that there is a
 8 phone number of (505) 884-0971?
 9 **A. Yes.**
 10 Q. That is the phone number for Advance New Mexico
 11 Now?
 12 **A. That's the one that's listed. That would have**
 13 **been my -- my phone number at my office.**
 14 Q. That would be McCleskey Media Strategies?
 15 **A. Yes. Then that number down there for the**
 16 **treasurer is Jessica Perez' cellphone number.**
 17 Q. Right. It looks like she may be from southern
 18 New Mexico?
 19 **A. Yes.**
 20 Q. Do you know where she's from?
 21 **A. Las Cruces.**
 22 Q. All right. Then if we go down to the 2015 form,
 23 is this going to be the one that would be current as of the
 24 primary?
 25 **A. Yes.**

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1 Q. Okay. Good. So can you tell me whose signature
2 that is on the certification on Page 2 of 15 for treasurer?
3 **A. Melissa Sousa.**
4 Q. Oh, okay. That's a different --
5 **A. This is related to -- yeah, 2015, correct.**
6 Q. All right.
7 **A. And that's her -- she's listed as the officer, as**
8 **Melissa Sousa, treasurer. She's now married. It's Melissa**
9 **Rogers today. That's her cellphone number that's listed**
10 **under "Officers," and her address and e-mail address.**
11 Q. And is there a phone number for Advance New
12 Mexico -- I don't see one -- for '15?
13 **A. No.**
14 Q. Would it have been your office number anyway?
15 **A. No. I mean, the -- the only reason that would**
16 **have ever been included is the media, as far as contacting**
17 **for -- usually what they would use that to contact for**
18 **questions, and so that would be a number where -- for media**
19 **inquiries. So I don't -- I don't see -- if they had**
20 **questions, Advance New Mexico Now, as the consultant, I**
21 **would handle those.**
22 Q. So if the media is calling Advance New Mexico Now
23 for information, the phone number they would go
24 directly to you at your office?
25 **A. They would contact my office generally, most of**

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1 **the reporters, or they would ask the governor at a press**
2 **conference. It just depends.**
3 Q. All right. And then for '14 -- oh, I see.
4 That's when Matt Chandler was the treasurer. Okay. Is
5 that right, Matt Chandler was the treasurer in '14?
6 **A. Correct.**
7 Q. There are numerous -- I think it's twice a year,
8 there are treasurer reports for PACs?
9 **A. More times than that. It depends. In a**
10 **non-election year -- I don't remember specifically, but in**
11 **a non-election year for state PACs, there are reports**
12 **that -- I think they're twice a year, biannual reports. In**
13 **election years, there are more than that. It's probably**
14 **six or seven reports. I think there are four reports in**
15 **the primary and four reports for the general.**
16 Q. And those are available online? You're probably
17 aware of that.
18 **A. Yes. Yes.**
19 Q. I don't see any current for Advance New Mexico,
20 any -- any reporting on the CFIS -- CFIS System.
21 **A. Yes. That's why -- because the PAC is inactive.**
22 Q. What other reporting is done by Advance New
23 Mexico to the state?
24 **A. That is it. That's -- those are the reports.**
25 Q. Let me show you Exhibit 4. I'll just have you

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1 identify that, if you would, please.
2 **A. This looks like a copy of the -- of an excerpt of**
3 **a Campaign Practices Act, specifically with respect to**
4 **political committees, registration and disclosures**
5 **requirements.**
6 Q. And it looks like under C-3 that the registration
7 requires the identification -- or the names and addresses
8 of the officers of the committee. While it's officers,
9 plural, are you telling me that it's only required that you
10 have one officer, being a treasurer?
11 **A. Yes, that's my understanding.**
12 Q. That's the way Advance New Mexico ran it?
13 **A. Correct.**
14 Q. Okay. Thank you. I'm going to have some more
15 detailed questions about how the mailer came about, but I
16 wanted to go next to your Complaint, which I've marked
17 as --
18 MR. KLECAN: Can I have you mark a different
19 one?
20 THE REPORTER: Sure.
21 MR. KLECAN: It's Exhibit 2.
22 Q. Just take a look at it. I first want to identify
23 it, if you can, and then I have some questions about it.
24 **A. It looks like a copy of a Complaint. Jay**
25 **McCleskey as Plaintiff against Sentinel Insurance Company,**

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1 **All-Star and Terri Ketelsen, First Amended Complaint.**
2 Q. And this has attached to it a letter from the
3 insurance company, dated June 25, 2019. Do you see that?
4 **A. Yes.**
5 Q. Could you please turn to Page 6.
6 **A. Okay.**
7 Q. And the top paragraph.
8 **A. Yes.**
9 Q. So let's get oriented first. Did you get a copy
10 of this letter from the insurance company?
11 **A. I don't remember.**
12 Q. Have you ever reviewed it?
13 **A. I'm reading this now. I think I've had**
14 **conversations with my attorney.**
15 Q. I'm not going to ask you about those --
16 **A. Okay.**
17 Q. -- directly, but I want -- if you finish reading
18 that first paragraph of Page 6, I'll be asking you a
19 question about it.
20 **A. Okay.**
21 Q. In the last sentence of Paragraph 6 -- on a
22 paragraph on Page 6, it says, "If you are aware of facts
23 indicating that Mr. McCleskey is being sued in connection
24 with the business he owns, please provide that information
25 to us, and we will carefully consider it."

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1 **A. Okay.**
2 MR. KENNEDY: Hold on. Go ahead. I'm
3 sorry.
4 MR. KLECAN: Yes. That's okay.
5 Q. Did you personally provide any information to the
6 insurance company in response to that -- that part of the
7 letter?
8 MR. KENNEDY: Hold on. Mr. Klecan, this is
9 way outside the scope of the 30(b)(6) notice.
10 Mr. McCleskey's already been deposed about these other
11 issues. This lawsuit doesn't have anything to do with
12 Advance New Mexico, and so I would object to my client
13 testifying about things that he's already been deposed on.
14 MR. KLECAN: Actually, this wasn't covered
15 in the deposition, and that's why.
16 MR. KENNEDY: Well, yes, and I understand
17 that, but you had every opportunity in that deposition
18 to -- to cover it. It was certainly the subject of the
19 deposition, so I don't see why -- he's not going to be
20 re-deposed personally. He's here as Advance New Mexico.
21 MR. KLECAN: Okay. I mean, you certainly
22 have the right to tell him not to answer. I'm posing the
23 question. I would like to get an answer to it, but --
24 MR. KENNEDY: I'm sure you would.
25 MR. KLECAN: But are you going to let him

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1 answer or no?
2 MR. KENNEDY: No, I'm not going to let him
3 answer. This is -- this is outside the scope of the
4 30(b)(6) and is not a question directed to Advance New
5 Mexico.
6 MR. KLECAN: Yes. I didn't know who was
7 going to show up for Advance New Mexico as the 30(b)(6)
8 witness.
9 MR. KENNEDY: Oh, sure.
10 MR. KLECAN: And so since he did show up, I
11 thought, well --
12 MR. KENNEDY: We'll you'll -- you'll -- yes.
13 MR. KLECAN: -- I'll ask him that question,
14 because that's one we -- I told Jessica we wanted to find
15 that out --
16 MR. KENNEDY: Yes.
17 MR. KLECAN: -- from either you or him.
18 MR. KENNEDY: Yes.
19 MR. KLECAN: And so she knows, and I assume
20 you know, that we want to know the answer to that.
21 MR. KENNEDY: I'm sure you do.
22 MR. KLECAN: So you're not going to
23 cooperate and give us that answer? You don't have to, and
24 I understand that.
25 MR. KENNEDY: You've had your chance --

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1 MR. KLECAN: That's your position.
2 MR. KENNEDY: -- through your client. Your
3 client had a chance.
4 MR. KLECAN: Okay. Understood.
5 Q. (By Mr. Klecan) So let's go -- let's go back
6 to -- if we can, I'd like to get a little more detail about
7 the mailer --
8 **A. Okay.**
9 Q. -- and how it came about. First off, with your
10 political acumen, were you already aware that Scott
11 Chandler was a candidate in the primary?
12 **A. Yes.**
13 Q. Were you also aware of his history, of the issues
14 that are alluded to in the mailers?
15 **A. Yes.**
16 Q. Did you personally think that that history would
17 be significant in terms of the primary campaign?
18 **A. Yes.**
19 Q. What was it about the history that you thought
20 significant?
21 **A. Well, I think the fact that he was -- that was a**
22 **very controversial ranch that he was running, that -- that**
23 **what had happened there was controversial, and it was a**
24 **scandal, and I felt that -- I think it was obvious that it**
25 **was -- that it would be a politically relevant piece of**

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1 **information for voters.**
2 Q. Let's put some dates on this. When did this
3 scandal surface?
4 **A. I don't remember exactly. I don't know if it's**
5 **in the references. It was -- I want to say it was prior to**
6 **2014.**
7 Q. Was Susana Martinez the governor at the time?
8 **A. Yes.**
9 Q. Was it particularly triggered by the fact that
10 one of the boys was killed in an accident?
11 **A. I don't recall what triggered it. I think what I**
12 **remember was the -- the whole Amber Alert issue that**
13 **became -- that was issued. I think it started with the**
14 **local -- with -- the media started going into it, and it**
15 **became a national media story.**
16 Q. Do you recall whether Advance New Mexico was in
17 existence at the time that the scandal broke?
18 **A. I don't remember. I don't -- I don't believe so.**
19 **I don't remember.**
20 Q. At that time, you -- were you an adviser to the
21 governor?
22 **A. Yes.**
23 Q. Were you involved in the Amber Alert --
24 **A. No.**
25 Q. -- decision?

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1 **A. No.**
 2 Q. Were you involved in any way with the State
 3 Police shows up at the ranch?
 4 **A. No.**
 5 Q. Or how about Children, Youth and Families?
 6 **A. No.**
 7 Q. Not involved with that either?
 8 **A. No.**
 9 Q. So no firsthand involvement in -- in the
 10 underlying matter that led to the mailers?
 11 **A. Correct.**
 12 Q. I assume you were aware of them, just because of
 13 your knowledge of what's going on in New Mexico.
 14 **A. I was aware of them. They were -- when they**
 15 **became media stories, I would have -- you know, it was**
 16 **obviously relevant as her political adviser, what was**
 17 **happening. There was a national media story about it, but**
 18 **I didn't have any firsthand knowledge of what was**
 19 **happening.**
 20 Q. Is it something that you had to deal with on her
 21 behalf, that in her state, this was happening?
 22 **A. I would have had to deal with it as far as it was**
 23 **a big media issue that was playing out. I don't remember**
 24 **if she was -- ever made any national appearances on it. I**
 25 **don't -- I don't remember that, but had she, I would have**

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1 **been involved in, you know, prepping her for those, or**
 2 **discussing those with her.**
 3 Q. I'm not aware of you having been a party to any
 4 of the related litigation. Were you ever made a party?
 5 **A. No.**
 6 Q. All right. So I think before, you told us that
 7 as the primary race was tightening, that that's what sort
 8 of attracted your attention to House race 32 primary,
 9 republican primary?
 10 **A. Yeah, to the best of my recollection. You know,**
 11 **it was -- it was -- you know, I was aware of that. That**
 12 **was going to be a target race. I think the House majority**
 13 **PAC -- the House majority was also, you know, invested in**
 14 **that race and concerned about the outcome of that race.**
 15 Q. Did anyone else come to you with the idea that we
 16 need to do something about Chandler in the primary?
 17 **A. There may have been discussions with the House**
 18 **majority.**
 19 Q. Is that an abbreviation for House majority leader
 20 or --
 21 **A. Yeah. I mean, the House Majority PAC, but it**
 22 **probably would have been probably Nate Gentry, state**
 23 **representative, the majority leader at the time. He and I**
 24 **probably -- you know, it was commonly, I had conversations**
 25 **about different races.**

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1 Q. And would you have told him that you're
 2 considering doing this kind of a mailer?
 3 **A. I don't recall if -- I -- I vaguely remember**
 4 **conversations with him. I think it would have been**
 5 **pretty -- the issue was very relevant. It was pretty**
 6 **obvious.**
 7 Q. As the race tightens, was this obvious that --
 8 that this information would have an impact on the outcome
 9 of the primary?
 10 **A. Yes, and -- and in the sense that we would have**
 11 **known that that same issue would have been brought up by**
 12 **the democrats in the general election, and it would**
 13 **probably be fatal to a general election campaign.**
 14 Q. All right. You've indicated that there was talk
 15 with the governor and you and perhaps with Mr. Gentry
 16 about -- in general, about the mailer or that information
 17 coming out, but who -- are there key people that are
 18 deciding what's going to be in the mailer?
 19 **A. The governor. I mean, I would have come -- I**
 20 **would have come with a recommendation that -- that we**
 21 **should become involved in this race, that Advance New**
 22 **Mexico Now should get engaged, because of the reasons I**
 23 **stated before, and she agreed, and said, you know, it's**
 24 **beyond, you know, the issues -- you know, the obvious**
 25 **issues with respect to the ranch.**

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1 **Then we would have done the mail -- there's --**
 2 **given there's probably a number of people I would have**
 3 **spoken to that are colleagues that are tangentially**
 4 **involved with -- with the governor's political operation**
 5 **and with Advance about that.**
 6 **Once it got drafted, it probably went through,**
 7 **you know, different sets of eyes to look at it. Like I**
 8 **said, I don't recall specific legal. That's common it**
 9 **would have been, someone to take a quick look at it. The**
 10 **part of the issue I have is this lawsuit was filed in an**
 11 **e-mail retention policy. I don't have the e-mails back**
 12 **from then. Advance doesn't have that.**
 13 **So that would have been common, but the --**
 14 **ultimately, the governor would have signed -- signed off on**
 15 **that, and then the mailer would have been sent.**
 16 Q. Was it well known that Advance New Mexico was a
 17 PAC supporting the governor?
 18 **A. Yes.**
 19 Q. Was it a concern that Advance New Mexico was
 20 doing what would be described as a negative campaign?
 21 **A. No.**
 22 Q. That doesn't have consequences for the governor,
 23 to be associated with a PAC that's doing a negative ad?
 24 **A. It didn't bother her.**
 25 Q. The proof is in the pudding.

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1 A. It's -- Advance New Mexico Now is not on the
2 ballot, so --

3 Q. Yes. Okay. There were two mailers. How far
4 apart were they, if you can recall?

5 A. I don't recall specifically, but my guess is a
6 few days to a week.

7 Q. I don't think there -- there is a date on -- on
8 it, is there?

9 A. No. It was sent by bulk rate, so there's no --
10 it doesn't go through the stamp at the Post Office to
11 provide the date. Generally, with these -- I mean, it
12 would have gone in -- you know, something like this would
13 have been just a few days to a weak apart.

14 It wouldn't have been -- it would have been --
15 you know, it wouldn't have been right up to the election,
16 for political reasons. It probably would have been, you
17 know, five or six -- the last one probably would have hit
18 mailboxes -- or planned to hit mailboxes five or six days
19 before the election.

20 Q. What's the political reason it doesn't go right
21 up to the date of the election?

22 A. My advice is always to do that, because it gives
23 the other side a chance to respond, and voters are less --
24 you know, voters tend to dismiss really last-minute stuff
25 that -- that appears unfair, and so I always tend to do

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1 that earlier.

2 You have early voting and other things, but
3 mainly that's the reason, is so they have -- it comes
4 across more credibly.

5 Q. Was there a response?

6 A. I don't remember one specifically. Again,
7 those -- those races are generally direct-mail races, and
8 since -- unless we're on that list in the district, we
9 don't know it, and we don't -- we don't really know what's
10 really happening, and we can't talk -- have any
11 conversation with the -- the other candidate in that race.

12 I believe that was Vicky Chavez, was the other
13 republican candidate, and we didn't have any conversations
14 with her.

15 Q. You mentioned that there are records in storage.
16 What are the other records still that would have been
17 retained by Advance New Mexico?

18 A. The records that I believe would have been
19 retained are likely limited to copies of checks from
20 donors, maybe some of these campaign finance reports that
21 are available online.

22 Q. Correspondence is not retained?

23 A. No.

24 Q. Is there an e-mail for Advance New Mexico?

25 A. No.

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1 Q. There was a website, wasn't there?

2 A. There may have been a website. I don't -- I
3 don't recall if there is a website. I know there was --
4 you know, would have been a social media presence, but --

5 Q. Does the fact that Mr. Chandler's name appears as
6 treasurer in -- I believe it was '14, tell you anything
7 about whether or not he would have been a lawyer reviewing
8 the mailers before they went out?

9 A. In 2014, I -- I don't -- he likely would have
10 seen them. You know, there was -- there was another
11 political consultant involved, too. He would have seen a
12 lot of those, but I don't know that he was necessarily the
13 counsel.

14 I mean, we have, generally, election lawyers that
15 we use for various things that specialize in that. There
16 is a firm out of DC that -- that we used for some things,
17 I'm sure probably generated the -- the Statement of Purpose
18 that was included.

19 Q. Yes.

20 A. And they would have seen some of those, and then
21 we have local election lawyers that take a look at things
22 here and there.

23 Q. I'm trying to pin you down. If you can remember
24 who -- who in particular reviewed it, and you tell us you
25 can't recall?

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1 A. I can't. It would have been -- I mean, there is
2 a handful of lawyers that could have.

3 Q. Would there be any existent record that would
4 show who -- what lawyer reviewed it before it went out?

5 A. No, because it would have been e-mail, like it
6 would have been by e-mail, and that wasn't -- by the time
7 that lawsuit was filed, it was three years after or
8 something.

9 Q. And there is no regulatory requirement that you
10 retain e-mails?

11 A. No.

12 Q. And actually, it sounds like you're not even sure
13 it was ever reviewed by a lawyer.

14 A. I don't remember specific. This one is one that,
15 you know, it's straightforward, but it would have likely
16 been checked. I mean, Nate Gentry is a lawyer for one of
17 the governors, a lawyer, but it probably would have been,
18 you know, just a quick look by -- by some counsel.

19 Q. Who was the other political consultant?

20 A. In 2014, it was Alexis Darnell.

21 Q. But in 2016, was there any other?

22 A. No.

23 Q. So you've already identified the governor,
24 possibly Mr. Gentry, and yourself as being the ones most
25 directly involved or approving the mailer.

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1 **A. Yeah. I mean, Mr. Gentry wouldn't have had**
2 **approval. He would have --**
3 Q. He would or wouldn't?
4 **A. He would not have had approval on it. The --**
5 **there would have been people around the governor's**
6 **political team, political operation, that may have reviewed**
7 **it for different things.**
8 Q. Did you get any kind of a post hoc
9 congratulations, recognition, or anything for the mailer,
10 the success of the mailer?
11 **A. From?**
12 Q. Anybody.
13 **A. Not that I -- not that I recall. I mean, I'm**
14 **sure that, you know, the race went the way we wanted it to,**
15 **but it wasn't --**
16 Q. Yes. In the next go-round with -- the meeting
17 with what you called the leadership, was there any mention
18 of the success of your -- of the mailer?
19 **A. No, other than we would have looked at that**
20 **district being -- potentially being a target still for that**
21 **election cycle.**
22 Q. And did Advance New Mexico participate in the --
23 in the general?
24 **A. I don't remember if we did. I remember the other**
25 **republican candidate did not want outside groups involved**

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1 **and wanted to run a purely positive campaign, is my best of**
2 **my recollection. I don't -- I mean, we're not bound by**
3 **that, but at the same time, you know, if they don't want us**
4 **to spend money, then -- I -- I don't recall -- I don't know**
5 **if we did --**
6 Q. Yes.
7 **A. -- and she lost. We were -- again, that's a -- I**
8 **mean, the expenditure of the race, two mailings in a**
9 **primary is a very small expenditure compared to what**
10 **Advance was doing in other races against, you know, the**
11 **Senate majority leader that year. I think we spent close**
12 **to a million dollars. This was probably three to 5,000.**
13 Q. Are there invoices that Media Strategies issues?
14 **A. There are.**
15 Q. Would those be retained?
16 **A. I believe so.**
17 Q. Media Strategies probably has retained those
18 invoices?
19 **A. Correct.**
20 Q. So would those invoices be specific as to the
21 mailer? Did it say -- in some way, describe that activity?
22 **A. I don't -- I don't know. It could be generally**
23 **for the services for that month.**
24 Q. And that likely would have been May and June --
25 **A. Correct.**

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1 Q. -- 2016?
2 **A. Correct.**
3 Q. All right. I'm going to ask you to retain those
4 records.
5 **A. Sure.**
6 Q. We'll make a formal request for them in the case,
7 but if you have not already gotten rid of them, please
8 don't get rid of them.
9 **A. Sure.**
10 Q. Are there any other records that Media Strategies
11 would have that would relate to the mailers, their
12 involvement in it?
13 **A. We may have physical copies of that -- of the**
14 **mailer. I may have physical copies of -- of the actual**
15 **mailer.**
16 MR. KLECAN: I think I'm almost done. I'd
17 like to check my notes a little bit --
18 THE WITNESS: Sure.
19 MR. KLECAN: -- and do that. So don't mind
20 a short break, we'll just do that.
21 (A recess was taken from 11:43 a.m.
22 to 11:50 a.m.)
23 Q. So for the first article --
24 THE REPORTER: Are we back on?
25 MR. KLECAN: We're back on. I'm sorry.

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1 Q. (By Mr. Klecan) And this is Exhibit -- this is
2 5. On Page 3 of 4, about the middle of the page, third
3 paragraph under 2, "firms' disclosures," it refers to
4 "Advance New Mexico Now, a super PAC led by Martinez'
5 political adviser, Jay McCleskey." Do you see that?
6 **A. Yes.**
7 Q. Is that accurate?
8 **A. I'm the consultant to it. I mean, it's -- I**
9 **mean, it's her PAC.**
10 Q. Yes. But are you the leader of the PAC, so to
11 speak?
12 **A. I think they're -- remember, they're not going**
13 **to -- generally, the -- the reporters don't identify the**
14 **treasurer or the officers. They identify the consultant.**
15 Q. In the second article, the one titled "In
16 southern New Mexico, state House races are the big draws."
17 **A. Okay.**
18 Q. On Page 3 of that article, what I wanted to
19 address to you -- you can read the whole article if you
20 need to, but in -- in the underlining in this -- what looks
21 like the third paragraph of the page, it refers to "Jay
22 McCleskey, the adviser for Governor Susana Martinez," and
23 then a website "who also controls the GOP super PAC," and
24 then above that refers to Advance New Mexico. Is that
25 accurate, that you controlled the -- the Advance New

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1 Mexico?

2 **A. That's fake news. No. This is the -- I think**

3 **it's the same thing, where they're talking about a**

4 **consultant.**

5 Q. And then the other articles, I think they use the

6 term "run by" or "ran"?

7 **A. Yes.**

8 Q. Is that the same answer, that --

9 **A. Yes. They're identifying the consultant, and**

10 **again, like I mentioned before, part of my responsibilities**

11 **to the client for Advance would have been to handle media**

12 **questions.**

13 Q. And that's because of your -- because it's your

14 profession?

15 **A. Yes.**

16 Q. And you're the consultant?

17 **A. Correct.**

18 MR. KLECAN: Okay. That's all the questions

19 I have. Thank you.

20 MR. WINSTON: Mr. McCleskey, my name is

21 Moses Winston. We met via Zoom. I have no questions for

22 you today, sir. Thank you.

23 THE WITNESS: Okay. Thank you.

24 MR. KLECAN: Do you have any questions,

25 Paul?

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1 MR. KENNEDY: No. I'm sorry, I already gave

2 her my instructions.

3 (Whereupon the deposition was

4 concluded at 11:52 a.m.)

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1 JAY MCCLESKEY -vs- THE HARTFORD, ALL-STAR

2 INSURANCE, and TERRI KETELSEN, Taken August 10, 2021

3

4 DEPONENT SIGNATURE/CORRECTION PAGE

5 If there are any typographical errors to your

6 deposition, indicate them below.

7 PAGE LINE

8 _____ Change to _____

9 _____ Change to _____

10 _____ Change to _____

11 Any other changes to your deposition are to be

12 listed below with a statement as to the reason

13 for such change.

14 PAGE LINE CORRECTION REASON FOR CHANGE

15

16

17

18

19

20

21 I, JASON MCCLESKEY, do hereby certify that I have

22 read the foregoing pages of my testimony as transcribed,

23 and that the same is a true and correct transcript of the

24 testimony given by me in this deposition, except for the

25 changes made.

JASON MCCLESKEY

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1 SECOND JUDICIAL DISTRICT COURT

2 COUNTY OF BERNALILLO

3 STATE OF NEW MEXICO

4 NO: D-202-CV-2020-04548

5 JAY MCCLESKEY,

6 Plaintiff,

7 vs.

8 THE HARTFORD, ALL-STAR

9 INSURANCE, and TERRI KETELSEN,

10 Defendants.

11

12 REPORTER'S CERTIFICATE

13 I, PENNY McALISTER, CCR #250, DO HEREBY CERTIFY

14 that on August 10, 2021, the Deposition of JASON MCCLESKEY

15 was taken before me at the request of, and sealed original

16 thereof retained by:

17 For The Defendant The Hartford

18 Mr. John A. Klecan

19 JONES, SKELTON & HOCHULI, P.L.C.

20 40 N. Central Avenue, Suite 2700

21 Phoenix, Arizona 85004

22 I FURTHER CERTIFY that copies of this certificate

23 have been mailed or delivered to all Counsel, and parties

24 to the proceedings not represented by counsel, appearing at

25 the taking of the deposition.

I FURTHER CERTIFY that examination of this

transcript and signature of the witness was requested by

the witness and all parties present. On _____, a

letter was mailed or delivered to _____ regarding