

<p>COURT OF APPEALS, STATE OF COLORADO  Colorado State Judicial Building  2 East 14th Avenue</p>	<p>DATE FILED: July 24, 2023 2:08 PM  FILING ID: AF0C4FD6A106C  CASE NUMBER: 2023CA1235</p>
<p>Appeal from the Denver District Court Honorable David Goldberg, District Judge</p> <p>Civil Action No. 2021CV33632</p>	
<p><b>Plaintiff-Appellee:</b> Eric Coomer</p> <p>v.</p> <p><b>Defendant-Appellant:</b> Randy Corporon, Salem Media of Colorado, Inc.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Defendant-Appellant Randy Corporon:  John S. Zakhem, # 30089  Eric R. Holway, #49263  Andrew C. Nickel, #45235  Jackson Kelly PLLC  1099 18th Street, Suite 2150  Denver, CO 80202  Telephone: 303-390-0003  Facsimile: 303-390-0177  <a href="mailto:jszakhem@jacksonkelly.com">jszakhem@jacksonkelly.com</a>  <a href="mailto:eric.holway@jacksonkelly.com">eric.holway@jacksonkelly.com</a>  <a href="mailto:andrew.nickel@jacksonkelly.com">andrew.nickel@jacksonkelly.com</a></p>	<p>Case No.: 2023CA1235</p>
<p style="text-align: center;"><b>RANDY CORPORON’S NOTICE OF APPEAL</b></p>	

Defendant-Appellant, Randy Corporon, by and through his attorneys of record, Jackson Kelly PLLC, hereby submits this Notice of Appeal, pursuant to C.A.R. 3(a)

and 4, and C.R.S. §§ 13-20-1101(7) and 13-4-102.2, and states as follows in support thereof:

**I. TRIAL COURT INFORMATION**

COURT/COUNTY: Denver County District Court

JUDGE’S NAME: Honorable David Goldberg

PARTY INITIATING THIS APPEAL: Randy Corporon

TRIAL COURT CASE NUMBER: 2021CV33632

**II. DESCRIPTION OF NATURE OF CASE AND DISPOSITION IN THE TRIAL COURT**

A. Nature of Controversy: In the aftermath of the 2020 Presidential Election (the “Election”), President Trump, his representatives, and his supporters disputed the election results, alleging voting irregularities and fraud. President Trump and his legal team, as well as others, investigated and ultimately filed lawsuits in multiple states alleging fraud and irregularities involving, among other things, Dominion Voting Systems, Inc.’s (“Dominion”) election software and equipment. The allegations of election fraud and the lawsuits filed were some of the most important news stories in the country for many months and were reported on extensively by news organizations and pundits across the country.

Plaintiff-Appellee Eric Coomer (“Coomer”) was Dominion’s Director of Product Strategy and Security in 2020.

Defendant-Appellant Randy Corporon (“Mr. Corporon”) hosts a radio talk show on Denver’s 710 KNUS, which is owned and operated by Salem Media of Colorado, Inc. In this capacity, Mr. Corporon invites guests on his show to provide opinions, information, and commentary on current news stories.

Following the Election, Mr. Corporon reported on and discussed the aforementioned allegations of election fraud. One of his guests on this topic was Joseph Oltmann, a Colorado businessman and political podcast host. Prior to coming on the air, Mr. Oltmann affirmed, under oath in an affidavit, that he had knowledge and information regarding Coomer relating to his role at Dominion and his connections to, and sympathy for, left-wing and anti-Trump causes, including Antifa. Mr. Oltmann obtained and disclosed multiple anti-Trump and anti-American Facebook posts from Coomer, and Mr. Oltmann recounted a Zoom call he attended during which a person identified as “Eric from Dominion” stated “Trump’s not going to win the election. I made f-ing sure of that.” Prior to coming on Mr. Corporon’s radio program, Mr. Oltmann provided Mr. Corporon with a signed affidavit swearing under penalty of perjury that his statements were true.

Coomer filed the subject lawsuit in November, 2021, alleging that Mr. Corporon made or published defamatory statements about him on his radio program. Coomer’s claims against Mr. Corporon are for defamation, intentional infliction of

emotional distress, conspiracy, and injunctive relief. Coomer's claims all stem from statements allegedly made on his radio program in the aftermath of the Election.

On October 27, 2022, Mr. Corporon filed a Special Motion to Dismiss Coomer's claims pursuant to C.R.S. § 13-20-1101, Colorado's anti-SLAPP statute. On November 29, 2022, the Court held an evidentiary hearing.

On June 9, 2023, the Court entered an order denying Mr. Corporon's Special Motion to Dismiss (the "anti-SLAPP Order"). **Exhibit A.** This is Mr. Corporon's appeal as of right from the judgment under C.R.S. § 13-20-1101(7), C.R.S. § 13-4-102.2, C.A.R. 3(a) and C.A.R. 4.

B. Judgment Appealed: Mr. Corporon appeals the Court's June 9, 2023 anti-SLAPP Order.

C. Basis of Jurisdiction: This Court has jurisdiction over Mr. Corporon's appeal pursuant to C.R.S. § 13-20-1101(7), which provides that an order denying a special motion to dismiss is appealable to the Colorado Court of Appeals, pursuant to C.R.S. § 13-4-101.2, which states in pertinent part that "[t]he court of appeals has initial jurisdiction over appeals from motions to dismiss actions involving constitutional rights pursuant to section 13-20-1101."

This notice is timely filed. The deadline for filing this notice of appeal under C.A.R. 4(a) is July 28, 2023, which is 49 days from the date Mr. Corporon's Special Motion to Dismiss was denied.

D. Whether the Judgment Resolved All Issues: The anti-SLAPP Order denied Mr. Corporon's Special Motion to Dismiss pursuant to C.R.S. § 13-20-1101. It was not a final judgment pursuant to C.R.C.P. 54(b). This is an interlocutory appeal as a matter of right pursuant to C.R.S. § 13-20-1101(7).

E. Applicability of C.R.C.P. 54(b): Not applicable.

F. Date of Entry of Judgment and Service: The trial court entered its anti-SLAPP Order on June 9, 2023, at which time the parties were notified of the ruling and served through Colorado Courts E-Filing.

G. Extensions of Time to File Motions for Post-trial Relief: Not applicable.

H. Motions for Post-trial Relief: No parties have filed post-trial motions.

I. Date motion for post-trial relief denied or deemed denied: Not applicable.

J. Extension of time to file notice of appeal: Mr. Corporon is not seeking additional time to initiate the appeal.

### III. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

Mr. Corporon intends to raise several points of error, including, without limitation, the following:

- Whether the trial court committed reversible error in denying Mr. Corporon's requested relief under the Colorado anti-SLAPP statute, § 13-20-1101, *et seq.*
- Whether the trial court erred in finding that Mr. Corporon made or otherwise published defamatory statements about Coomer.
- Whether the trial court erred in finding that Mr. Corporon acted with actual malice in reckless disregard of the truth by: (1) assisting Mr. Oltmann in drafting an affidavit to send to Trump's legal team; (2) asserting Mr. Oltmann's claims as fact; (3) not questioning Oltmann's story; (4) not asking Mr. Oltmann for his sources of information; and (5) presenting viewpoints contrary to Mr. Oltmann's claims on the air.
- Whether the trial court erred in finding that Mr. Corporon assisted in drafting an affidavit for Mr. Oltmann.
- Whether the trial court erred in finding that Mr. Corporon asserted Mr. Oltmann's claims as fact.
- Whether the trial court erred in finding that Mr. Corporon neither questioned Mr. Oltmann's story nor asked for his sources of information.

- Whether the trial court erred in finding that Mr. Corporon had a high degree of awareness of the probable falsity of Mr. Oltmann's statements. *Garrison v. La.*, 379 U.S. 64, 74 (1964).
- Whether the trial court erred in finding that Mr. Corporon had reason to know that Mr. Oltmann was an unreliable witness.
- Whether the trial court erred in failing to consider the fair report privilege.
- Whether the trial court erred in finding that Coomer established a reasonable likelihood of prevailing on his defamation claim against Mr. Corporon.
- Whether the trial court erred in finding that Coomer established a reasonable likelihood of prevailing on his intentional infliction of emotional distress claim against Mr. Corporon.
- Whether the trial court erred in finding that Coomer established a reasonable likelihood of prevailing on his civil conspiracy claim against Mr. Corporon.
- Whether the trial court erred in finding that Mr. Oltmann's allegations against Coomer were inherently implausible.
- Whether the trial court erred by engaging in credibility choices and fact-findings it was not entitled to make as a matter of law in the context of the application of the anti-SLAPP statute.

Mr. Corporon hereby specifically reserves the right to raise these and other issues, whether or not specified above. *See Giampapa v. American Family Mut. Ins. Co.*, 919 P.2d 838, 840 (Colo. App. 1995) (issues listed in a notice of appeal are merely advisory, not jurisdictional).

#### **IV. TRANSCRIPT INFORMATION**

The transcripts identified below are necessary to review the Issues on Appeal:

- August 18, 2022
- September 29, 2022
- October 14, 2022
- November 29, 2022

Mr. Corporon will file a Designation of Transcripts with the District Court clerk's office within seven (7) days of the filing of this Notice of Appeal.

#### **V. WHETHER ANY ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE WHERE CONSENT WAS NECESSARY**

The anti-SLAPP Motion was not decided by a magistrate judge.

#### **VI. ATTORNEY INFORMATION**

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## **VII. APPENDICIES TO THIS NOTICE OF APPEAL**

The District Court's Order re: Defendant Salem Media and Randy Corporon's Special Motion to Dismiss (anti-SLAPP Order) is attached as Exhibit A to this Notice of Appeal.

Respectfully submitted this 24th day of July 2023.

JACKSON KELLY PLLC

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## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 2023, a true and correct copy of the foregoing was served via the Colorado Court's E-Filing system, on the following:

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In addition, I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail, on the following:

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*/s/ Amanda Herrman*

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Amanda Herrman