

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2005 APR 29 07:43:59

SUPERIOR COURT DIVISION

COUNTY OF WAKE

WAKE COUNTY, N.C.

07 CVS 19854

GLENN HAGELE, )  
 BY \_\_\_\_\_ )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LAURANELL BURCH a/k/a NELL )  
 BURCH, )  
 )  
 Defendant. )  
 )  
 LAURANELL BURCH, )  
 )  
 Counter-Plaintiff, )  
 )  
 v. )  
 )  
 GLENN HAGELE and COUNCIL FOR )  
 REFRACTIVE SURGERY QUALITY )  
 ASSURANCE d/b/a USAEYES.ORG, )  
 )  
 Counter-Defendants. )

**FIRST AMENDED ANSWER AND  
 COUNTERCLAIMS  
 (ANSW-CTCL)**

*Put in this against Plt.  
 need some type of order  
 to add the additional  
 party.*

Defendant Lauranell Burch a/k/a Nell Burch ("Burch"), pursuant to North Carolina Rule of Civil Procedure 15(a) and in apt time, amends her Answer and Counterclaims in this matter as of right, such that the Answer and Counterclaims read as follows:

**FIRST AMENDED ANSWER AND COUNTERCLAIMS**

Burch, through undersigned counsel and pursuant to North Carolina Rules of Civil Procedure 8, 12, and 13(b) and 13(h), responds to the Complaint filed by Plaintiff Glenn Hagele ("Hagele") in the above-captioned matter as follows:

**TWELFTH DEFENSE**  
**(Constitutional Defenses)**

Hagele's claims against Burch are barred and should be denied and dismissed under the First Amendment to the United States Constitution and Article I, Section 14 of the North Carolina Constitution because the reading of N.C. Gen. Stat. §§ 1-539.2C, 75-1.1, 75-62 and 75-66 advocated by Hagele in his Complaint, both on its face and as applied under the circumstances of this case, would unduly impair Burch's right to engage in free speech.

**THIRTEENTH DEFENSE**  
**(Unconstitutional Prior Restraint)**

Hagele's claims against Burch are barred and should be denied and dismissed under the First Amendment to the United States Constitution and Article I, Section 14 of the North Carolina Constitution because the relief sought by Hagele in his Complaint, if granted by this Court, would constitute an impermissible and unconstitutional prior restraint on speech.

**FOURTEENTH DEFENSE AND COUNTERCLAIMS AGAINST HAGELE  
AND AGAINST ADDITIONAL COUNTER-DEFENDANT COUNCIL FOR  
REFRACTIVE SURGERY QUALITY ASSURANCE d/b/a USAEYES.ORG**

Defendant/Counter-Plaintiff Luranell Burch, through undersigned counsel and as further defense, pursuant to North Carolina Rule of Civil Procedure 13(b) by way of Counterclaims against Plaintiff/Counter-Defendant Glenn Hagele and pursuant to North Carolina Rule of Civil Procedure 13(h) by way of Counterclaims against additional Counter-Defendant Council for Refractive Surgery Quality Assurance d/b/a USAEyes.org alleges as follows:

1. Luranell Burch ("Burch") is a citizen and resident of Durham County, North Carolina.
2. Upon information and belief, Glenn Hagele ("Hagele") is a citizen and resident of Sacramento, California.

3. Upon information and belief, Council for Refractive Surgery Quality Assurance d/b/a USAEyes.org (“CRSQA/USAEyes”) is a California corporation that has engaged in substantial activities in the State of North Carolina through its agent, Glenn Hagele.

4. Burch is a medical research scientist, with a Ph.D. in Molecular Biology and Genetics. She is currently employed as Director of the Molecular Genetics Core Facility at the National Institute of Environmental Health Sciences (“NIEHS”) in the Research Triangle Park, North Carolina, and she has been so employed at all relevant times hereto.

5. Burch underwent LASIK surgery on March 31, 2004. The results of Burch’s surgery were devastating and impact her in profoundly negative ways in many aspects of her daily life.

6. For example, shortly after Burch’s LASIK surgery she could read the 20/20 eye chart line in optimal lighting conditions unaided by glasses or contacts; however, her vision is now distorted and blurry, especially in dim light, and she suffers from chronic eye irritation due to LASIK-induced dry eye.

7. In addition, Burch’s vision has regressed, and she wears glasses full time. She avoids driving at night because LASIK-induced corneal distortions produce night-vision disturbances, which are distracting and unpleasant. Burch has also lost significant contrast sensitivity from the surgery, which is the ability to perceive differences between an object and its background at low light levels.

8. Based on her experience, research and interaction with other persons, Burch believes that LASIK complications are often understated by LASIK surgeons, who have a vested interest in a patient’s decision to have the LASIK procedure performed. Since April 2004, Burch

has applied her science background to the study of medical literature relating to complications of corneal refractive surgeries such as LASIK.

9. Burch has posted information on patient bulletin boards to communicate with other patients and also with those considering LASIK, with the hope that patients would have access to better information about LASIK complications and would have an opportunity to know what she would have liked to have known before she had LASIK surgery performed on her eyes.

10. Burch also volunteers as a peer counselor for patients who are suicidal and/or depressed as a result of devastating corneal refractive surgery outcomes.

11. Upon information and belief, Hagele is the Executive Director of CRSQA/USAEyes.

12. CRSQA/USAEyes and Hagele are engaged in the business of promoting the LASIK industry and, among other things, criticizing, harassing, and intimidating those who wish to speak publicly about the risks of the LASIK procedure and about negative outcomes experienced by some LASIK patients.

13. In particular, Hagele has criticized and harassed many people who have attempted to raise concerns about LASIK surgery on the Internet. He has also harassed people who have attempted to establish websites and other forums for patients to discuss LASIK surgery and share concerns about the surgical procedure.

14. By way of example and without limitation, upon information and belief Hagele has posted or made the following statements about various persons who have suffered adverse outcomes from LASIK surgery:

“Is it time for me to publish your divorce documents Keller?  
Perhaps we should all see what your ex-neighbor has to say about you too. And then there are those business dealings that went

south. Perhaps this errata is important to some, but it has nothing to do with refractive surgery issues, now does it?"

\* \* \*

"Not only have you demonstrated time and again that you don't have the emotional ability to handle your own problems without vomiting your neurosis on the rest of the world, you have the unmitigated gall to tell people who have real problems that you have a 'shattered' life. I, for one, have had enough of you. Take your sniveling whining to SurgicalEyes where it is appreciated and leave the rest of the sane world out of your self-perpetuated gloom."

\* \* \*

Ron, you really think way too much of SurgicalEyes and its importance in my professional and personal life. I equate SurgicalEyes to an ant on the ass of a cow I pass by going 50 in my sports car. You are a fly speck in my routine, but you have taken up a lot of my time lately with your antics.

\* \* \*

"Bottom line: Keller/Cofer will sell their integrity for the few shekels an ad on LasikDisaster.com will bring in. Excuse my bluntness, but the term that comes to mind rhymes with 'boars.'"

\* \* \*

"Keep in mind that although I know about Hanson's two bankruptcies, skipping out on people, federal fraud, ownership of LasikFlap, sexual orientation, additional acts of judicial contempt, and sending defaming e-mails to all of our doctors, I have not announced any of it although I have all the documentation to substantiate. The same is true regarding Keller's implication of her business in defamation on LasikDisaster, Cofer stupidly involving her employer, or Burch's defamation of her former employer. Yes, what I have said about them has been bad, but it most certainly could be worse for them – and worse for me. I'm willing to sink as far as necessary, but not all the way down to their level."

15. Upon information and belief, CRSQA/USAEyes and Hagele and the activities they engage in are subsidized by LASIK surgeons who have a direct pecuniary interest in

increasing the number of persons choosing the LASIK procedure. Thus, those LASIK surgeons—and their agents CRSQA/USAEyes and Hagele—have a direct pecuniary interest in silencing those who would speak publicly about the risks of the LASIK procedure and about negative outcomes experienced by some LASIK patients.

16. Upon information and belief, the actions taken by Hagele, as alleged herein, have been undertaken at the direction of and/or with the express or tacit authorization or ratification of CRSQA/USAEyes and the LASIK surgeons who subsidize CRSQA/USAEyes and Hagele.

17. Burch first became aware of Hagele when she was told that he was making posts on a particular newsgroup criticizing Burch's postings made under her screen name, "Scientist," on a patient bulletin board.

18. Since that time, much of Hagele's campaign of threats, intimidation, and harassment has been directed at Burch, and it has included without limitation making false statements to her employer, engaging in efforts to have her fired from her job (including through use of an altered document), publishing identifying information about Burch on his website, issuing press releases with false statements about Burch, and interfering with websites on which Burch has posted content concerning LASIK surgery and its attendant risks.

19. Much of the content on Hagele's website, [www.glennhagele.com](http://www.glennhagele.com), is devoted to attacks and misinformation concerning Burch.

**FIRST CLAIM FOR RELIEF**  
**(Defamation *Per Se* against Hagele and CRSQA/USAEyes)**

20. The allegations of the foregoing paragraphs are realleged and incorporated herein by reference.

21. Hagele contacted Burch's employer, NIEHS, in or about May 2007. These contacts included without limitation a series of communications with the NIEHS chief executive

officer for management, Marc S. Hollander, on May 1 and May 6, 2007. In the course of these communications, Hagele made various false statements concerning Burch that impeached and maligned her in her business or profession and were otherwise false and defamatory.

22. By way of example and without limitation, in the course of these communications with Burch's employer, Hagele:

- a. falsely accused Burch of using her government-issued computer for prohibited purposes and in violation of government policies;
- b. falsely stated that Burch had been the subject of a "detailed investigation" by the North Carolina Attorney General;
- c. falsely stated that Burch had been issued a "cease and desist letter" by the North Carolina Attorney General;
- d. falsely stated that Burch had publicized Hagele's personal information, including his "Social Security number, driver's license number, bank account numbers, credit card numbers, and more;" and
- e. falsely stated that "forty six pages of documents including [Hagele's] personal identity were made available at Luranell 'Nell' Burch's website."

23. The foregoing statements were false. In fact, Burch never used a government-issued computer for prohibited purposes or in violation of government policies. In addition, Burch was never the subject of a "detailed investigation" by the North Carolina Attorney General, nor was she ever issued a "cease and desist letter" by the North Carolina Attorney General. Finally, Burch has never publicized Hagele's personal information, and such information was never "made available at Luranell 'Nell' Burch's website."

24. The foregoing false statements were defamatory *per se* because they tended to impeach and malign Burch in her business or profession. By way of example and without limitation, the false statements Hagele made to Burch's employer—a government agency—involved, among other things, the false allegation that Burch had misused government-issued computers, the false allegation that Burch has been the subject of a “detailed investigation” by the North Carolina Attorney General and the false allegation that Burch had published personal information concerning Hagele. In addition, the foregoing false statements were defamatory *per se* because they otherwise tended to subject Burch to ridicule, contempt, and disgrace.

25. Hagele knew or should have known that the foregoing statements were false, yet he proceeded to make intentional and reckless misstatements of fact concerning Burch to her employer. Upon information and belief, Hagele did so in an effort to interfere with Burch's relationship with her employer and to have Burch fired from her job.

26. Because Hagele made the false and defamatory statements concerning Burch in the furtherance of the business of CRSQA/USAEyes and for purposes of accomplishing the duties of his employment with CRSQA/USAEyes, his defamation is imputed to CRSQA/USAEyes under the theory of *respondeat superior*.

27. As a consequence of the false and defamatory statements made by Hagele and imputed to CRSQA/USAEyes concerning Burch, Burch has been damaged in an amount in excess of \$10,000.00 and to be proved at trial, and Burch is entitled to recover presumed, actual, and punitive damages therefor.

#### **SECOND CLAIM FOR RELIEF**

**(Violation of N.C. Gen. Stat. § 75-1.1 against Hagele and CRSQA/USAEyes)**

28. The allegations of the foregoing paragraphs are realleged and incorporated herein by reference.

29. The actions taken by CRSQA/USAEyes and by Hagele on its behalf, as alleged herein, were actions taken in and affecting commerce.

30. In particular, the actions taken by CRSQA/USAEyes and Hagele were acts affecting commerce because Hagele's false statements to Burch's employer impeached and maligned Burch in her business or profession. Moreover, the actions taken by CRSQA/USAEyes and Hagele, as alleged herein, were acts affecting commerce because they were all done in furtherance and in the course of commercial activity. CRSQA/USAEyes and Hagele are engaged in the business of promoting the LASIK industry and, among other things, criticizing, harassing, and intimidating those who wish to speak publicly about the risks of the LASIK procedure and about negative outcomes experienced by some LASIK patients.

31. The actions of CRSQA/USAEyes and by Hagele on its behalf, as alleged herein, were unfair and deceptive in violation of North Carolina General Statutes § 75-1.1.

32. By way of example and without limitation, the following unfair and deceptive actions taken by CRSQA/USAEyes and/or Hagele on behalf of CRSQA/USAEyes violated North Carolina General Statutes § 75-1.1:

- a. On or about August 28, 2006 an altered version of an editorial—authored by Burch anonymously and entitled “The LASIK Report”—was submitted to Burch's employer. The document had been altered to identify Burch as the author and to falsely suggest that it had been authored by Burch in her capacity as a scientist with NIEHS and/or that the report was somehow supported or endorsed by NIEHS, which it was not. Upon information and belief, the document was altered and submitted to NIEHS with Hagele's knowledge, at his direction or suggestion and/or with his

assistance. Upon information and belief, Hagele engaged in this conduct with respect to the report in an effort to interfere with Burch's relationship with her employer and to have Burch fired from her job.

- b. Hagele has reserved a host of domain names in an effort to frustrate the ability of Burch and others to establish websites and other forums for patients to discuss LASIK surgery and share concerns about the surgical procedure; including at least the following: Lauranellburch.com, Lasikdisaster.org, Lasikfraud.info, Lasikfraud.net, Lasikfraud.org, Lasikfraud.biz, Lasikinforcenter.org, Brenthanson.info, Paulacofer.com, Elviragalindo.com, Dommorgan.com, Deankantis.com, and Arielberschadsky.com.
- c. Hagele has falsely claimed to the North Carolina Attorney General that Burch is engaged in a business with respect to the publication of information concerning LASIK surgery and its attendant risks and that Burch has publicized Hagele's personal information on the Internet.
- d. Hagele has contacted Burch's employer on multiple occasions in an effort to interfere with Burch's relationship with her employer and to have Burch fired from her job. These contacts have included, without limitation, communications in which Hagele: (i) falsely accused Burch of using her government-issued computer for prohibited purposes and in violation of government policies; (ii) falsely stated that Burch had been the subject of a "detailed investigation" by the North Carolina Attorney General; (iii) falsely stated that Burch had been issued a "cease and desist letter" by

the North Carolina Attorney General; (iv) falsely stated that Burch had publicized Hagele's personal information, including his "Social Security number, driver's license number, bank account numbers, credit card numbers, and more;" and (v) falsely stated that "forty six pages of documents including [Hagele's] personal identity were made available at Laurantell 'Nell' Burch's website." claim to employer that misuse government computer.

- e. In or about November 2007, Hagele procured the shutting down of a website ([www.lasikflap.com](http://www.lasikflap.com)) on which Burch sometimes posted content concerning LASIK surgery and its attendant risks. Upon information and belief, Hagele improperly acquired the domain name for this website in violation of regulations issued by the Internet Corporation for Assigned Names and Numbers ("ICANN"). Upon information and belief, Hagele engaged in this conduct in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks.
- f. Upon information and belief, Hagele has communicated with the domain registrars of those domain names for which Burch is the registered owner ([www.lasikdisaster.com](http://www.lasikdisaster.com) and [www.thelasikflap.com](http://www.thelasikflap.com)) in an effort to interfere with the continued operation and availability of the websites with those domain names on the Internet. Upon information and belief, Hagele engaged in this conduct in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks.

- g. Upon information and belief, Hagele has communicated with the web hosts of those websites for which Burch is the registered owner of the domain name ([www.lasikdisaster.com](http://www.lasikdisaster.com) and [www.thelasikflap.com](http://www.thelasikflap.com)) in an effort to interfere with the continued operation and availability of those websites on the Internet. Upon information and belief, Hagele engaged in this conduct in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks.
- h. Upon information and belief, Hagele has communicated with search engines (such as Google) concerning websites for which Burch is the registered owner of the domain name ([www.lasikdisaster.com](http://www.lasikdisaster.com) and [www.thelasikflap.com](http://www.thelasikflap.com)) in an effort to have those websites delisted and de-indexed by the search engines. This has the effect of making it difficult, if not impossible, for Internet users not already familiar with the websites to identify and visit them. Upon information and belief, Hagele engaged in this conduct in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks.
- i. Hagele has instituted this baseless lawsuit, obtained an *ex parte* temporary restraining order (since dissolved) and, upon information and belief, misrepresented the nature of the now-dissolved temporary restraining order to ISPs, web hosts and domain registrars and search engines in an effort to interfere with the continued operation and availability of websites for which Burch is the registered owner of the domain name ([www.lasikdisaster.com](http://www.lasikdisaster.com) and [www.thelasikflap.com](http://www.thelasikflap.com)). Upon information

and belief, Hagele engaged in this conduct in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks.

- j. Hagele has threatened to publish personal information about Burch and has threatened legal action against Burch in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks. Hagele has published personal information concerning Burch on his website, [www.glennhagele.com](http://www.glennhagele.com), including her name, address, telephone number, e-mail addresses, employer, and former employer.
- k. Hagele has threatened to publish personal information about Burch's elderly mother in an effort to silence speech by Burch and others concerning the LASIK procedure and its attendant risks.
- l. Hagele has prepared and distributed widely press releases that falsely accuse Burch of publishing Hagele's personal information and that misrepresent the nature of statute of this lawsuit and the actions taken by the Court.
- m. Hagele has published various misstatements about Burch on his website, [www.glennhagele.com](http://www.glennhagele.com), including, without limitation, false accusations that Burch has published Hagele's personal information and the false statement that N.C. Gen. Stat. § 75-66 is "commonly known as The Burch Clause."

33. As a consequence of the unfair and deceptive trade practices engaged in by CRSQA/USAEyes and Hagele, as alleged herein, Burch has been damaged in an amount in excess of \$10,000.00 and, pursuant to North Carolina General Statutes § 75-1.1, § 75-16, and

§ 75-16.1, Burch is entitled to the recovery of her actual damages, trebled, plus attorneys' fees and the other costs of this action.

34. The unfair and deceptive conduct perpetrated by Hagele was taken in the scope of authority and in his capacity as agent for CRSQA/USAEyes, and such conduct may therefore be imputed to CRSQA/USAEyes.

WHEREFORE, Defendant Laurantell Burch a/k/a Nell Burch respectfully prays that the Court:

1. Dismiss Hagele's Complaint in its entirety with prejudice, such that Hagele takes nothing on his Complaint;
2. Enter judgment in favor of Burch and against Hagele on Hagele's claims;
3. Deny Hagele the monetary and injunctive relief requested in his Complaint;
4. Disburse to Burch the bond that was posted by Hagele in connection with his seeking of an *ex parte* temporary restraining order, which order was dissolved when the Court denied Hagele's motion for preliminary injunction;
5. Award Burch her attorneys' fees as the prevailing party under 1-539.2C(a);
6. Enter judgment in favor of Burch and against Hagele and CRSQA/USAEyes on Burch's counterclaims in an amount in excess of \$10,000 and to be proved at trial;
7. Grant Burch the relief requested in her counterclaims;
8. Award Burch her reasonable attorneys' fees pursuant to N.C. Gen. Stat § 75-16.1.
9. Tax the cost of this action, including attorneys' fees, against Hagele and CRSQA/USAEyes;
10. Grant Burch a jury trial on all issues so triable; and
11. Award Burch such other and further relief as the Court deems just or proper.

This the 28 day of April, 2008.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was served upon the parties to this action by depositing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

Jon Sasser  
ELLIS & WINTERS  
1100 Crescent Green  
Suite 200  
Cary, NC 27518

This the 28 day of April, 2008.

  
\_\_\_\_\_  
Charles E. Coble