



MICHELE B. FRIEND  
MFRIEND@CLARKTREV.COM

ALEXANDER C. MCGILVRAY, JR.  
LEONARD BRAZIL  
LESLIE R. HOROWITZ  
JAMES S. ARICO  
DEBORAH H. PETITO  
STEPHEN E. HYAM

BRET R. CARTER  
MICHELE B. FRIEND  
TIFFANY A. HALIMI  
JONATHAN L. SMOLLER  
T. MATTHEW HANSEN  
POUYA ZIAPOUR

OF COUNSEL  
DONALD P. CLARK, FOUNDER  
JOHN A. LAPINSKI  
ROBERT F. DEMETER  
JAMES Q. FISHER  
RAIMUND FREIHUBE  
KIMBERLY S. WINICK  
E. EUGENE WALSH

June 11, 2021

**VIA E-MAIL AND FIRST CLASS MAIL**

Shelby Russell  
President & Publisher  
Los Angeles Magazine  
5900 Wilshire Boulevard, 10th Floor  
Los Angeles, CA 90036  
E-Mail: srussell@lamag.com

Re: Demand for Retraction of Los Angeles Magazine Articles Re Anthony Wagner

Dear Ms. Russell:

I represent Anthony Wagner and I am writing regarding a series of defamatory articles published by Los Angeles Magazine about Mr. Wagner, beginning with Mitchell Kriegman's March 12, 2021 attack piece entitled "In Sleepy Santa Barbara, a City Hall Insider Is Raising Eyebrows" (hereafter referred to as the "Attack Piece"). Mr. Kriegman and LA Magazine paint a shocking cinematic picture for a reader to believe that Mr. Wagner is like a mobster with a history of corruption who was not fit to be hired but mysteriously got the job through an improper relationship with a female supervisor, that he impersonated a police officer, waiving his badge while assaulting a private citizen, and that he misused his position to gain valuable cannabis licenses for his friends. The outrageous claims are entirely false and misleading, and they have caused significant damage to Mr. Wagner and his family.

On March 18, 2021, Mr. Wagner promptly notified you of thirty-two (32) gross inaccuracies in the Attack Piece and he demanded a retraction in compliance with Civil Code §48a. Despite Mr. Wagner's efforts to correct the record with citations and evidence, LA Magazine has failed to retract the Attack Piece or even correct most of the easily verifiable falsehoods. LA Magazine's astounding refusal to even acknowledge reliable evidence such as court rulings and administrative reports and instead stand by hearsay claims that have been wholly refuted demonstrates the actual malice and reckless disregard for the truth on the part of LA Magazine and Mr. Kriegman. While Mr. Kriegman may be an accomplished fiction and television writer, he appears to have no experience or training in investigative journalism, as indicated by his online bio on his website at <https://mitchellkriegman.com/about> (attached). It was incumbent upon LA Magazine to fact-check his work but it clearly ignored basic journalistic standards for the lure of a sensational story that is more fiction than fact. LA Magazine's failure and refusal to timely retract the Attack Piece and correct the record is in violation of Civil Code §48a, thereby entitling Mr. Wagner to general, special and exemplary damages.

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I will not repeat each of the thirty-two (32) falsities described in Mr. Wagner's seven (7) page letter to you, but will highlight a few which show the depth of the inaccuracies and the clear malice directed toward Mr. Wagner.

### **Failure and Refusal to Properly Investigate**

Mr. Kriegman never discussed his wild allegations with Mr. Wagner prior to publication. He spoke to Mr. Wagner one time a year earlier about unrelated budget issues and Mr. Wagner provided him with a phone number and an email address to reach him. Mr. Kriegman never contacted Mr. Wagner to address the outrageous claims Mr. Kriegman planned to level at Mr. Wagner in the Attack Piece. Notably, Mr. Kriegman's faulty reporting was rejected by the local news as indicated in the Montecito Journal's publisher's response to the Attack Piece.

Mr. Kriegman went 100 miles outside the city of Santa Barbara to find a publisher for his Attack Piece. Why would LA Magazine feature an Attack Piece about an individual in a small city 100 miles and two counties away? Why didn't it fact-check the story? Mr. Wagner's letter to you contains citations to easily verifiable information. It is clear that LA Magazine took no steps to determine the accuracy of Mr. Kriegman's claims and instead chose to join the smear campaign. From typos such as the opening paragraph describing Santa Barbara as a "gentile" place rather than "genteel" and incorrect citations to meeting minutes, to referring to the mayor as travelling in an armored SWAT vehicle when in fact she was travelling in her personal Honda Accord, to salacious, wholly-fabricated allegations of corruption that had already been discredited, there appears to have been no editing or fact checking and only an intention to defame Mr. Wagner and others in the city.

Even after LA Magazine received the accurate information from Mr. Wagner, it still refused to correct the record. Then, after Mr. Wagner was cleared by an independent investigation, LA Magazine still stood by the Attack Piece. Why? It can only be explained as its reckless disregard for the truth and actual malice toward Mr. Wagner.

### **False Accusations Regarding Mr. Wagner's Hiring**

The Attack Piece claims that Mr. Wagner failed to receive a "recommendation to hire" after the police department's extensive background check, that the chief overrode the finding and the city manager backed her up on appeal. This is false. There was no such finding for the chief to override, and there was no appeal for the city manager to back. This is not how the process works – not just in Santa Barbara, but through statewide protocols mandated by California Peace Officer Standards and Training. Further, police department background checks are confidential as required by law to protect the employee, so how would Mr. Kriegman or LA Magazine know what is contained in Mr. Wagner's background check file to make such an accusation? The Attack Piece was clearly intended to leave the reader with the impression that Mr. Wagner's hiring was improper and that his background check resulted in a finding that he should not be hired. None of this is true. His background check cleared him to get hired, and he was hired. Mr. Kriegman and LA Magazine had no legitimate access to Mr. Wagner's background check file and should not have led readers to believe they had insider information that they did not actually possess.

### **False Accusations Regarding an Illegal Bribe in San Diego**

The Attack Piece asserts that Mr. Wagner was “at the table during the payment of a \$10,000 bribe to two San Diego council members, one of whom was acting mayor.” This statement is false and misleading in several ways.

First and foremost, Mr. Wagner was not implicated in any way in that incident. He was not charged, never a subject, never a target and not even a witness in the case.

Second, the breakfast meeting which allegedly involved a \$10,000 bribe between a city council member and a private citizen was addressed in a jury trial in which the city council member was acquitted and the Ninth Circuit articulated the lack of persuasiveness of the testimony regarding this accusation. United States v. Zucchet (S.D. Cal., Nov. 10, 2005, No. 03CR2434 JM) 2005 WL 8160882, at \*8, aff'd sub nom. U.S. v. Inzunza (9th Cir. 2011) 638 F.3d 1006. The court noted that the credibility of the witness making the bribe allegation was seriously compromised by the benefits he received under his written plea agreement with the Government and the extent to which his testimony could increase favorable treatment. *Id.*

Third, there was only one city council member present at that breakfast meeting, not two. Finally, no acting mayor was present.

The reporting in the Attack Piece was so sloppy it did not have any of the facts right, it failed to acknowledge that the accusation was not credible and that it was directed at someone else, not Mr. Wagner. This story in the Attack Piece was clearly intended to leave a reader with the false impression that Mr. Wagner was involved in an illegal bribe, when in fact there was no bribe and Mr. Wagner was not even involved in the case. LA Magazine could have easily fact checked the Ninth Circuit and related trial court opinions in this matter and edited the Attack Piece accordingly, but it did not, even after the error was highlighted by Mr. Wagner. This reckless disregard for the truth is another example of malice toward Mr. Wagner.

### **False Accusations Regarding the San Diego Planning Commission**

The Attack Piece completely fabricated the story regarding Mr. Wagner's work on the San Diego Planning Commission. It portrays him as a criminal when in fact he was an exemplary public servant with a pristine record.

The Attack Piece asserts that “[a]ccording to the Planning Commission agenda minutes of March 12, 2015, Wagner voted to approve Knopf's MMCC, which had been denied three months earlier. In fact Commissioner Wagner initiated the motion to approve, advocating for his associates representing significant conflicts.” This statement is entirely false.

First, the Knopf MMCC had never been denied – not three months earlier – not ever. The hearing officer approved Knopf's application. A private citizen then filed an appeal in an attempt to get the approval of Knopf's application reversed. The Planning Commission, including Mr. Wagner, upheld the hearing officer's approval of Knopf's application.

Second, Mr. Wagner did not advocate for Mr. Knopf or anyone else in this process and he had no associates in cannabis at that time. The only thing Wagner advocated was to add more safety requirements for Knopf to fulfill in order to protect the public, such as Kevlar based walls, 24-hour armed security, metal detectors and a safe area. The false statement in the Attack Piece that Mr. Wagner advocated for his associates representing significant conflicts is essentially accusing Mr. Wagner of corruption – a crime of which he has never been accused.

Third, the March 12, 2015 minutes do not even address this issue. These publicly available minutes only show that the appeal relating to Knopf was tabled to a later date. Subsequent meeting minutes also do not support the claims in the Attack Piece. Citing to an official source is an attempt to legitimize the claim and lead the reader to believe that the reporter actually reviewed the source, but nothing in the minutes support the Attack Piece. A review of the minutes before publishing could have quickly revealed the gross errors contained in the Attack Piece.

The Attack Piece is also arranged to lead the reader to believe that Mr. Wagner knew Mr. Knopf through the Southern California Responsible Growers Counsel at the time of this Planning Commission hearing and that Mr. Wagner was advocating for his associates in that organization, but that is false and the timeline is wrong. Wagner did not know Mr. Knopf at all outside the official proceeding and the SCRGC was not even formed until about a year and a half later. Another false and misleading item that could have been easily fact-checked.

The truth is, Mr. Wagner was never accused of any ethical violations during his tenure on the San Diego Planning Commission. The false and misleading statements in the Attack Piece were intended to leave a reader with the false impression that Mr. Wagner was corrupt in his work on the San Diego Planning Commission when in fact he was an exemplary public servant.

Mr. Wagner brought these errors to your attention but Los Angeles Magazine continues to stand by these defamatory statements in furtherance of its malice against Mr. Wagner.

### **False Accusations Regarding Mr. Wagner's Use of His Badge**

The Attack Piece contends that Mr. Wagner received a badge “in a most curious turn” despite no training or history in law enforcement and that he improperly used his badge, conjuring images that he has been impersonating a police officer flashing a metal badge. This is false. Mr. Wagner wore an ID key card on a neck lanyard that is issued to every employee, which they are required to use for access to the building. The ID key card identified him by his job title as “Santa Barbara Police Public Information Officer”. While he also received a metal badge, it was never worn publicly and was used solely for identification purposes as needed during the fires and aftermath. There is nothing nefarious about Mr. Wagner receiving a badge as the police PIO. Many civilian employees at SBPD are provided with such identification. Presenting the image that Mr. Wagner was improperly flashing his badge at times that he was only wearing his ID lanyard puts Mr. Wagner in a false light. His metal badge was kept in his wallet and used only in high regard.

The Attack Piece claims Mr. Wagner was involved in an incident over use of his badge in a 7-11 Store on July 13, 2017. It was 6:30 am and Mr. Wagner stopped at 7-11 on his way to work while wearing

his neck lanyard. He had been talking to the store clerk when he was interrupted by a civilian behind him in line to hurry up, there's nothing going on, etc. and after repeated interruptions, Mr. Wagner responded to the impatient civilian with an expletive. However, the Attack Piece painted an entirely different story that Mr. Wagner flashed his badge and aggressively approached the civilian, threatening him inches from his face with arms wide open. The official complaint and the results of the police investigation, including the in-store 7-11 video, show that the civilian's complaint did not include a claim for misuse of his badge, that Mr. Wagner never approached the civilian in any way and that the only reprimand was for use of the expletive, to which Mr. Wagner readily admitted and apologized. For the Attack Piece to present a fictional narrative that Mr. Wagner was waving his badge and approaching a civilian in a threatening manner, and that this complaint was fully sustained was only intended to leave the reader with the false impression that Mr. Wagner assaulted a civilian while impersonating a police officer.

Notably, the incident was so minor, none of the clerks at the store even remembered it when interviewed a short time later for the investigation. Mr. Wagner provided LA Magazine with the Investigation report, which concludes that the store video shows Mr. Wagner never approached the civilian at all. Mr. Wagner also provided LA Magazine with the resulting Oral Reprimand Memo showing that the oral discipline was limited to the expletive response to the civilian's interruption as Discourteous Treatment and Unbecoming Conduct pursuant to Department Policies 340.3.2(k) and 340.3.5(aa). He was not charged with or reprimanded for the more egregious conduct the Attack Piece promotes, such as the unauthorized use of any badge, uniform or identification card (340.3.5(k)) or exceeding lawful powers by unreasonable, unlawful or excessive conduct (340.3.5(u)). Nonetheless, LA Magazine refused to correct this false and misleading information, continuing to leave readers with the false impression that Mr. Wagner was reprimanded for improper use of a badge and for improperly approaching the civilian in a threatening way.

The intended effect worked. The March 14, 2021 report on the Attack Piece by Edhat (the "Edhat Report") repeats the falsities, accusing Mr. Wagner of flashing a badge and bullying the civilian, demonstrating that a reader of the Attack Piece was led to believe Mr. Wagner engaged in activity that never happened. Despite the official evidence setting the record straight, LA Magazine continues its malicious reporting regarding Mr. Wagner.

### **False Statements Regarding Mr. Wagner's Role in the Santa Barbara Marijuana License Approval Process**

The Attack Piece asserts that Mr. Wagner used his position as the key player in the Santa Barbara marijuana license approval selection process to gain a license for his San Diego friends, Mr. Knopf and Mr. Anderson, who were the recipients of one of the Santa Barbara marijuana licenses. This is false and misleading in several ways.

First, it exaggerates Mr. Wagner's role in the Santa Barbara license selection process. There are two phases to the process. In the first phase, there were five (5) city personnel on a panel, including Mr. Wagner, and everyone had an equal vote. No one was a key player with a greater vote. Staff in phase one of the process included police (Wagner), fire safety, finance, community development, and the city attorney's office. To suggest that Mr. Wagner's vote somehow carried more weight than the others is false and discredits the other four members of the panel. If an applicant succeeds in phase one, then the process

proceeds to phase two, which is run by the city administrator's office. The city manager's designee is the main arbiter of phase two, which is the final stage of the process involving public interviews and hearings on the applicants by the city administrator and city attorney's office, not Mr. Wagner.

Second, asserting that Mr. Wagner's friends (Knopf and Anderson) were recipients of a license is false. Mr. Wagner did not know Mr. Knopf outside of official proceedings, and Mr. Anderson was not involved at all in the Santa Barbara application process. LA Magazine later removed the reference to Wagner's friends and Anderson, but continued to suggest that Mr. Wagner acted improperly.

Third, the recipient of the license was an entity, Golden State Greens, not Knopf or Anderson. LA Magazine later corrected the reference, but continued to suggest that associates (plural) of Mr. Wagner's from San Diego were gaining unfair advantage from Mr. Wagner when this is simply not the case.

The Edhat Report shows the impact of how a reader is led to believe the falsehoods in the Attack Piece. It describes the Attack Piece as stating that Mr. Wagner was the point person who awarded cannabis dispensary licenses for the city, which is not true – there are four (4) other people on the panel in phase 1 and Mr. Wagner was not on the phase 2 team that makes the final decisions. It also claims that Mr. Wagner's San Diego friends were able to secure one of the eight highly desirable licenses as a result of his purported position as the person awarding licenses – also not true. LA Magazine's minor corrections to the Attack Piece to remove the references to Mr. Wagner's friends and to Mr. Anderson don't negate the false impression that was already caused by its faulty reporting.

### **Conclusion**

We recognize that LA Magazine made revisions to the Attack Piece after it was initially published. We are aware of at least three (3) different versions. However, it is not clear what was changed, when and why. It also does not negate the ripple effect caused by the damning Attack Piece and the damage suffered by Mr. Wagner and his family.

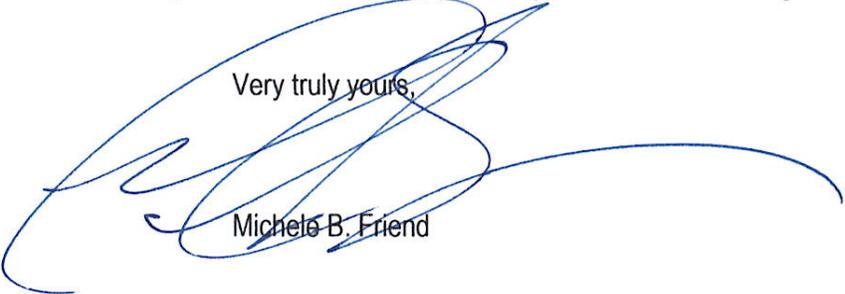
Based on the foregoing, it appears that LA Magazine is more interested in a sensational, false story than the truth. However, this type of malicious and irresponsible reporting impacts people's lives. Mr. Wagner was placed on administrative leave and forced to undergo an investigation into these claims by the City of Santa Barbara, costing both Mr. Wagner and the city to incur significant expense. As expected, Mr. Wagner was cleared of any wrongdoing. Mr. Wagner also had to respond to a State of California Fair Political Practices Commission Complaint as a result of the Attack Piece. The Enforcement Division has decided not to pursue the matter. There is a reason the City of San Diego never accused Mr. Wagner of ethical violations, the City of Santa Barbara never found Mr. Wagner to have used his badge inappropriately or operated with conflicts of interest, and that the State of California FPPC did not pursue claims of Political Reform Act violations – because Mr. Wagner is innocent. Mr. Kriegman and LA Magazine took someone with stellar performance reviews and portrayed him to the public as unethical and a criminal. This placed an enormous toll on Mr. Wagner and his family. Mr. Wagner was fully cleared as a result of the investigation, but none of this would have happened had LA Magazine followed proper journalistic standards. The manufactured claims reported in the Attack Piece demonstrated a reckless disregard for the truth and the malicious reporting

Shelby Russell  
June 11, 2021  
Page 7 of 7

concerning Mr. Wagner was undoubtedly designed to cast doubt on his integrity, damage his reputation and compromise his position in the city. LA Magazine clearly wanted this result and you got it.

Mr. Wagner demands that LA Magazine retract the Attack Piece and reimburse him for his attorneys' fees and other costs incurred to defend himself against these false and misleading claims and for damages in the sum of \$4.6 million.

Very truly yours,



Michele B. Friend

MBF:mfs

cc: Gwynedd Stuart, Digital Managing Editor  
[gstuart@lamag.com](mailto:gstuart@lamag.com)