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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

THE ELECTRONIC RECYCLING ASSOCIATION  
OF ALBERTA d/b/a ELECTRONIC RECYCLING  
ASSOCIATION, a Canadian non-profit  
corporation,

Plaintiff,

v.

BASEL ACTION NETWORK, a Washington non-  
profit corporation,

Defendant.

Case No.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

JURY DEMAND

**COMPLAINT**

Plaintiff The Electronic Recycling Association of Alberta d/b/a/ Electronic Recycling Association (“Plaintiff or “ERA”) sues the Basel Action Network (“Defendant” or “BAN”) and alleges the following:

**OVERVIEW**

**THE PARTIES**

1. ERA is a citizen and nonprofit corporation of Canada, having its principal place of business in Alberta, Canada. ERA was created to address the growing problem of e-waste. Its founder, Bojan Paduh, recognized a great need for better management of waste created by

1 electronics, and was inspired to give back to the community in an environmentally conscious way.  
2 Thus, ERA primarily focuses on the reuse of electronic equipment for any and all items that can  
3 be refurbished and repurposed. ERA provides low-cost or no-cost services to numerous customers  
4 throughout Canada and the United States, including large corporations, small businesses, school  
5 systems, municipalities, government entities, and charities. Donating reusable electronics and  
6 giving back to the community is also a focal point of ERA's corporate function. ERA has donated  
7 electronic equipment to over 700 organizations throughout Canada. In the last two years, alone,  
8 ERA has donated over 2,500 laptops and computers, and the number of items ERA donates  
9 continues to grow every year.  
10

11 2. BAN is a registered non-profit corporation and citizen of the State of Washington,  
12 with its principal place of business in Seattle, Washington.  
13

#### 14 **JURISDICTION AND VENUE**

15 3. This Court has original subject matter jurisdiction over the claims set forth in this  
16 Complaint pursuant to 28 U.S. C. § 1332(a)(2) in that the amount in controversy exceeds \$75,000,  
17 exclusive of interests and costs, and is between a citizen of a State and a citizen of a foreign state.  
18

19 4. The Court has personal jurisdiction over BAN based upon its presence within this  
20 judicial district. Additionally, the false and defamatory statements made by BAN were published  
21 in, among other places, the State of Washington.

22 5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because a substantial  
23 part of the events giving rise to the claims alleged in this Complaint occurred with this judicial  
24 district and BAN resides in this judicial district.  
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**GENERAL ALLEGATIONS**

**I. The Electronic Recycling Association**

6. ERA reduces unnecessary e-waste, and the associated environmental deterioration, through effective management of aging electronic and information technology (“IT”) equipment. ERA has found that most electronic equipment designated for retirement has remaining productive life, and seeks to maximize that remaining life through recovery, reuse, and refurbishment.

7. ERA also engages in positive community impact through donations of reusable electronic equipment.

8. ERA assists businesses and individuals with managing and disposing of electronic equipment that is no longer needed or wanted. The company accepts a wide range of equipment, including medical equipment, telecommunication equipment, networking equipment, computers, monitors, TV’s, laptops, servers, printers, copiers, small appliances/household items, and all electronic/IT related equipment and accessories.

9. ERA offers the following services to its customers:

- a. pick-up services of unwanted electronic equipment;
- b. industry leading data removal or destruction, including, providing a “Destruction Certificate” upon completion of data removal;
- c. comprehensive reporting of equipment received; and
- d. providing on-site collection bins, often at no cost to the customer, including delivery and regular removal of the bins.

10. ERA also sells intact, working computer systems to customers all over the world, including in Washington state, to help pay for its operating costs as a non-profit organization.

11. In addition, ERA provides a number of services to the community at no cost. Those services include:

- 1 a. offering free refurbished equipment to charities, non-profits, care facilities, and
- 2 educational facilities;
- 3 b. volunteer programs allowing volunteers to work alongside ERA trained staff
- 4 and earn a computer of their own at the end of their volunteer hours;
- 5 c. free community cleanup assistance, where ERA provides its staff and removal
- 6 trucks to community associations for their cleanups; and
- 7
- 8 d. hosting awareness events in which ERA partners with law enforcement and
- 9 environmental organizations to educate the public about security on retiring
- 10 electronic devices and the environmental importance of reuse and recycling.

11 12. When ERA obtains an electronic item, ownership and responsibility of the donated  
12 material is transferred to ERA. This transfer of ownership is documented by ERA upon receipt of  
13 any item.

14 13. Data security and data destruction are key areas of ERA's services. ERA offers  
15 various options to its customers to safely and reliably destroy any data on items that are given to  
16 ERA. ERA follows detailed procedures relating to the destruction of any form of electronic data  
17 donated to, collected by, or dropped off to ERA. Specifically, once an item is transferred to ERA,  
18 ERA takes on the responsibility of destroying all remaining data on the electronic device. To do  
19 so, ERA employs overwrite software, used by various data sensitive organizations, that effectively  
20 overwrites all data on the hard drive, while still allowing the hard drive to function going forward  
21 and be reissued and used. In addition to this general policy, ERA also maintains a separate policy  
22 for Hard Drive Destruction for customers who request onsite destruction of hard drives. Customers  
23 who engage ERA for data destruction receive a Data Destruction Certificate upon completion of  
24 the data destruction service and are provided the individual serial numbers for drives that have  
25 been destroyed.

1 14. ERA also maintains and follows policies for adherence to all applicable legal and  
2 regulatory requirements.

3 **ERA Does Not Recycle e-Waste and Does Not Ship Hazardous Material**

4 15. ERA is not an e-waste recycler. However, recycling electronic equipment in  
5 accordance with applicable laws and regulations is very important to ERA. As such, for all  
6 equipment that ERA assesses and determines to be at 100% end of life, ERA transfers that  
7 equipment to regulated and approved facilities to be recycled, such as the Electronic Products  
8 Recycling Association (“EPRA”) and the Alberta Recycling Management Authority (“ARMA”).  
9 It is these approved recyclers, not ERA, that dismantle and recycle the components of electronics.  
10 Furthermore, it is these approved recyclers, not ERA, which may ship dismantled components to  
11 further destinations.  
12

13 16. Electronic equipment is not “hazardous” until it is dismantled and broken down,  
14 which ERA does not do.  
15

16 17. ERA does not ship hazardous e-waste material within or outside of Canada.

17 **II. The Basel Action Network**

18 18. BAN is a registered Washington non-profit and purported environmental advocate.

19 19. In recent years, BAN has created what it calls the “e-Trash Transparency Project.”  
20 As part of this project, BAN purports to investigate and issue reports on alleged exports of e-waste.  
21

22 20. As part of the e-Trash Transparency Project, BAN claims that it plants GPS  
23 tracking devices in electronic devices and delivers them to various companies. The companies  
24 receiving electronic devices from BAN are not made aware of the presence of the GPS devices.  
25 The GPS devices then allegedly report back their coordinates and locations to BAN for an extended  
26 period of time.  
27  
28

1 21. BAN touts the GPS trackers as employing “EarthEye™” technology. BAN wholly  
2 owns EarthEye™. All profits from the sale of EarthEye™ go to BAN.

3 22. BAN also runs a certification program called “e-Stewards.” For an undisclosed  
4 amount of money, companies can pay BAN fees to take place in an accredited, third-party audited  
5 certification program for electronics recyclers, refurbishers, and asset managers. Upon successful  
6 completion of the program, companies can sign a license agreement with BAN and display an e-  
7 Stewards logo on their website.  
8

9 23. To date, ERA has not participated in BAN’s e-Stewards certification program.  
10 However, a number of ERA’s competitors apparently have participated and tout their BAN e-  
11 Stewards certificate.  
12

### 13 **III. The October 10, 2018 Report and Press Release**

14 24. On October 10, 2018, BAN released a report titled “Export of e-Waste from  
15 Canada: A Story as Told by GPS Trackers” (the “Report”) (**Exhibit A**). The same day, BAN  
16 issued a press release titled “GPS Trackers Reveal More Canadian e-Waste Exported to  
17 Developing Countries” (the “Press Release”) (**Exhibit B**).<sup>1</sup>

18 25. The Report details BAN’s alleged efforts to determine “whether Canada and its  
19 electronics industry was complying with the waste trade obligations of the Basel Convention and  
20 the laws of Canada and of importing countries.” (Report at 1). BAN alleges that it planted GPS  
21 trackers onto forty-three used electronic devices and delivered the devices to “electronics recyclers  
22 or recycler collection sites.” *Id.* All of these devices were, according to BAN, “rendered non-  
23 functional and economically unrepairable” and “qualified under the Basel Convention as  
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26  
27 <sup>1</sup> Available at <https://myemail.constantcontact.com/Canada-Still-Exporting-e-Waste-to-Developing-Countries.html?soid=1114999858498&aid=0dV6AREekxk>.  
28

1 hazardous waste.” *Id.*

2 26. BAN stated that seven of the forty-three devices were exported out of Canada, and  
3 that four of those seven devices ended up in developing countries. *Id.*

4 27. The Report contains a number of false, misleading, and defamatory statements  
5 regarding ERA.

6 28. The Report’s false and defamatory statements include:

7 a. “4 of the discovered exports (to developing countries) were deemed likely to be  
8 illegal and 3 (to developed countries) possibly illegal. . . . Three of the seven  
9 exports, and three of four (75%) that were shipped to developing countries, all  
10 came from one company – Electronic Recycling Association (ERA) which has  
11 had a history of making similar exports in the past” and further describing ERA  
12 as a “repeat offender.” (Report at 1, 2).

13 b. “3 of the 7 exports and 3 of the 4 that went to developing countries were  
14 exported by one non-profit organization – Electronics Recycling Association  
15 (ERA) that has a long history of similar exports.” *Id.* at 3.

16 c. In a Section labeled “Exported Trackers in Detail”:

17 i. “ERA-Vancouver #1 . . . ERA has a long history of exporting electronic  
18 waste (see special section). In this case, the printer delivered to ERA in  
19 the Vancouver area went to two different electronics junkyards in Hong  
20 Kong’s New Territories. . . . **Legality: Likely Illegal.**” (Report at 23).

21 ii. “ERA-Vancouver #2 . . . ERA has a long history of exporting electronic  
22 waste (see special section on ERA). In this case and [sic] an LCD  
23 monitor delivered to their site in the Vancouver area went first to  
24 Calgary, Alberta – likely ERA’s site there and then onward to Pakistan..  
25  
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1 . . . **Legality: Likely Illegal.**” (Report at 25).

2 iii. “Uniway (ERA drop site-Edmonton) . . . Once again, our tracking finds  
3 ERA exporting an LCD monitor -- this time to Hong Kong, via  
4 Brampton, Ontario. . . . **Legality: Likely Illegal.**” (Report at 28).<sup>2</sup>

5 1. Photo purporting to show “[w]here the ERA-Uniway LCD  
6 screen ended up.” (Report at 29).

7  
8 d. Section of Report titled: “ERA: Canada’s Prolific Exporter” (Report at 36-42):

9 i. Claims that ERA was “responsible for 75% of the tracked devices that  
10 moved from Canada to developing countries.”

11 ii. “For over ten years BAN has found ERA to be a constant and prolific  
12 Canadian exporter of electronic waste to developing countries from  
13 three different locations in the Vancouver, BC area. We have also  
14 discovered them selling equipment with residual corporate data on it to  
15 the public. Both of these types of activities are highly irresponsible and  
16 likely illegal.”

17  
18 iii. “BAN monitored several truck trailer loads of e-waste that went directly  
19 from ERA’s facilities in Vancouver to PC Max’s facility in Vancouver.  
20 We believed PC Max was another channel through which ERA exported  
21 large volumes of e-scrap to Asia.”

22  
23 iv. “ERA Vancouver Container Exports: Observed 2018 [sic] – 2013”

24 1. The chart and photographs contained on pages 37-40 of the

25  
26  
27 <sup>2</sup> BAN also mentions other companies in the Report as engaging in “possibly illegal” and  
28 “likely illegal” activity.



1 Report are defamatory in that they describe illegal container  
2 shipments coming from ERA.

3 v. **“Data Insecurity.** Additionally, as was reported to the Vancouver Sun,  
4 BAN purchased ten computers from ERA in 2009. On the hard drives  
5 of the computers, we found sensitive and private residual corporate data  
6 from companies such as Petro-Canada, Borden Chemical, and CP Rail,  
7 including payroll, oil drilling data, and personal SINs (Social Insurance  
8 Numbers). All of this was easily uncovered despite ERA’s promise that  
9 donated computers are handled ‘safely and securely.’”

10  
11 vi. Claiming that “the selling of many hundreds of tons of donated  
12 equipment to scrap brokers on the global waste market . . . would appear  
13 to be a primary source of revenue for [ERA] over the years.”

14  
15 vii. **“Threats and Donations.** . . . Mr. Bojan Paduh had threatened BAN  
16 volunteers photographing his property and later sent people to confront  
17 and intimidate the volunteers with large dogs.”

18  
19 viii. “ERA is a company showing substantial evidence of likely illegal  
20 exportation.”

21 29. The Press Release similarly, contains false and defamatory statements about ERA  
22 when it states that ERA has engaged in illegal activity: “The BAN study, entitled, *“Illegal Export*  
23 *of e-Waste from Canada: A Story as Told by GPS Trackers”* found that 7 (16%) of the devices  
24 were exported in what are likely to be illegal shipments. Four of the devices were exported to  
25 developing countries (Pakistan and Hong Kong) in likely violation of the Basel Convention to  
26 which Canada is a party. Three of the exported devices were handled by one Canadian recycler,  
27 the Electronics Recycling Association (ERA).” (Press Release). Notably, the Press Release  
28

1 statement misrepresents even the title of BAN's own Report. In reality, the Report does not  
2 include "Illegal" in the title. (*See* Report).

3 30. At some point after BAN published the Report on October 10, 2018, BAN  
4 published an updated version, removing information about a company called Evolu-TIC  
5 Outaouais. *See* [http://wiki.ban.org/images/8/8b/Export of e-Waste from Canada -  
6 A Story as Told by GPS Trackers.pdf](http://wiki.ban.org/images/8/8b/Export_of_e-Waste_from_Canada_-_A_Story_as_Told_by_GPS_Trackers.pdf). The defamatory statements about ERA alleged above  
7 contained in the October 10, 2018 Report remain, and are materially the same, in the updated  
8 version.  
9

10 31. These defamatory statements are demonstrably false and fundamentally  
11 misrepresent the actual facts and ERA's function and business. They were made at the very least  
12 negligently, or, more likely, with knowledge of their falsity or with reckless disregard for their  
13 falsity. In light of this, BAN's motivation for these statements against ERA, can be nothing more  
14 than another one of BAN's efforts to discredit and harm ERA's business.  
15

16 32. ERA maintains comprehensive reporting on all items it obtains, including recording  
17 the serial numbers and related information for all such equipment. ERA has no record of ever  
18 selling BAN any electronic devices.  
19

20 33. Additionally, throughout the Report, BAN repeatedly makes an issue of ERA's lack  
21 of e-Stewards certification.

22 34. The false statements in the Report and Press Release have been widely  
23 disseminated. BAN published them on its publically available website. BAN also distributed the  
24 Report and Press Release to subscribers of its mailing list. The Report has also been picked up by  
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1 and cited by other Internet news sources. *See, e.g.,* Colin Staub, E-Scrap News, *Latest GPS*  
2 *tracking report charts Canadian exports* (Oct. 10, 2018).<sup>3</sup>

3 35. ERA has been inundated with calls and emails from customers, prospective  
4 customers, and industry-acquaintances about the false and misleading statements in the Report and  
5 Press Release, and the Report and Press Release have clearly caused ERA to lose business and  
6 future business, as well as jeopardize its ongoing business relationships.

7  
8 36. After publication of the BAN Report, for example, one of ERA's consistent and  
9 largest buyers of LCD monitors, GreenTec, which was specifically referenced in the BAN Report  
10 as a business partner of ERA (Report at 42),<sup>4</sup> communicated to ERA that it no longer wants to buy  
11 LCD monitors from ERA. This loss of Green-Tec's business, alone, is estimated to cost ERA at  
12 least \$200,000.00 a year.

13  
14 37. The false allegations in the Report and Press Release are continuing to substantially  
15 affect ERA's business and ability to continue to offer its services to the public. ERA will continue  
16 to suffer harm unless BAN is enjoined from making such false statements and action is taken to  
17 correct the record.

18  
19 **COUNT I**  
**(Defamation / Defamation *Per Se*)**

20 38. ERA repeats and re-alleges each of the allegations in the preceding paragraphs  
21 previously pled in this Complaint as if each were set forth in full herein.

22 39. BAN's published statements alleged herein are false and defamatory statements of  
23 fact.

24  
25  
26 <sup>3</sup> Available at <https://resource-recycling.com/e-scrap/2018/10/10/latest-gps-tracking-report-charts-canadian-exports/>.

27 <sup>4</sup> BAN also identified High-Tech and Shell Canada as current business partners of ERA.  
28 Report at 42.

1 40. By posting these false and defamatory statements in the Report and Press Release  
2 at publicly accessible websites and distributing them to BAN's mailing list subscribers, BAN  
3 published these defamatory statements to a wide range of persons.

4 41. BAN's statements are defamatory *per se* because they falsely accuse ERA of  
5 engaging in criminal wrongdoing and directly paint ERA's business in disrepute.  
6

7 42. BAN's statements are further defamatory as they caused harm to ERA's reputation  
8 by questioning ERA's fundamental non-profit business function and reusing and refurbishing  
9 procedures, and have deterred third parties from dealing with ERA.

10 43. BAN's defamatory statements alleged herein are unprivileged.

11 44. BAN published the defamatory statements alleged herein with actual malice,  
12 knowledge of their falsity, or with reckless disregard as to the probability of their falsity, or, at  
13 best, negligently published the false statements alleged herein.  
14

15 45. BAN's defamatory statements have proximately caused, and are the actual cause,  
16 of damages to ERA. Specifically, BAN's defamatory statements have injured, and continue to  
17 injure: (a) ERA's nonprofit services and programs; (b) ERA's reputation and the goodwill ERA  
18 has established; and (c) ERA's relationships with its customers and consumers, in an amount to be  
19 determined at trial. ERA would not be suffering these damages had BAN not defamed ERA.  
20

21 46. The damages ERA has suffered will continue unless and until BAN corrects its  
22 Report, removes all defamatory content about ERA, and issues a corrective statement.

23  
24 **COUNT II**  
**(Tortious Interference with a Business Relationship or Expectancy)**

25 47. ERA repeats and re-alleges each of the allegations in the preceding paragraphs  
26 previously pled in this Complaint as if each were set forth in full herein.  
27  
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1 48. ERA has valid, existing, and potential relationships with various customers and  
2 partners, including GreenTec.

3 49. BAN had knowledge of the existence of ERA's valid business relationships with  
4 customers and partners. For example, BAN identified a number of ERA customers in the Report,  
5 including GreenTec. BAN is also generally aware of many of ERA's customers and business  
6 partnerships due to BAN's focus on, and investigations into, ERA over many years.  
7

8 50. By publishing the false statements, BAN intentionally interfered with ERA's valid  
9 business relationships with many of ERA's customers and business partners, including GreenTec,  
10 and caused a termination of such business relationships.

11 51. BAN's intentional interference with ERA's valid business relationships, including  
12 with GreenTec, was without legal or factual justification and was employed for an improper  
13 purpose or by wrongful means. Specifically, BAN defamed ERA and made false statements about  
14 ERA's business, services, and products to a wide audience, without any legal justification and for  
15 an improper purpose or by wrongful means. BAN's Report is the most recent attempt by BAN to  
16 discredit ERA's business for no legitimate purpose.  
17

18 52. BAN's intentional interference with ERA's valid business relationships  
19 proximately caused, and was the actual cause of, ERA damages, including consequential damages  
20 and injury to reputation (in an amount to be determined at trial) as a result of BAN's intentional  
21 interference with ERA's valid business relationships with its customers and business partners,  
22 including GreenTec. ERA would not be suffering these damages had BAN not defamed ERA and  
23 tortiously interfered with ERA's business relationships.  
24

25 53. ERA is likely to suffer additional damages unless and until BAN ceases making  
26 such false statements and actions are taken to correct the record.  
27  
28

**COMPLIANCE WITH RCW 7.96.040**

1  
2 54. In accordance with Washington’s Uniform Correction or Clarification of  
3 Defamation Act, ERA sent BAN two letters, one on October 12, 2018 and one on October 15,  
4 2018, requesting that BAN issue a correction of its false and defamatory statements in the Report  
5 and Press Release.

6  
7 55. These letters, in conjunction with the statements contained in this lawsuit, satisfy  
8 all requirements for raising defamation and related claims under RCW 7.96.040.

9 56. To date, no correction or clarification has been made by BAN regarding the false  
10 and defamatory statements in the Report and Press Release.

11  
12 **JURY DEMAND**

13  
14 57. Pursuant to Federal Rule of Civil Procedure 38, ERA respectfully requests a trial  
15 on all issues properly triable to a jury.

16  
17 **PRAYER FOR RELIEF**

18 WHEREFORE, ERA respectfully requests that this Court enter judgment in favor of ERA  
19 and against BAN on Counts I and II above, and grant the following relief:

- 20  
21 a. A permanent injunction prohibiting BAN from continuing its practice of making false and  
22 defamatory statements about ERA, its services, and its employees and directors;
- 23  
24 b. A permanent injunction requiring BAN to remove the false and misleading statements  
25 published and/or posted on publically available websites, or other outlets under BAN’s  
26 control; and requiring BAN to issue a retraction of the false and misleading statements that  
27 is of equal prominence to the Report and Press Release;
- 28 c. An award of actual and presumed damages for Plaintiff’s false statements;

- 1 d. An award of damages for ERA's economic loss in an amount to be determined at trial;  
2 e. An award of damages for injury caused to ERA's reputation and business goodwill;  
3 f. An award of costs incurred in this action; and  
4 g. Such other and further relief as this Court deems just and proper.  
5

6 Dated: November 2, 2018

Respectfully submitted,

7 /s/ J. Douglas Baldrige  
8 J. Douglas Baldrige, WSBA No. 37247  
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13 *Association of Alberta d/b/a Electronic Recycling*  
14 *Association*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed via the Court's CM/ECF system and served on Defendant in accordance with the Federal Rules of Civil Procedure.

Date: November 2, 2018

/s/ J. Douglas Baldrige  
J. Douglas Baldrige