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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-6753 AHM (AJWx)	Date	February 23, 2009
Title	SURFWARE, INC. v. CELERITIVE TECHNOLOGIES, INC., et al.		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE
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Stephen Montes

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys **NOT** Present for Plaintiff:

Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

On October 14, 2008, Plaintiff Surfware, Inc. (“Surfware”) sued Defendants Celeritive Technologies, Inc. (“Celeritive”), Glenn Coleman, Evan Sherbrooke, and Terry Sorensen. Coleman and Sherbrooke co-founded Celeritive and all three of the individual defendants are officers of Celeritive. Plaintiff’s First Amended Complaint alleges fifteen causes of action, including patent infringement. Defendants have filed an answer with fifteen counterclaims. Plaintiff now moves to dismiss all fifteen of the counterclaims under Fed. R. Civ. P. 12(b)(6).

The Court GRANTS in part and DENIES in part Surfware’s motion to dismiss.¹ Specifically, the Court rules as follows:

Unfair Competition and Misleading Advertising (Counterclaims 1-4)

Not dismissed. The alleged statements are not protected by the litigation privilege.

Defamation and Trade Libel (Counterclaims 5-6)

Not dismissed. The alleged statements are not protected by the litigation privilege because they have no “functional” or “logical” connection to any litigation.

Interference with Prospective Economic Advantage (Counterclaims 7-8)

Not dismissed. The alleged statements are not protected by the litigation privilege.

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¹ Docket No. 68.

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Declaratory Relief (Counterclaims 9-11)

Not dismissed. These claims address an actual case or controversy because they concern Surfware’s allegedly current practice of making statements that Celeritive’s VoluMill software is based on stolen trade secrets and infringement of a valid patent.

Breach of Contract (Counterclaim 12)

Dismissed with prejudice. The allegations do not show and Defendants cannot show that the search of Defendants’ company-issued computers and the copying of a business plan for “GlevCo” violated the terms of the non-disclosure agreements.

Breach of Covenant of Good Faith and Fair Dealing (Counterclaim 13)

Dismissed in part without prejudice. Searching the company-issued computers and copying the files might be a breach if those actions interfered with the purpose or benefits of the non-disclosure agreements, but that has not been alleged sufficiently. The remainder of the claim is sufficient because Plaintiffs did not challenge the allegation that delaying negotiations over the joint venture was a breach.

Fraud and Deceit (Counterclaims 14-15)

Dismissed in part without prejudice. The fraud claims directed at the exploitation of Defendants’ business plans do not state with any specificity how those plans were exploited. The fraud claims directed at Plaintiff’s intent to form a joint venture are pleaded with sufficient specificity because they go to intent.

Initials of Preparer	_____ : _____
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