



Lisa Borodkin <lborodkin@gmail.com>

Meet and Confer of August 18, 2010

Maria Crimi Speth <mcs@jaburgwilk.com>

Wed, Aug 18, 2010 at 5:50 PM

To: Daniel Blackert <blackertesq@yahoo.com>, david gingras <david@ripoffreport.com>

Cc: Lisa Borodkin <lborodkin@gmail.com>

Daniel and Lisa:

There are several clarifications needed.

1. With respect to your motion to file a second amended complaint, I said that it was too late to meet and confer and that a meet and confer was supposed to occur before you filed, not after.
2. I explained that your proposed second amended complaint adds many allegations that did not exist in the original complaint and that you did not have leave to amend the first time beyond pleading the particulars of your wire fraud claim.
3. I explained that diversity jurisdiction is a type of subject matter jurisdiction, which is not waivable. You are confusing it with personal jurisdiction.
4. I explained that my motion to strike requests that the pleadings be stricken and removed from the record or sealed. Your withdrawal of the pleadings would not remedy the harm that your actions have caused. I requested that you consent to a request to strike the pleadings and seal that part of the record.

Also, I neglected to mention during our telephone conversation that my motion to strike the declarations and the motion for reconsideration seeks sanctions. Here again, even if you consent to the motion, you have already rung a bell that can not be unring.

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-----Original Message-----

From: Daniel Blackert [mailto:blackertesq@yahoo.com]
Sent: Wednesday, August 18, 2010 5:16 PM
To: Maria Crimi Speth; david gingras
Cc: Lisa Borodkin
Subject: Meet and Confer of August 18, 2010

Dear Ms. Speth,

I am writing to confirm our telephonic meet and confer of today, August 18, 2010.

You stated that you will be filing a Rule 12(f) Motion seeking to strike the following:

a-The Declaration of Lisa J. Borodkin filed on August 17, 2010 (paragraphs 6,8, and 9);

b- The Declaration of Raymond Mobrez filed on August 17, 2010 (paragraphs 6-16);

c- Plaintiffs' Notice of Motion and Motion for Reconsideration filed on August 16, 2010 (Page 4, paragraphs 1-3 and 18-25).

Our position was that we would review the foregoing, consider it, and respond to it promptly. We also advised you that we may be willing to stipulate to remove some of the foregoing if it is not essential to our Motion for Reconsideration.

In addition, we are open to further dialogue on this subject to address your concerns.

In addition, we asked you to stipulate to our filing of the Second Amended Complaint as it addressed many of the issues in your Motion for Sanctions and Motion to Dismiss. Specifically your Motion to Dismiss solely addressed the First, Second, Third, Eleventh, and Twelfth Causes of Action (RICO 18 U.S.C., Section 1962(c) and (d) predicated on wire fraud 18 USC, Section 1343, unfair business practices, defamation, defamation per se, preliminary injunction, and permanent injunction). We filed a Notice of Non-Opposition as to the first and second RICO/wire fraud claims. As we discussed our position is that your Motion to Dismiss is inappropriate as Judge Wilson has stated that the case remains bifurcated. Our proposed Second Amended Complaint only asserts State Law causes of action. Your answer was that you were unwilling to

stipulate and that you wish to "stand on your papers."

Furthermore, we discussed that the proposed Second Amended Complaint did not add any new allegations to the First Amended Complaint and that another purpose of amending is to remove some of the allegations Defendants requested be withdrawn per your Rule 11 Motion for Sanctions. You stated unwillingness to stipulate to the proposed First Amended Complaint on that ground as well. As we stated, this makes it difficult, if not impossible, to comply with your Rule 11 Motion. We believe that this would undermine any request for attorneys' fees in asking that those allegations be withdrawn.

Further, we advised you that we would file a Motion to Remand the case back to the Superior Court, County of Los Angeles as our proposed Second Amended Complaint only alleges state law causes of action. As we noted above, if the Motion for Leave to Amend is granted only federal law causes of action will remain. We asked if you would stipulate to remand and your response was that you believed there was diversity jurisdiction and that our case should be thrown out all together for "abuse of the system." We responded by noting that it is our belief that you had waived diversity jurisdiction for the following reasons:

a-Your client, Mr. Magedson represented to our client before this action was commenced that he lived in the State of California;

b-You had waived any objections to jurisdiction as you had not raised them in either your previous Motion to Strike and Request for a RICO Case Statement (Anti-SLAPP) and, currently pending, Motion to Dismiss;

c-You have purposefully availed yourself of the protections available to the people of the State of California by taking advantage of its judicial resources, for example seeking to dismiss Plaintiffs' Complaint by filing an Anti-SLAPP Motion pursuant to Cal. Code Civ. P., Section 425.16.

d- Even if Xcentric is an Arizona corporation, judicial and equitable estoppel would apply to make Mr. Magedson a citizen of California, due to his statements on which Plaintiffs relied in initially bringing this action in California State Court, which destroys diversity.

Your response was that your were unwilling to stipulate to any aspect of our Motion to Remand.

This confirms we also suggested that you discuss the Initial Case Management Conference with Mr. Gingras, as Judge Wilson's comments at that conference indicated a belief that without the RICO claims this matter would be appropriate for State Court.

Thank you.

Daniel F. Blackert, Esq.

