



Lisa Borodkin &lt;lborodkin@gmail.com&gt;

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## FW: Xcentric Ventures adv. Asia - Stipulation

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Lisa Borodkin &lt;lborodkin@gmail.com&gt;

Thu, Sep 23, 2010 at 9:51 PM

To: Lisa Borodkin &lt;lborodkin@gmail.com&gt;

Cc: Maria Crimi Speth &lt;mcs@jaburgwilk.com&gt;, Daniel Blackert &lt;blackertesq@yahoo.com&gt;, &lt;david@ripoffreport.com&gt; &lt;david@ripoffreport.com&gt;

Maria and David,

This confirms that we met and conferred yesterday from approximately 12 to 1 p.m. on a proposed set of motions:

1. Your contemplated motion for summary judgment to be heard on November 1, 2010
2. Plaintiffs' contemplated motion under Rule 56(f) to permit discovery on the state law claims. I suggested that we consolidate the hearings on this and the motion for summary judgment
3. The timing of the pending Rule 11 motion and refile with a second Rule 11 motion, possibly to be heard on November 1, 2010. We did not discuss the merits of the second Rule 11 motion.

With respect to the first Rule 11 motion, I noted that you failed to file Exhibit A and I also drew your attention to the 9th Circuit case of Sneller v. City of Bainbridge Island, 606 F.3d 636, 639 (9th Cir. 2010) (reversing imposition of Rule 11 sanctions). Where a Rule 11 motion is directed to less than all claims in a pleading, filing a motion under Rule 15 to amend the pleading to eliminate the challenged claim within the 21-day safe harbor period constitutes "withdrawal" of the claim under Rule 11(c)(2). See Sneller v. City of Bainbridge Island, 606 F.3d 636, 639 (9th Cir. 2010) ("Filing a motion for leave to amend the complaint under Rule 15 thus constitutes effective withdrawal because it is the only procedure available under the rules to withdraw individual challenged claims") (citing Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 687-88 (9th Cir. 2005)).

Therefore, if you refile your first Rule 11 motion, I expect you will revise it to conform with Sneller to eliminate any arguments based on the wire fraud RICO claim that was effectively withdrawn by Plaintiffs' Rule 15 motion.

With respect to your questions yesterday about the discovery Plaintiffs would seek in a contemplated Rule 56(f) motion, I imagine it will have a great deal to do with your clients' policies and representations about the circumstances in which they will remove or redact names from reports. I have listened to your representations in the oral argument in the Seventh Circuit today in Blockowicz v. Williams, particularly with respect to your stated policy.

You had a colloquy today in which Judge Wood asked you the following and you gave the following answer:

"The Court: And you flout all of these Court orders, I take it? For the 30 orders you're talking about, you have refused to comply with.

Ms. Speth: Your Honor, we have complied with Court orders against our client. We have not complied with Court orders in cases in which we are not a party. We're not a defendant, had no opportunity to be heard, and were [sic] not applicable to us because we're not aiding and abetting the actual author of the report."

First, I would ask you to stipulate to the accuracy of that quote. It is about halfway through your argument, at the following link:

<http://www.ca7.uscourts.gov/tmp/1C1A9U2L.mp3>

If you will not stipulate to the accuracy of that quote and others, I will seek an extension of time so that we can get a properly authenticated copy of the official written transcript.

Second, Plaintiffs would seek discovery on the circumstances you referred to in today's oral argument in which you "have complied with Court orders against our client."

One of the representations on your clients' website is:

"As explained above, one thing you can't do is to sue Ripoff Report. Sorry, but the law just does not allow this. You can always sue the person who wrote the report if it contains false and defamatory information about you. Of course, you should talk to an experienced lawyer in your area if you are unsure about your options."

We have certain allegations in the pleadings about both the factual and legal accuracy of that advice.

One of the areas of discovery Plaintiffs have under the state law claims is why do you tell people they can "always sue the person who wrote the report" if you do not disclose that your client will not comply with a court order unless they name your client as a defendant.

Another is to identify the cases in which your clients have complied with court orders against them.

Finally, I would ask why you think a claim against your client is per se frivolous when your client has complied with court orders against them?

I would appreciate your answers to the above before Monday.

Lisa

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