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From: Lisa Borodkin [mailto:lborodkin@gmail.com]
Sent: Monday, September 27, 2010 11:36 AM
To: Lisa Borodkin
Cc: david@ripoffreport.com; Maria Crimi Speth; blackertesq@yahoo.com
Subject: Re: Xcentric Ventures adv. Asia - Stipulation

I just left messages on both your work and cell numbers in an effort to narrow the issues without motion practice.

Call me back at 323-337-7933.

Lisa

On Sep 27, 2010, at 10:54 AM, Lisa Borodkin <lborodkin@gmail.com> wrote:

David and Maria,

Tell me what the matter is that you want to strike from the First Amended Complaint on anti-SLAPP grounds, and we may consider stipulating.

I'll follow up with a call shortly.

Lisa

On Fri, Sep 24, 2010 at 4:03 PM, Lisa Borodkin <lborodkin@gmail.com> wrote:
Let's talk Monday, since we have to do that regardless if you are going to file a motion.

On Fri, Sep 24, 2010 at 4:00 PM, David Gingras <david@ripoffreport.com> wrote:

Lisa,

I don't want to get into a huge debate at this point, but your comments below are insufficient to make those issues part of the case.

You have two fraud-based claims which are plainly subject to the heightened pleading requirements of Rule 9(b), and to the extent any of your other claims sound in fraud, that rule applies to them as well.

Because fraud must be pleaded with particularity, your claims are limited to what's properly set forth in the four corners of your complaint. Anything not pleaded with particularity in the pleading is simply not part of the case for the purposes of your fraud claims (or the 17200 claim to the extent that claim is based on fraudulent conduct). See, e.g., *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003) (explaining, "if particular averments of fraud are insufficiently pled under Rule 9(b), a district court should "disregard" those averments, or "strip" them from the claim. The court should then examine the allegations that remain to determine whether they state a claim.")

Based on this authority, comments in an email which make ambiguous references to "computer code", Google, or any of Ripoff Report's business activities are not part of this action because they are not pleaded with particularity in your complaint. To the extent they relate to any other non-fraud claims, Rule 9(b) may not apply to them, but the CDA certainly does. For that reason, we don't need to meet and confer about these issues.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

<http://www.ripoffreport.com/>

David@RipoffReport.com

<image001.jpg>

PO BOX 310, Tempe, AZ 85280

Tel.: (480) 668-3623

Fax: (480) 248-3196

From: Lisa Borodkin [mailto:lborodkin@gmail.com]

Sent: Friday, September 24, 2010 3:40 PM

To: <david@ripoffreport.com>

Cc: Maria Crimi Speth; <blackertesq@yahoo.com>

Subject: Re: Xcentric Ventures adv. Asia - Stipulation

David and Maria,

Sure, let's talk Monday. So you're saying I already know the substantive arguments of both motions and can make the Rule 56(f) motion Monday as well?

After the Court's comments at oral argument on Monday, I think we are probably most focused on two issues right now:

1. your client's computer code and its relationship to Google search results
2. endorsements through the Verified Safe and Corporate Advocacy Programs

The computer code and endorsements are not susceptible to CDA defenses. You or your agents wrote them.

I also don't think you can dispute that they are commercial speech, to the extent they are

speech.

I don't think your anti-SLAPP motion is directed at these theories.

We should also discuss the timing and scope of your Rule 11 motions. For Rule 11 purposes, we have already withdrawn some of the allegations that are now the subject of your proposed anti-SLAPP motion. If you are going by things that are still in the First Amended Complaint that are not in the proposed Second Amended Complaint, let's resolve whatever we can by stipulation.

Maria, can you be more specific as to what process you contend is being abused? I am assuming it's not the general notion of filing a lawsuit, because you file quite a few of them yourself.

Lisa

On Sep 24, 2010, at 11:18 AM, "David Gingras" <david@ripoffreport.com> wrote:

I'm available any time on Monday. You can call around 11 am or whatever other time works for you.

I don't think the discussion should be long, and while I cannot require you to provide it beforehand, in order to have a meaningful discussion I would like responses to these two questions:

1.) Do you agree that the anti-SLAPP law applies to your fraud claims and 17200 claim to the extent those claims are based on Xcentric's public speech concerning matters of public importance? I believe you already informed the court (both in pleadings and on the record in several hearings) that you feel this case, and Xcentric's actions, position and policies regarding the CDA, the removal of reports, and related conduct are matters of substantial public interest and concern, so I do not anticipate that you'll really disagree with this point.

2.) Because the anti-SLAPP law applies, Plaintiffs are obligated to show a probability of success at trial on the fraud claims and 17200 claim. You have already seen our legal arguments in the motion to dismiss (to which you never filed a substantive response), so I would like to hear any argument/authority you have which refutes the arguments contained in that brief.

We can discuss this more on Monday.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

<http://www.ripoffreport.com/>

David@RipoffReport.com

<image001.jpg>

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From: Lisa Borodkin [mailto:lborodkin@gmail.com]
Sent: Friday, September 24, 2010 10:37 AM
To: david@ripoffreport.com
Subject: Re: Xcentric Ventures adv. Asia - Stipulation

I was relying on Rule 12(g).

If you disagree, let's meet and confer Monday. Let me know what time works for you.

What are the answers to my questions?

On Fri, Sep 24, 2010 at 10:16 AM, David Gingras <david@ripoffreport.com> wrote:

Lisa,

Per CCP § 425.16(f), an anti-SLAPP motion must be filed within 60 days of the complaint. If a pleading is amended, "the sixty day period runs from the filing of the most recent amended complaint." *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 63 F.Supp.2d 1127, 1129 (N.D.Cal. 1999). The interim filing of other pleadings has no effect on this timing.

I would argue that your amended pleading was not actually filed until the court permitted it on Sept. 20th. However, even if we use the original filing date (July 27), sixty days from that would be Monday, Sept. 27th. As such, the anti-SLAPP motion I intend to file will be timely.

If you have any authority to the contrary, please provide it. Otherwise, I renew my request to meet and confer with you on the anti-SLAPP motion. If I do not hear from you by 4 pm on Monday, I will file the motion and inform the court that you refused to meet and confer with me about it.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

<http://www.ripoffreport.com/>

David@RipoffReport.com

<image001.jpg>

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From: Lisa Borodkin [mailto:lborodkin@gmail.com]

Sent: Friday, September 24, 2010 9:58 AM

To: david@ripoffreport.com

Cc: Maria Crimi Speth; Daniel Blackert

Subject: Re: Xcentric Ventures adv. Asia - Stipulation

You can't. You already made a Rule 12 motion. You waived it.

What are the answers to my questions?

On Fri, Sep 24, 2010 at 7:10 AM, David Gingras <david@ripoffreport.com> wrote:

Lisa,

Based on your comments below, in addition to the MSJ which Judge Wilson ordered us to file, I intend to bring a new anti-SLAPP motion as to the fraud-based claims in the FAC. As your comments expressly state, those claims seek to impose liability on Xcentric for its public speech regarding matters of substantial public importance such as its opinions on the law, its analysis of the CDA, and its policies and conduct regarding removal of reports. Although Judge Wilson denied our first anti-SLAPP motion because he did not believe the reports about your clients involved matters of public concern, since that ruling you have substantially broadened your theory to include Xcentric's speech on legal issues which are undeniably matters of substantial public importance. As such, your new fraud claims implicate the anti-SLAPP law and are subject to another special motion to strike.

Please let me know when you are free to meet and confer on the new anti-SLAPP motion.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

<http://www.ripoffreport.com/>

David@RipoffReport.com

<image001.jpg>

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From: Lisa Borodkin [mailto:lborodkin@gmail.com]
Sent: Thursday, September 23, 2010 9:52 PM
To: Lisa Borodkin
Cc: Maria Crimi Speth; Daniel Blackert; <david@ripoffreport.com>
Subject: Re: Xcentric Ventures adv. Asia - Stipulation

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

On Tue, Sep 21, 2010 at 7:27 PM, Lisa Borodkin <lborodkin@gmail.com> wrote:

Maria and David,

I just returned your voicemail fom about 6:00 p.m. tonight and left messages at both the numbers you requested.

I'm available to meet and confer any time tonight. Or all day tomorrow. Just call me or we

can agree by email on a time. I would suggest 11 a.m. tomorrow.

Lisa

On Sep 21, 2010, at 3:50 PM, Lisa Borodkin <lborodkin@gmail.com> wrote:

In addition, I would like to meet and confer with you on a Rule 56(f) motion to stay or deny summary judgment so that we can take discovery on the state law claims. Discovery was never done on those claims because the case was bifurcated to exclude state law claims from April 19, 2010 until yesterday, and we properly obtained an order bifurcating discovery.

On Tue, Sep 21, 2010 at 12:40 PM, Lisa Borodkin <lborodkin@gmail.com> wrote:

I would request that we meet and confer under Local Rule 7-3 on the substance of these motions before any such stipulation.

Please let me know your availability.

On Sep 21, 2010, at 11:53 cuAM, "Maria Crimi Speth" <mcs@jaburgwilk.com> wrote:

Lisa:

I meant to give these to you yesterday, but I forgot. As you know, one of the two Rule 11 motions was stricken because we had the wrong initials in the caption. We need to re-set that to a new motion date, which I have tentatively made October 25, 2010. In order to avoid multiple trips to the court, I am proposing that we stipulate to move the other motion date so that they are on the same date. If this is acceptable to you, please sign the attached stipulation. If there is a date that is better for you than October 25, let me know.

Maria Crimi Speth, Esq.
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From: Debra A. Gower
Sent: Tuesday, September 21, 2010 11:47 AM
To: Maria Crimi Speth
Subject: Xcentric Ventures adv. Asia - Stipulation

Did you want to sign your Verification before sending to Lisa?

Debra Gower
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<Asia Declaration.pdf>

<Asia Stipulation.pdf>

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