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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HAROLD ROBINSON,
Plaintiff,

No. C 14-0852 PJH

v.

**ORDER DENYING MOTION TO
DISMISS**

OPEN TOP SIGHTSEEING
SAN FRANCISCO, LLC,
Defendant.

_____ /

Defendant's motion to dismiss came on for hearing before this court on July 23, 2014. Plaintiff Harold Robinson ("plaintiff") appeared through his counsel, Joel Young. Defendant Open Top Sightseeing San Francisco, LLC ("defendant") appeared through its counsel, Michael Purcell. Having read the papers filed in conjunction with the motion and carefully considered the arguments and relevant legal authority, and good cause appearing, the court hereby DENIES defendant's motion to dismiss for the reasons stated at the hearing.

While the court finds that the majority of plaintiff's allegations are not sufficient to meet the "interstate commerce" element of his first cause of action, the allegation that defendant "sells tour packages to out-of-state individuals and/or groups" is arguably sufficient to meet the "interstate commerce" element. The court also finds that plaintiff's allegations are sufficient to allege willfulness. Accordingly, defendant's motion is DENIED. However, the court notes that neither issue is foreclosed from further litigation on the merits, because while plaintiff's allegations are sufficient for pleading purposes, they will need to be supported by actual evidence after discovery.

United States District Court
For the Northern District of California

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IT IS SO ORDERED.

Dated: July 23, 2014



PHYLLIS J. HAMILTON
United States District Judge