

E-Filed 12/10/10

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN JOSE DIVISION**
9

10 TMX FUNDING, INC., a Delaware corporation,
11 Plaintiff,

12 v.

13
14 IMPERO TECHNOLOGIES, INC., a California
15 corporation; CLARENCE NICHOLAS
16 STEIGELMAN, an individual; RONALD S.
17 LESNIAK, an individual; DAVID LESNIAK, an
18 individual; MITCHELL A. HEINLEIN, an
19 individual; JOSEPH ZHANG, a.k.a.
20 XIANGCHOU ZHANG, an individual;
21 MICHELLE DOVER, an individual; and BITTEL
22 TECHNOLOGY, INC., a California corporation;

23 Defendants.

24

RONALD S. LESNIAK, an individual

25 Counterclaimant,

26 v.

27 TMX FUNDING, INC., a Delaware Corporation;
28 BING SUN, an individual; JOSE QUIROS, an
individual; and JAMIE KNIEP, an individual;

Counter-defendants.

Case No. 5:10-cv-00202 JF/PVT

ORDER¹ GRANTING MOTION TO DISMISS COUNTERCLAIMS WITH LEAVE TO AMEND AND VACATING HEARING DATE

[Docket No. 187]

¹ This disposition is not designated for publication in the official reports.

1 Counterclaimant Ronald S. Lesniak (“R. Lesniak”) alleges claims against Counter-
2 Defendant Jamie Kniep (“Kniep”) for defamation, intentional infliction of emotional distress
3 (“IIED”), and fraud. Kniep moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the
4 counterclaims. Under this Court’s Civil Local Rules, R. Lesniak’s opposition was due at least
5 twenty-one days before the noticed hearing date of December 17, 2010 – here, not later than
6 November 26, 2010. *See* Civ. L.R. 7-3(a). As of the date of this order, R. Lesniak has not filed
7 opposition papers. The Court presumes that the lack of opposition is based on the fact that on
8 November 16, 2010, the Court granted a similar motion by Counter-Defendants TMX Funding,
9 Inc. and Bing Sun, and that R. Lesniak intends to file amended counterclaims within the time
10 permitted by that order. Accordingly, Kniep’s motion also will be deemed granted with leave to
11 amend, and the hearing date of December 17, 2010 will be vacated.

12
13 IT IS SO ORDERED.

14 DATED: 12/10/2010

15 
16 JEREMY FOGEL
17 United States District Judge