

Albritton, Eric M.

10/27/2008

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON,	*
	*
Plaintiff,	*
	*
VS.	* C.A. NO. 6:08-CV-00089
	*
CISCO SYSTEMS, INC., RICK	*
FRENKEL, MALLUN YEN &	*
JOHN NOH,	*
	*
Defendants.	*

ORAL DEPOSITION OF
ERIC M. ALBRITTON
OCTOBER 27TH, 2008

ORAL DEPOSITION OF ERIC ALBRITTON, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 27th of October, 2008, from 12:44 p.m. to 4:24 p.m., before Tammy Staggs, CSR in and for the State of Texas, reported by machine shorthand, at the Law Offices of James A. Holmes, 605 South Main, Suite 203, Henderson, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.



1 certain that we talked about it that day as well, the
2 day of the Inn of Court meeting.

3 Q. Okay. Did you ever hand the Troll Tracker
4 articles, either the October 17th or October 18th, to
5 any person?

6 A. Not to my knowledge.

7 Q. Okay. Did you ever distribute it in some
8 other way like E-mail or mail or fax to anybody else?

9 A. I don't believe so, Mr. Babcock.

10 Q. In the -- at the Inn of Court meeting on the
11 18th, did you tell Bob Parker that -- about the Banana
12 Republic statement?

13 A. I don't recall specifically.

14 Q. And how about Sam Baxter, did you tell him at
15 the Inn of Court meeting about the Banana Republic
16 statement?

17 A. I don't recall specifically.

18 Q. Do you know whether the October 18th article
19 has ever been modified?

20 A. Yes.

21 Q. Okay. And tell me what you know about that.

22 A. Well, I know that somebody evidently thought
23 better of that statement and took it down, but decided
24 evidently to leave up the outrageous statements about
25 me.

1 Q. Okay.

2 A. So I guess it was Cisco thought it was okay to
3 say ugly thinks about Eric Albritton, but not about the
4 judges.

5 Q. Do you know when the Banana Republic statement
6 was taken down?

7 A. Within a day or two.

8 Q. Was it -- was the October 18th article ever,
9 to your knowledge, modified in any other way?

10 A. I don't recall. There were some other slight
11 modifications. I think there was some, you know,
12 language that tried to soften it that said, well,
13 we're -- you know, whether this was intentional or
14 not -- I don't recall, but you can obviously just
15 compare them, but I don't recall specifically.

16 I do know that up until February it
17 continued to say that I conspired with the United States
18 District Clerk to alter a document, to manufacture
19 subject matter jurisdiction where none existed, and I
20 also know that it continued to say that I had filed an
21 amended complaint for no other reason than to correct
22 the -- the problem with subject matter jurisdiction as
23 evidence that it was some sort of a recognition on my
24 part that I had done wrong.

25 Q. You said up until February. What happened in

1 February?

2 A. All I know is that Frenkel identified himself.

3 Q. Okay.

4 A. And took it down shortly thereafter or pass-
5 -- made it password protected. I don't know if it's
6 down or not.

7 Q. Okay. Have you ever -- has anybody ever told
8 you that they've seen it after February 2008?

9 A. Not to my knowledge.

10 Q. I want you to clear up an ambiguity for me if
11 you would -- if you can. You're aware that in federal
12 court, as we are in, you have to make mandatory --
13 mandatory disclosure to the other time -- to the other
14 side?

15 A. Uh-huh.

16 Q. Is that a "yes"?

17 A. Are you talking about -- well, I mean, in this
18 district there are some judges that are -- operate under
19 Rule 26, some judges that have discovery orders that
20 have other mandatory disclosure obligations. So I don't
21 know what you're talking about.

22 Q. In -- in this case that we're in --

23 A. Uh-huh.

24 Q. -- your lawyer undertook to advise us on the
25 category of computation of any category of damages.

1 A. Okay.

2 Q. Do you understand that that is an obligation
3 that you as a plaintiff have to do in this case
4 regardless of who the judge is?

5 A. Well, I understand that Judge Snyder entered
6 an order in this case. If you'll show me the order -- I
7 don't remember the exact language. This is the first
8 time I've ever been in Judge Snyder's court in a civil
9 case, but I presume that there is an obligation to make
10 the damage disclosure.

11 Q. Okay. The damage disclosure that your lawyer
12 made, whether he was obligated to or not -- or maybe
13 he's just a good guy, but... (as read): Plaintiff does
14 not seek any economic damages. Plaintiffs -- plaintiff
15 seeks only an appropriate award of damages for his
16 mental anguish and punitive damages sufficient to detour
17 defendants from future misconduct. The amounts of these
18 awards are soundly in the discretion of the jury.

19 Is that -- is that the damages you're
20 seeking in this case?

21 A. Yes, sir.

22 Q. All right. And so you are not seeking any
23 economic damages at all?

24 A. I'm not seeking economic -- I'm not saying
25 that I can quantify money that I've lost as a result of

1 these defamatory statements.

2 Q. But are you going to say to the jury that even
3 though you can't quantify it, you think that you have
4 lost --

5 A. No, I'm not going to say that because I can't
6 quantify it. I mean, I very well may have, but I -- I'm
7 not seeking that damage because there's no way to know
8 it. People don't call me up and say, hey, Eric, we're
9 not using you anymore because, you know, Rick Frenkel
10 told us that you're a criminal.

11 Q. Okay.

12 A. It doesn't work that way.

13 Q. All right. So -- so for whatever reasons
14 you're not -- you're not going to claim reputational
15 damages in this case?

16 A. That's not true.

17 Q. Okay. So you are going to claim reputational
18 damages?

19 A. Well, Mr. Babcock, you're a lot smarter than
20 me about first amendment law. I don't -- I don't know
21 exactly what you mean. I'm not claiming lost wages or
22 money damages, economic damages, as a result of lost
23 business based on the defamatory statements. But has my
24 reputation being harmed --

25 Q. Yes.

1 A. -- I believe that it has. Can I -- can I
2 quantify that monetarily? No, I cannot. And I don't
3 intend to tell the jury that I should be paid "X"
4 dollars because of my -- my reputation has been
5 diminished by "X" dollars. I'm not going to quantify
6 that at all. Because frankly, there's no way to know
7 how I -- exactly how I've been harmed, and frankly
8 that's the reason the law, as I understand it, says that
9 damages are presumed, because people don't call me up
10 and say, hey, we are not hiring you anymore because
11 you're evidently a criminal.

12 Q. Well, are you -- are you asking for presumed
13 reputational damages?

14 A. I'm -- I'm -- whatever I'm entitled to under
15 the law and under the contours of what Mr. Holmes said
16 is all that I'm seeking.

17 Q. Well, what he says is that you're only seeking
18 damages for mental anguish and punitive damages.

19 Let me ask it that way. Is that all that
20 you're seeking: mental anguish damages and punitive
21 damages?

22 A. All I can tell you is I'm not seeking economic
23 damages.

24 Q. And you won't rule anything else out?

25 A. I'm not seeking any economic damages. And I'm

1 not seeking, you know, health care or, you know,
2 something like that. I've not been to the doctor as a
3 result of this.

4 Q. Okay.

5 A. So no medical expenses, no economic damages.

6 Q. Will you rule out presumed reputational
7 damages or are you seeking that?

8 A. I don't know what a presumed -- I don't know
9 what the meaning of that word is or that phrase
10 "reputational damages."

11 Q. Well --

12 A. I'm not seeking economic damages, that's all I
13 can tell you.

14 Q. Okay. And so that's all you're going to rule
15 out, right?

16 A. Mr. Babcock, I don't know all -- I'm telling
17 you I don't -- I'm not seeking money damages for lost
18 economics based on economic harm.

19 Q. I think you were the one that raised this
20 issue of presumed damages.

21 A. Generally presumed. I don't know about
22 presumed reputational damages as you keep using that
23 phrase.

24 Q. Let me ask you what -- take reputational out
25 of it. What damages are you seeking in this case that

1 you believe the law presumes?

2 A. I'm not here to offer legal opinions.
3 Whatever the law presumes is whatever the law presumes.

4 Q. Okay. So -- so to get -- get back to my
5 question a few questions ago, you're not willing to rule
6 out anything that the law would permit you to have other
7 than economic damages?

8 A. I'm not asking for any economic damage.

9 Q. And other than that, you're going for
10 everything?

11 A. As we sit here this second, I think a jury
12 ought to be able to award, you know, the damages it
13 believes are appropriate, except for I'm not asking for,
14 you know, medical bills or economic damages.

15 Q. Okay. The ambiguity that I mentioned earlier
16 was created by your complaint vis-a-vis your
17 disclosures, and it says in your complaint that you've
18 endured shame, embarrassment, humiliation, mental pain,
19 and anguish. Are you still seeking damages for all
20 those things?

21 A. Yes. This has been extremely, extremely
22 traumatic.

23 Q. Okay. Can you identify for me a friend who
24 was a friend of yours prior to the October 18th and 17th
25 articles and who is -- and who is now not a friend as a