

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Daniel R. Castro
Plaintiff

v.

ENTREPRENEUR MEDIA, INC.
Defendant

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CIVIL ACTION NO: 10CA695

PLAINTIFF'S ADR REPORT

Now Comes Plaintiff, Daniel R. Castro, and files this ADR Report, and would show unto the Court as follows:

1. Status of Settlement Negotiations:

The parties participated in full day of mediation on June 13, 2011, with Karl Bayer as the mediator. Under Disciplinary Rule 3.03 Duty of Candor To The Court, Castro is compelled to inform the Court that the parties reached an agreement in principle, but the owner of EMI, Peter Shea, and his counsel Perry Viscounty of Latham & Watkins had to catch a flight before the documents were finalized. Before the mediation concluded, the documents were drafted and went back and forth between counsel for “word-smithing.” Before the end of mediation, all substantive issues on all claims that are currently before the Court had been resolved. However, Viscounty represented to Castro that there was one “deal killer” in the confidentiality clause that would prevent his client from signing off on the Agreement. Castro believed that EMI was over-reaching and

that the language in the confidentiality clause was overly broad, and simply suggested the deletion of one sentence from that clause. The rest of the standard confidentiality clause remained in tact. Karl Bayer suggested some alternatives as well – such as an agreed joint press release, which was acceptable to Castro.

At the end of the day, Viscounty represented to Castro that he would send him a Word document to review on Wednesday June 15, 2011 (i.e. today) and suggested that the parties hammer out the final language of the confidentiality clause at that time. Also pending were other minor changes requested by Castro that would not affect the legal rights of EMI, but would merely ensure that the protections EMI was requesting for itself would be reciprocal and also apply to Castro. Viscounty had already agreed verbally to make Castro's minor changes and Castro was merely waiting on the changes to be made in the written agreement. As of this morning, Castro capitulated (via email) on the version of the confidentiality clause that EMI demanded.

However, this morning Viscounty sent Castro an email saying there were other "significant" issues as well. This was the first time Viscounty had informed Castro that there were other "significant" issues that needed to be resolved. Despite Castro's repeated requests, opposing counsel has still not informed him what the other "significant" issues are that are preventing the finalization of the Agreement.

Because the parties could not agree on what to tell the Court as far as the status of settlement negotiations, the parties agreed to each submit their own version of what happened. At approximately 3:30 p.m., Castro spoke with an

associate at Latham & Watkins, LLC named Jennifer Barry (who is also counsel of record in this case), and asked her what the “significant issues” were. Even at this late date, Barry could not articulate what those issues were. Barry represented that she would be sending Castro a revised draft of the Settlement Agreement tonight.

At 9:00 pm, Castro called Barry and left her a voice message requesting a status report and sent her an email again asking for a list of the “significant” issues that needed to be resolved. At 9:35 pm, Barry sent Castro an email indicating that she would not be sending him a settlement agreement tonight, but that one would be forthcoming at some point. Barry still did not send Castro a list of any “significant” issues that needed to be resolved.

At this very moment, Castro is still waiting to hear from opposing counsel as to what the other remaining issues are that need resolution. Castro believes that there are no additional issues that need to be worked out because he has already capitulated on the one “deal killer” that Viscounty described. If there are any “last minute” issues to be resolved, EMI has not been forthcoming in disclosing them to Castro – even knowing that Castro was under an obligation to inform the Court of the status of settlement negotiations. Had Peter Shea and Viscounty not had flights to catch, Castro believes the Agreement would have been finalized and signed at mediation. Karl Bayer can verify this.

At this time, the Local Rules preclude Castro from disclosing to the Court the terms of the Agreement or the offers that went back and forth. However, Castro seeks leave to submit the last version of the Settlement Agreement (under

seal) that was pending before opposing counsel walked out of mediation, as well as all the emails sent by Castro today requesting information about the status of the previously non-existent “significant” issues that came up for the first time today, which opposing counsel still cannot articulate.

In addition, if it would help, Castro respectfully requests that the Court call the mediator Karl Bayer to get his account of what happened in the final minutes of the mediation and to find out the demeanor of Peter Shea, the owner of EMI, at the end of the day.

Additionally,

2. Persons Responsible for Settlement Negotiations for Each Party:

For Daniel R. Castro: Daniel R. Castro

For Entrepreneur Media, Inc.: Peter Shea

3. Is Alternative Dispute Resolution Appropriate for this Case?

Yes. Castro respectfully requests that the Court issue an order requiring Peter Shea to be present at the Pretrial Conference scheduled for June 27, 2011 to ask him personally what the remaining “significant” issues are that would prevent the settlement from being finalized.

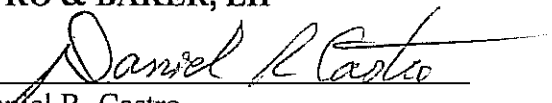
4. Counsel for defendant and counterclaimant Entrepreneur Media, Inc.

(“EMI”) certify that EMI has been informed of the ADR procedures available in this district.

5. Mr. Castro certifies that he is aware of the ADR procedures available in this district.

6. ADR Procedure Selected: Mediation conducted on June 13, 2011.

Respectfully Submitted,
CASTRO & BAKER, LLP

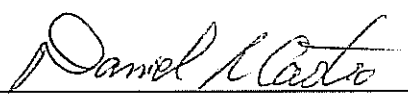
By: 

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this pleading was filed with the Clerk of the Court using CM/ECF system, which will send a notification of a Notice of Electronic Filing to the following counsel of record on June 15, 2011:

	William G. Barber Pirkey Barber, LLP 600 Congress Avenue, Suite 2120 Austin, Texas 78701
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Daniel R. Castro