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8 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
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10 OPEN SOURCE SECURITY INC. and
11 BRADLEY SPENGLER

12 Plaintiff,

13 v.

14 BRUCE PERENS, and Does 1-50,

15 Defendants.

) Case No.: 3:17-cv-04002-LB
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)
)

) **PLAINTIFF’S UNOPPOSED MOTION**
) **FOR LEAVE TO FILE A**
) **SUPPLEMENTAL MEMORANDUM OF**
) **POINTS & AUTHORITIES TO**
) **PLAINTIFFS’ OPPOSITION TO**
) **DEFENDANT’S MOTION TO DISMISS**
) **AND SPECIAL MOTION TO STRIKE**
) **[Civ. L.R. 7-3(d)]**
)

) Hearing Date: December 14, 2017
) Time: 9:30 a.m.
) Location: Courtroom C, 15th Floor
) Judge: Hon. Laurel Beeler
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1 Plaintiffs Open Source Security and Bradley Spengler (“Plaintiffs”) respectfully moves this
2 Court for the entry of an Order granting Plaintiff the right to file a Supplemental Memorandum in
3 Support of Plaintiff’s Opposition to Defendant’s Motion to Dismiss (“Supplemental Memorandum”), a
4 copy of which is attached hereto, and for its reasons relies upon the following:

5 Plaintiff timely filed its Opposition to Defendant’s Motion to Dismiss/ Special motion to strike
6 and exercised due diligence to research case law. However, since Defendant raises a very specific issue
7 as to whether his statements about Plaintiffs violating the GPL can be proven true or false, it took
8 Plaintiff’s counsel an exhaustive search of analyzing more the 500 cases to find an authority
9 addressing a very similar fact pattern.

10 On December 11, 2017 Plaintiff’s counsel was finally able to find a relevant case,
11 *Overstock.com Inc. v. Gradient Analytics, Inc.* 151 Cal. App. 4th 688 (2007). The additional points and
12 authorities set forth as part of Plaintiff’s proposed Supplemental Memorandum only discuss the
13 *Overstock* case and is significant and directly relevant to the merits of Defendant’s incorrect contention
14 that Perens’ defamatory statements cannot be proven true or false.

15 While Plaintiffs’ counsel acknowledges and apologizes for the delay in submitting this
16 Supplemental Memorandum, the delay was unintentional as it took more than a due diligent effort to
17 find authority with very a similar fact pattern.

18 Plaintiffs agree that Defendant may file a memorandum responding to Plaintiffs’
19 Memorandum. The parties do not seek to continue the hearing scheduled for December 14 and plan to
20 proceed as scheduled on that date.

21 **Plaintiff respectfully requests that the Court enter an Order:**

22 Granting Plaintiffs the right to file the attached Supplemental Memorandum in Support of
23 Plaintiff’s Opposition to the Defendant’s Motion to Dismiss and Special Motion to Strike pursuant to
24 California’s Anti-SLAPP Statute, granting such other and further relief to which this Court finds
25 Plaintiffs otherwise entitled, and allowing Defendant to file a responsive Memorandum.

1 **Defendant Bruce Perens's Statement:**

2 Defendant Bruce Perens does not agree that Plaintiffs have a proper basis to seek leave now to
3 submit a decade-old decision that relies on precedent cited by both parties in previous briefing, nor
4 does he agree that *Overstock* bears similarity to this case or that additional briefing is necessary. In the
5 spirit of cooperation, however, Mr. Perens will not oppose Plaintiffs' motion provided it does not delay
6 consideration of Mr. Perens's pending motions. Mr. Perens has not seen Plaintiff's proposed
7 Memorandum and requests the opportunity to file a short response, if necessary. Mr. Perens does not
8 request any continuance of the December 14 hearing scheduled in this case, as he is eager for the Court
9 to hear the pending anti-SLAPP motion and motion to dismiss, and Mr. Perens is prepared to proceed
10 with the December 14 hearing as scheduled. Mr. Perens also wishes to avoid unnecessary expenses
11 that may be incurred by additional delays in the Court's consideration of Mr. Perens's motions.

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13 **Statement of Compliance with Civ. L. R. 7-7**

14 Pursuant to Civ. L. R. 7-7, Plaintiffs' Counsel contacted Mr. Perens' counsel to file this motion
15 with Mr. Perens' counsel in an effort to narrow any areas of disagreement, and Mr. Perens' counsel
16 advised that that while they do not agree that such supplementation is necessary or appropriate under
17 the rules, in the interest of cooperation and reducing motion practice, they will not oppose Plaintiffs'
18 motion provided it does not delay consideration of Mr. Perens' pending motions.

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21 Respectfully Submitted,

22 CHHABRA LAW FIRM, PC

23 /s/Rohit Chhabra

24 Rohit Chhabra

25 Attorney for Plaintiffs,

26 Open Source Security Inc. & Bradley Spengler
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