

No. 18-15189

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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OPEN SOURCE SECURITY, INC. AND BRADLEY SPENGLER

*Plaintiffs-Appellants,*

v.

BRUCE PERENS

*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 3:17-cv-04002-LB  
Hon. Laurel Beeler

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**NOTICE OF ERRATA RE: APPELLANTS' OPENING BRIEF**

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TO THE COURT, DEFENDANT, AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT to correct an omission by Appellant's attorney the last two sentences on page 44 have been modified as follows (markings: underline for text added; strike through for deletions):

As argued above at sections VI.B and VI.C, Defendant Perens made an objectively verifiable false factual implication, causing an average reader to reasonably believe that it was based on facts, resulting in damages. See ER 38-39. Thus, the First Amended Complaint ("FAC") is legally sufficient and supported by a sufficient ~~prima facie showing of~~ facts to sustain a favorable judgment in the claim of defamation *per se* and defamation *per quod*.

The last sentence was modified for the sole purpose to preserve formatting of the brief. A replacement sheet is attached herewith. The undersigned apologizes for the inconvenience caused due to this inadvertent omission.

Date: June 18, 2018

Respectfully Submitted,  
s/ Rohit Chhabra  
Rohit Chhabra

*Attorney for Appellants Open Source  
Security, Inc. and Bradley Spengler*

also did not attempt to defend OSS from Defendant's allegations to change public opinion. Thus, OSS is not a limited public figure. ER 254.

**c. Even If The Matter Is Considered Of Public Interest, Defendant Made False Statements Of Fact That Were Not Privileged And That Have A Natural Tendency To Cause Damages.**

Defendant's false statements of "opinion" are actionable because they are facts rather than opinions and admissible evidence shows they are demonstrably false. Generally, statements of fact are actionable. *Global Telemedia Intern., Inc. v. Doe I*, 132 F.Supp.2d 1261, 1267-68 (C.D. Cal. 2001). A defendant cannot hide behind a claim of —opinion when the statement in question – however phrased – states a provable (or disprovable) fact. *Rodriguez v. Panayiotou*, 314 F.3d 979, 985 (9th Cir. 2002); *Milkovich*, 487 U. S. at 19. The dispositive question is whether a reasonable fact finder could conclude that the relevant statements imply a provably false factual assertion. *Id.* Thus, "a false assertion of fact [can] be libelous even though couched in terms of opinion." *Moyer v. Amador Valley Joint Union High Sch. Dist.*, 225 Cal.App.3d 720, 723 (1990). ER 254-55. As argued above at sections VI.B and VI.C, Defendant Perens made an objectively verifiable false factual implication, causing an average reader to reasonably believe that it was based on facts, resulting in damages. *See* ER 38-39. Thus, the First Amended Complaint ("FAC") is legally sufficient and supported by sufficient facts to sustain a favorable judgment in the claim of defamation *per se* and defamation *per quod*.

9th Circuit Case Number(s) 18-15189

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