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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

OPEN SOURCE SECURITY, INC., and
BRADLEY SPENGLER,

Plaintiffs,

v.

BRUCE PERENS, and Does 1-50,

Defendants.

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

**DECLARATION OF MELODY
DRUMMOND HANSEN IN SUPPORT
OF DEFENDANT'S MOTION TO
CHANGE TIME AND CONTINUE
PROCEEDINGS ON OPEN SOURCE
SECURITY, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
PENDING RESOLUTION OF
DEFENDANT'S RENEWED ANTI-
SLAPP MOTION AND RENEWED
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM**

Judge: Hon. Laurel Beeler

DECLARATION OF MELODY DRUMMOND HANSEN

I, Melody Drummond Hansen, declare as follows:

1. I am a partner of O’Melveny & Myers LLP, the attorneys of record for Defendant Bruce Perens in the above-referenced action, and am admitted to practice before this Court. Pursuant to Civil Local Rule 6-3(a), I submit this Declaration in Support of Defendant’s Motion to Change Time and Continue Proceedings on Open Source Security, Inc.’s Motion for Partial Summary Judgment Pending Resolution of Defendant’s Renewed Anti-SLAPP Motion and Renewed Motion to Dismiss for Failure to State a Claim. I have personal knowledge of the facts stated herein and, if called to testify, I could and would testify completely hereto.

2. The original complaint in this action (ECF No. 1) was filed by Open Source Security Inc. (“OSS”) and asserted four causes of action based on a blog post authored by Mr. Perens: defamation per se, defamation per quod, false light invasion of privacy, and intentional interference with prospective economic advantage.

3. On September 18, 2017, Mr. Perens moved to strike all claims under the California anti-SLAPP law, Cal. Civ. Proc. Code § 425.16, and to dismiss all claims under Federal Rule of Civil Procedure 12(b)(6). (ECF No. 11.) Mr. Perens’s motions argued, *inter alia*, that OSS’s claims arose from conduct protected by California’s anti-SLAPP law; that OSS’s defamation claims were based on non-actionable statements of opinion; that OSS’s false light and intentional interference claims were duplicative of its defamation claims; that corporate entities cannot sue for false light invasion of privacy under California law; and that OSS’s factual allegations were legally deficient.

4. On September 22, the parties jointly filed a stipulated request for an order continuing the Initial Case Management Conference and associated deadlines, having agreed that giving the Court an opportunity to first consider Mr. Perens’s motions would best conserve the Court’s and parties’ resources. (ECF No. 15.) The Court granted the parties’ request, rescheduling the Initial Case Management Conference for November 30, 2017 and extending all related deadlines by six weeks. (ECF No. 16.)

1 5. On September 29, OSS moved to join Plaintiff Bradley Spengler, OSS's CEO and
2 sole-owner, as a required party. (ECF No. 17.)

3 6. On October 2, Plaintiffs simultaneously filed a First Amended Complaint that
4 asserted the same claims but added 12 pages of allegations, substituted Mr. Spengler for OSS on
5 the false light claim, and added an intentional interference claim by Mr. Spengler (ECF No. 18,
6 "FAC"); a second motion to join Mr. Spengler as a party, this time under the permissive joinder
7 rule (ECF No. 19); and a purported opposition to Mr. Perens's pending motions that relied on the
8 allegations of the FAC, rather than defending the original complaint (ECF No. 20).

9 7. Because under federal law, an amended complaint supersedes previous complaints,
10 and Mr. Perens would need to file new motions to address the FAC, on October 10, Mr. Perens
11 notified the Court that he was withdrawing his motions solely on the basis of procedural
12 mootness. (ECF No. 21.) Mr. Perens preserved all substantive objections and informed the Court
13 of his intent to file renewed motions to strike and to dismiss the FAC, and to seek fees based on
14 both complaints. (ECF No. 21.)

15 8. On October 10, I also emailed Plaintiffs' counsel, Mr. Chhabra, and informed him
16 that Mr. Perens would move to dismiss and strike all claims under Federal Rule of Civil
17 Procedure 12(b)(6) and California's anti-SLAPP statute and requested additional time to respond
18 to the new party and new arguments and factual allegations raised by the FAC. The parties
19 stipulated to extend Mr. Perens's deadline to respond to the FAC from October 16 to October 31.
20 (ECF No. 23.) At no point did Mr. Chhabra indicate that either plaintiff intended to file a motion
21 for partial summary judgment, or any other motion that would be heard *before* Mr. Perens had the
22 opportunity to be heard on his motions.

23 9. Under an hour later, OSS filed a motion for partial summary judgment as to its
24 claim for defamation per se.

25 10. On October 17, after analyzing Plaintiffs' multiple motions and filings, and
26 researching the legal bases for Plaintiffs' proposed procedure, my colleague Cara Gagliano
27 emailed Mr. Chhabra and asked whether OSS would join a stipulated request for the Court to
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1 continue all dates and deadlines related to OSS's partial motion for summary judgment to allow
2 the Court to decide Mr. Perens's challenges to the FAC first, according to the following schedule:

Event	Current Deadline	Revised Deadline
Filing deadline for Mr. Perens's opposition	October 25, 2017	14 days after entry of order on Mr. Perens's anti-SLAPP and 12(b)(6) motions
Filing deadline for Open Source Security's reply	November 1, 2017	21 days after entry of order on Mr. Perens's anti-SLAPP and 12(b)(6) motions
Motion hearing	November 16, 2017	No sooner than 35 days after entry of order on Mr. Perens's anti-SLAPP and 12(b)(6) motions

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9 We explained that Mr. Perens's deadline to oppose OSS's motion for partial summary judgment
10 falls six days before the stipulated October 31 deadline for Mr. Perens's response to the FAC and
11 that Mr. Perens's forthcoming anti-SLAPP motion and motion to dismiss would have the
12 potential to dispose of the entire case, while the pending motion for partial summary judgment is
13 directed to only one of the four claims at issue. Mr. Chhabra responded that he would be
14 opposing the motion. The parties engaged in further correspondence regarding the burdens on
15 Mr. Perens and judicial inefficiency of proceeding in the way Plaintiffs propose, particularly
16 given the nature of an anti-SLAPP suit and that OSS brings only a partial summary judgment
17 motion on one claim asserted by one plaintiff. Mr. Chhabra's stated position was that Mr. Perens
18 voluntarily gave up the opportunity to have his motions heard first and that he believes judicial
19 economy will instead be served by hearing a partial summary judgment motion before Mr. Perens
20 responds to the FAC. Because the FAC replaced the original complaint and Mr. Perens's motions
21 may resolve all claims at issue, Mr. Perens could not agree that judicial economy would be
22 served, and he believes that proceeding in the way Plaintiffs propose will add to his burdens and
23 expenses, inconsistent with the purposes of the anti-SLAPP statute. The parties therefore could
24 not reach an agreement regarding this motion.

25 11. The only dates that would be affected by this continuance are the dates relating to
26 OSS's motion for partial summary judgment.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 20th day of October 2017 in San Francisco, California.

By: /s/ Melody Drummond Hansen
Melody Drummond Hansen
Of O'Melveny & Myers LLP