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N. TORRE, CEO
SUPERIOR COURT OF CA.
CO. OF SANTA CLARA
BY JUDITH CASTILLO DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

EAGLE BROADBAND, INC.,

Plaintiff,

vs.

DOES 1 through 25, inclusive,

Defendants.

CASE NO. 1-05-CV-050179

**EAGLE BROADBAND'S RESPONSE TO
NOTICE RE: DISMISSAL PURSUANT
TO CRC 201.7 AND APPLICATION FOR
EXTENSION TO SERVE COMPLAINT**

FTS

Date: February 15, 2007

Time: 10:02 a.m. ✓

Dept: 22

Judge: Hon. Kevin J. Murphy

Complaint Filed: October 5, 2005

Plaintiff EAGLE BROADBAND ("Plaintiff") hereby submits this statement regarding the status of the action and efforts at service of the Defendants in response to the Court's Notice RE: Sanctions/Dismissal Pursuant to CRC 201.7 set for hearing on February 15, 2007.

I. Brief Description Of The Case

This is a case involving a "short and distort" scheme, where certain DOE Defendants, who are unidentified individuals and/or entities, acting alone or in concert with others, have used the Eagle Broadband message board on Yahoo! Finance to deliberately engage in relentless misinformation campaigns in an effort to denigrate Eagle Broadband's business in order to reap profits for themselves. In short, Eagle Broadband has fallen victim to organized, Internet-based

1 stock market manipulation schemes, which have included, among other activities, posting false
2 and misleading information about the financial health and corporate activities of Eagle
3 Broadband on Yahoo! Finance's widely visited financial Internet message board in order to
4 deflate the price of Eagle Broadband stock and reap illegal gains from short sales.

5 As described more fully below, Eagle Broadband has diligently attempted to execute
6 service on all DOE Defendants, but without discovery ascertaining their identities and
7 whereabouts, this endeavor has taken longer than Plaintiff anticipated. In addition to the
8 anonymity of the DOES, the delay in service is also the result in part of the motions to strike
9 filed by DOES 2-5 pursuant to the Anti-SLAPP statute, which has stayed discovery in this action
10 indefinitely. The Court issued a ruling on those motions on March 7, 2006 and had scheduled a
11 supplemental hearing for DOE 2 on June 15, 2006, which has been rescheduled several times by
12 stipulation and is now set for hearing on March 8, 2007. Declaration Of Karineh Khachatourian
13 In Support Of Eagle Broadband's Response To Notice Re: Dismissal Pursuant To CRC 201.7
14 and Application For Extension To Serve Complaint ("Khachatourian Decl.") Exhs. N, P.

15 The action with respect to DOE 4 a/k/a Richard Williams ("Williams") and DOE 5 a/k/a/
16 Thomas Mould ("Mould") has also been automatically stayed due to the parties' respective
17 appeals filed after the Court denied Williams' Anti-SLAPP motion and granted Mould's Anti-
18 SLAPP motion. *See*, Cal. Civ. Proc. Code §§ 416.16(i), 904.1 and 916. DOES 1, 6-7 have never
19 appeared in this action. DOE 3 has been dismissed from the lawsuit.

20 II. Eagle Broadband's Attempts to Serve the DOE Defendants.

21 On October 5, 2005 Eagle Broadband filed its complaint against DOES 1-25 alleging
22 causes of action for unfair business practices and defamation. On October 26, 2005, Eagle
23 Broadband served a subpoena on Yahoo! to ascertain the identities of a certain number of the
24 DOE Defendants. Khachatourian Decl., Exh. A.

25 On November 17, 2005, Yahoo! informed Eagle Broadband that DOE 4 a/k/a Williams
26 and DOE 5 a/k/a Mould had raised an objection to the disclosure of their identities and therefore,
27 it would not provide information on any of the DOES until the objections were resolved.
28 Khachatourian Decl., Exh. B. Because of the anonymous nature of Yahoo! Finance's Internet

1 message board and the individuals that post on it, Eagle Broadband must obtain discovery from
2 Yahoo! and third party internet service providers to ascertain the real identity of the DOE
3 Defendants. As a result, Eagle will be unable to conduct discovery to ascertain the identities of
4 DOES 1, 6 and 7 and then serve them with Eagle Broadband's complaint until all of the anti-
5 SLAPP motions pending before the Court are resolved.

6 On January 5, 2006, Eagle Broadband amended its complaint to add Daniel Berger, the
7 true name of DOE 3, a/k/a "upanddown100." Khachatourian Decl., Exh. C. Berger was served
8 with the Amended Complaint on January 6, 2006. *Id.* at Exh. D On October 17, 2006, the action
9 against Berger was dismissed, with prejudice. Khachatourian Decl. Exh. O.

10 On or about February 16, 2006, Williams and Mould revealed their identities in
11 declarations submitted in support of their Anti-SLAPP motions. Plaintiff immediately amended
12 the complaint to add their true identities. Khachatourian Decl., Exh. E. Plaintiff further
13 requested that counsel for Williams and Mould accept service of the complaint. *Id.*, Exh. F.
14 Counsel for Williams and Mould took the position that because the action had been stayed by
15 their anti-SLAPP motions, the complaint could not be amended and therefore they could not be
16 served. Khachatourian Decl., ¶ 20.

17 On June 23, 2006, the Honorable Socrates Manoukian ordered DOE 2's former counsel
18 to provide DOE 3's identity and current address. Judge Manoukian also ordered DOE 2 to
19 respond to interrogatories that required the disclosure of his first, middle and last name, current
20 address and former names used and addresses in the past five years. On that same day, counsel
21 identified DOE 2 as "David Mowers" and provided his last known address.

22 On July 7, 2006, Eagle Broadband amended its complaint to substitute David Mowers for
23 DOE 2 a/k/a "team_3339" and on July 14, 2006, Eagle Broadband served a David Mowers a the
24 address provided by DOE 2's former counsel. Khachatourian Decl., Exhs. G-H. On August 1,
25 2006, a "David Mowers" submitted a declaration in support of DOE 2's supplemental reply in
26 support of his Anti-SLAPP motion claiming that he was never served. *Id.*, Exhs. I-K. Around
27 the same time, Eagle Broadband received a call from another attorney claiming that Eagle
28 Broadband had served the "wrong" David Mowers. *Id.* On or about, August 25, 2006, Shelly

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1 Mack of Fish & Richardson accepted service of the Complaint on behalf of what appeared to be
2 the "right" David Mowers. Khachatourian Decl., Exh. L.

3 **III. CONCLUSION.**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court extend the time to
5 serve the Complaint on remaining DOE Defendants to 120 days from February 15, 2007 to
6 permit Plaintiff sufficient time to obtain discovery and serve the remaining DOE Defendants.

7
8 Respectfully submitted,

9 Dated: February 9, 2007

BUCHANAN INGERSOLL & ROONEY LLP

10
11 By: 

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EAGLE BROADBAND, INC.