

<b>CIVIL CASE INFORMATION STATEMENT</b>	Court of Appeal Case Number (if known): H030169
COURT OF APPEAL, <u>SIXTH</u> APPELLATE DISTRICT, DIVISION _____	<p><b>FOR COURT USE ONLY</b></p> <p style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</p> <p>MAY 18 2006</p> <p>Court of Appeal - Sixth App. Dist.</p> <p>By _____ DEPUTY</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Karineh Khachatourian (SBN 202634) Jeffrey M. Ratinoff (SBN 197241) Gordon & Rees LLP 275 Battery Street, 20 <sup>th</sup> Floor San Francisco, CA 94111  TELEPHONE NO.: (415) 986-5900 FAX NO. (Optional): (415) 986-8054 E-MAIL ADDRESS (Optional): jratinoff@gordonrees.com ATTORNEY FOR (Name): Plaintiff/Appellant Eagle Broadband, Inc.	
APPELLANT: Eagle Broadband, Inc. RESPONDENT: Thomas Mould aka benderanddunat	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</b> STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:	
JUDGES (all who participated in case): Hon. William J. Elfving	Superior Court Case Number: 1-05-CV-050179
<p><b>NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 10 days after the clerk mails you a notice that this form must be filed. You must attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 2(c) for definition of "entered") and (2) proof of service of this form on all parties to the appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2), or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).</b></p>	

**A. APPEALABILITY**

**PART I - APPEAL INFORMATION**

1. Appeal is from:

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code Civ. Proc., §§ 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code Civ. Proc., § 904.1(a)(2)
- An order or judgment under Code Civ. Proc., § 904.1(a)(3)-(13)
- Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

- Yes  No If no, please explain why the judgment is appealable:

**B. TIMELINESS OF APPEAL (Provide all applicable dates.)**

1. Date of entry of judgment or order appealed from: 03 / 07 / 2006
2. Date that notice of entry of judgment or a copy of the judgment was mailed by the clerk or served by a party under California Rules of Court, rule 2: 03 / 07 / 2006
3. Was a motion for new trial, judgment notwithstanding the verdict, reconsideration, or to vacate the judgment made and denied?  
 Yes  No If yes, please specify the type of motion:  
Date motion filed: \_\_\_ / \_\_\_ / \_\_\_ Date denied: \_\_\_ / \_\_\_ / \_\_\_ Date denial served: \_\_\_ / \_\_\_ / \_\_\_
4. Date notice of  appeal or  cross-appeal filed: 05 / 04 / 2006

**C. BANKRUPTCY OR OTHER STAY**

Is there a related bankruptcy case or a court-ordered stay that affects this appeal?  Yes  No If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.

**ORIGINAL**

D. APPELLATE CASE HISTORY (Provide additional information, if necessary, on attachment I.D.)

Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?  Yes  No If yes, insert name of appellate court: See attachment.

Appellate court case no.:

Title of case:

Name of trial court:

Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a brief or a petition, required on the Attorney General or other non party public officer or agency under California Rules of Court, rule 44.5 or a statute?  Yes  No If yes, please indicate the rule or statute that applies.

- |  |  |
|--|--|
| <input type="checkbox"/> Rule 44.5(a)  | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings)                                   |
| <input checked="" type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act)  | <input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act)  |
| <input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising)  | <input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)                     |
| <input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney) | <input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations) |
| <input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)  | <input type="checkbox"/> Other (please specify statute):   |

**NOTE: The rule and statutory provisions listed above require service of a copy of a party's brief or petition and brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply. (See, e.g., Code Civ. Proc., § 1355; Gov. Code, § 946.6(d); Pub. Resources Code, § 21167.7.)**

PART II - NATURE OF ACTION

A. Nature of action (check all that apply):

1.  Conservatorship
2.  Contract
3.  Eminent domain
4.  Equitable action a.  Declaratory relief b.  Other (describe):
5.  Family law
6.  Guardianship
7.  Probate
8.  Real property rights a.  Title of real property b.  Other (describe):
9.  Tort
 

a. <input type="checkbox"/> Medical malpractice	b. <input type="checkbox"/> Product liability
c. <input type="checkbox"/> Other personal injury	d. <input type="checkbox"/> Personal property
e. <input checked="" type="checkbox"/> Other tort (describe): Defamation	
10.  Trust proceedings
11.  Writ proceedings in superior court
 

a. <input type="checkbox"/>	b. <input type="checkbox"/> Administrative mandate (Code Civ. Proc., § 1094.5)
c. <input type="checkbox"/> Mandate (Code Civ. Proc., § 1085)	d. <input type="checkbox"/> Other (describe):
12.  Other action (describe): Unfair Competition

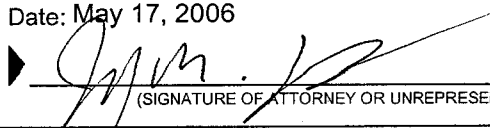
B.  This appeal is entitled to calendar preference/priority on appeal (cite authority):

PART III - PARTY AND ATTORNEY INFORMATION

Please attach to this form a list of all the parties and all their attorneys of record who will participate in the appeal. For the parties, include the following information: the party's name and his or her designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, include the following information: name, State Bar number, mailing address, telephone number, fax number, and e-mail address.

Date: May 17, 2006

This statement is prepared and submitted by:  
Jeffrey M. Ratinoff, Esq.

  
\_\_\_\_\_  
(SIGNATURE OF ATTORNEY OR UNREPRESENTED PARTY)

**Civil Case Information Statement**

**Attachment I.D.**

Plaintiff and Appellant Eagle Broadband, Inc. (“Eagle Broadband”) is a leading provider of advanced broadband, Internet Protocol and communications technology and services that create new revenue opportunities for broadband providers and enhance communications for government, military and enterprise customers. Doe Defendants, who are certain unidentified individuals and/or entities, acting alone or in concert with others, have used the Eagle Broadband message board on Yahoo! Finance to deliberately engaged in relentless misinformation campaigns in an effort to denigrate Eagle Broadband’s business in order to reap profits for themselves.

Specifically, the Yahoo! Finance message board for Eagle Broadband contains many specific incidences of postings of false information that have had a negative impact on Eagle Broadband’s business. These defamatory posts are attributable to several posters on the message board, including Defendants Richard Williams, a/k/a richwill21 a/k/a DOE 4, (“Williams”) and Thomas Mould a/k/a benderanddunat a/k/a DOE 5 (“Mould”).

On or about October 5, 2005, Eagle Broadband filed its complaint for defamation and unfair competition against these and other posters, entitled *Eagle Broadband Inc. v. DOES 1 thought 25*, Santa Clara Superior Court Case No. 1-05-CV-050179. Thereafter, Defendants Williams and Mould filed and served their special motion to strike, pursuant Code of Civil Procedure section 425.16 (“Anti-SLAPP motion”). In conjunction with its opposition to the Anti-SLAPP motion, Eagle Broadband filed a motion for leave to conduct discovery pursuant to Code of Civil Procedure section 425.16(g).

On March 7, 2006, the Honorable William J. Elfving of the Superior Court

for Santa Clara County issued an order granting Defendant Mould's Anti-SLAPP motion and denying Eagle Broadband's motion for leave to take discovery. A true and correct copy of this order is attached hereto as Exhibit A. On May 4, 2006, Eagle Broadband filed and served its notice of appeal of the portion of the March 7 order granting Defendant Mould's Anti-SLAPP motion and denying Eagle Broadband's motion for leave to take discovery. The Court of Appeal assigned Court of Appeal Case No. H030169 to this appeal.

In that same March 7 order, Judge Elfving denied Defendant Williams' Anti-SLAPP motion. On or about May 8, 2006, Defendant Williams filed his notice of appeal of the portion of the March 7 denying his Anti-SLAPP motion. The Court of Appeal assigned Defendant William's appeal the same case number, H030169, as Eagle Broadband's appeal.

On or about May 10, 2006, the Clerk of the Court of Appeal notified Eagle that it would be treating the appeal filed by Defendant William as a cross-appeal to Eagle Broadband's appeal. It is Eagle Broadband's position that because the parties to each appeal are different, Eagle Broadband's appeal of the portion of the March 7 order granting Defendant Mould's Anti-SLAPP motion should be treated separately from Defendant William's appeal of the March 7 order denying his Anti-SLAPP Motion.

*Eagle Broadband v. Thomas Mould aka Benderanddunat*  
Court of Appeal (6<sup>th</sup> Appellate District) Case Number: H030169  
Santa Clara Superior Court No. 1-05-CV-050179

**Civil Case Information Statement**

**Part III- Party and Attorney Information**

**Plaintiff/Appellant Eagle Broadband, Inc.**

Karineh Khachatourian, Esq. (SBN 202634)

[kkhachatourian@gordonrees.com](mailto:kkhachatourian@gordonrees.com)

Jeffrey M. Ratinoff, Esq. (SBN 197241)

[jratinoff@gordonrees.com](mailto:jratinoff@gordonrees.com)

Gordon & Rees LLP

275 Battery Street, Suite 2000

San Francisco, CA 94111

T: (415) 986-5900

F: (415) 986-8054

**Defendant/Respondent Thomas Mould a/k/a Benderanddunat a/k/ a Doe 5**

Mark A. Goldowitz, Esq. (SBN 96418)

[mg@casp.net](mailto:mg@casp.net)

Paul Clifford, Esq. (SBN 119015)

[pc@casp.net](mailto:pc@casp.net)

California Anti-SLAPP Project

2903 Sacramento St.

Berkeley, CA 94702

T: (510) 486-9123

F: (510) 486-9708