

CIVIL CASE INFORMATION STATEMENT		Court of Appeal Case Number (if known): H030719
COURT OF APPEAL, <u>SIXTH</u> APPELLATE DISTRICT, DIVISION _____		<p style="text-align: center; font-weight: bold; font-size: 1.2em;">ORIGINAL</p> <p style="text-align: center; font-weight: bold; font-size: 2em;">FILED</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">OCT 20 2006</p> <p style="text-align: center; font-size: small;">Court of Appeal - Sixth App. Dist.</p> <p style="text-align: center;">By _____ DEPUTY</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Karineh Khachatourian, Esq. (SBN: 202634) Jeffrey M. Ratinoff, Esq. (SBN: 197241) Gordon & Rees LLP 275 Battery Street, 20 th Floor San Francisco, CA 94111 TELEPHONE NO.: 415-986-5900 FAX NO. (Optional): 415-986-8054 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff and Appellant, Eagle Broadband, Inc.		
APPELLANT: EAGLE BROADBAND, INC. RESPONDENT: THOMAS MOULD		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA 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>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]).</p>		

PART I - APPEAL INFORMATION

A. APPEALABILITY

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: Attorney's fees award entered pursuant to CCP § 425.16(c) after order granting special motion to strike and is directly appealable pursuant to CCP § 904.1(a)(2).

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

1. Date of entry of judgment or order appealed from: 8 / 9 / 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: 8 / 9 / 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: 10 / 6 / 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.

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 I.D.

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.

- Rule 44.5(a)
- Bus. & Prof. Code, § 17209 (Unfair Competition Act)
- Bus. & Prof. Code, § 17536.5 (False advertising)
- 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)
- Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)
- Gov. Code, § 4461 (Disabled access to public buildings)
- Gov. Code, § 12656(a) (False Claims Act)
- Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)
- Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)
- 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. Medical malpractice
 - b. Product liability
 - c. Other personal injury
 - d. Personal property
 - e. Other tort (describe): Defamation
- 10. Trust proceedings
- 11. Writ proceedings in superior court
 - a.
 - b. Administrative mandate (Code Civ. Proc., § 1094.5)
 - c. Mandate (Code Civ. Proc., § 1085)
 - d. Other (describe):
- 12. Other action (describe): Unfair Competition (Bus. & Prof. Code § 17200)

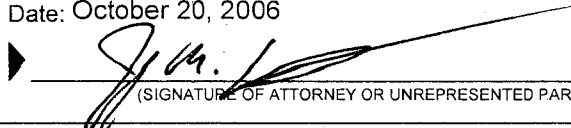
B. This appeal is entitled to calendar preference/priority on appeal (cite authority):

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: October 20, 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.

On or about October 5, 2005, Eagle Broadband filed its complaint for defamation and unfair competition against Thomas Mould and other defendants, entitled *Eagle Broadband Inc. v. DOES 1 thought 25*, Santa Clara Superior Court Case No. 1-05-CV-050179. Thereafter, Defendant Thomas Mould (“Mould”) filed and served his special motion to strike, pursuant Code of Civil Procedure section 425.16 (the “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 Mould’s Anti-SLAPP motion and denying Eagle Broadband’s motion for leave to take discovery (“March 7 Order”). On May 4, 2006, Eagle Broadband filed and served its notice of appeal of the March 7 Order granting Mould’s Anti-SLAPP motion and denying Eagle Broadband’s motion for leave to take discovery. The Court of Appeal assigned Case No. H030169 to that appeal. At the time of this statement, Eagle Broadband’s appeal of the March 7 Order is in the process of being briefed.

Several months later, as the prevailing defendant, Mould filed his motion for attorney’s fees pursuant. *See* Cal. Civ. Proc. Code § 425.16(c) (“a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney’s fees and costs”). In response, Eagle Broadband filed its opposition thereto and a motion to stay Mould’s motion for attorney’s fees wherein Eagle Broadband requested that the trial court not hear Mould’s motion until after the disposition of Eagle’s appeal of the March 7 Order. On August 9, 2006, the Honorable William J. Elfving of the Superior Court for Santa Clara County issued

an order granting Mould's motion for attorney's fees and denied Eagle Broadband's request for a stay of such a motion ("August 9 Order").

On October 6, 2006, Eagle Broadband filed and served its notice of appeal of the portion of the August 9 Order granting Defendant Mould's motion for attorney's fees and denying Eagle Broadband's motion to stay. Eagle Broadband's appeal of the attorney's fees award directly relates to and is dependant on Eagle Broadband's appeal of the underlying March 7 Order. Eagle Broadband believes that it would be a waste of the resources of both the parties and the Court of Appeal to hear Eagle's appeal of the August 9 Order prior to the Court either upholding or reversing the March 7 Order. Indeed, if Eagle prevails on its appeal of the March 7 Order, there will be no need for the Court to consider Eagle's appeal of the order granting Mould's motion for attorney's fees as Mould would no longer be entitled to such an award as a matter of law. *See Giles v. Horn*, 100 Cal.App.4th 206, 241 (2002) (order awarding attorney fees falls with a reversal of judgment on which it was based); *accord Law Offices of Dixon R. Howell v. Valley*, 129 Cal.App.4th 1076, 1105 (6th App. Dist. 2005).

Eagle Broadband, Inc. v. Thomas Mould
Court of Appeal (6th Appellate District) Case Number: H030719
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)

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

Mark A. Goldowitz, Esq. (SBN 96418)

mg@casp.net

Paul Clifford, Esq. (SBN 119015)

pc@casp.net

California Anti-SLAPP Project

2903 Sacramento St.

Berkeley, CA 94702

T: (510) 486-9123

F: (510) 486-9708

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party
3 to the within action. My business address is Embarcadero Center West, 275 Battery Street,
4 Suite 2000, San Francisco, California. On the date set forth below, I served the attached
5 document entitled:

6 **CIVIL CASE INFORMATION STATEMENT**

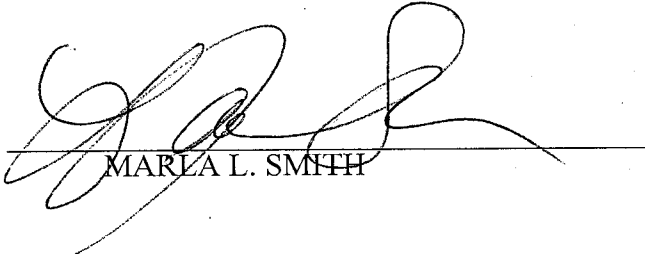
- 7 by transmitting via facsimile the document listed above to the fax numbers set forth
8 below on this date before 5:00 p.m.
- 9 by placing the document listed above in a sealed envelope with postage thereon fully
10 prepaid, in United States mail in the State of California at San Francisco, addressed
11 as set forth below. I am readily familiar with the firm's practice of collection and
12 processing correspondence for mailing. Under that practice it would be deposited
13 with the U.S. Postal Service on that same day with postage thereon fully prepaid in
14 the ordinary course of business. I am aware that on motion of the party served,
15 service is presumed invalid if postal cancellation date or postage meter date is more
16 than one day after the date of deposit for mailing in affidavit.
- 17 by personally delivering , via Western Messenger, the document listed above to the
18 persons at the addresses set forth below.

14 Shelley K. Mack, Esq.
15 Fish & Richardson, P.C.
16 500 Arguello Street, Suite 500
17 Redwood City, CA 94063

14 Paul Clifford, Esq.
15 California Anti-SLAPP Project
16 2903 Sacramento St.
17 Berkeley, CA 94702
18 (510) 486-9708 FAX

19 I declare under penalty of perjury under the laws of the State of California that the above
20 is true and correct.

21 Executed on October 20, 2006 at San Francisco, California.

22 
23 _____
24 MARLA L. SMITH
25
26
27
28

(ENFORCED)
FILED

AUG 8 2006

KIRI TORRE
Chief Executive Officer
Superior Court of California, County of Santa Clara
M. HADDON
DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

EAGLE BROADBAND, INC.

Plaintiff

v.

DOES 1 to 25, inclusive,

Defendants.

Case No. 1 - 05 - CV050179

Order re: (1) EAGLE's Motion to Stay
DOE 5's Motion for Attorney
Fees
(2) DOE 5's Motion to Seal
(3) DOE 5's Motion for
Attorney Fees
(4) DOE 2's Special Motion to
Strike EAGLE's Complaint

The following motions came on for hearing before the Honorable William J. Elfving on August 8, 2006 at 9:00 a.m. in Department 2: (1) EAGLE's Motion to Stay DOE 5's Motion for Attorney Fees; (2) DOE 5's Motion to Seal; (3) DOE 5's Motion for Attorney Fees; and (4) DOE 2's Special Motion to Strike EAGLE's Complaint. The matters having been submitted, the Court finds and orders as follows:

4. EAGLE's Motion to Stay DOE 5's Motion for Attorney Fees is denied.

5. EAGLE's Motion to Seal is granted.

(a) The Court finds that there exists an overriding interest that overcomes the right of public access in the records specified below, in that disclosure would

Order re: (1) EAGLE's Motion to Stay DOE 5's Attorney Fees Motion; (2) DOE 5's Motion to Seal; (2) DOE 5's Motion for Attorney Fees; (4) DOE 2's Special Motion to Strike [CCP §425.16].

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

RECORDED
FILED

AUG 09 2006

Plaintiff(s):

EAGLE BROADBAND, INC.

Defendant(s):

DOES 1 to 25, inclusive

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY M. HIJDUK DEPUTY

PROOF OF SERVICE BY MAIL OF ORDER RE:

**1. EAGLE'S MOTION TO STAY DOE 5'S MOTION FOR
ATTORNEY FEES 2. DOE 5'S MOTION TO SEAL 3. DOE
5'S MOTION FOR ATTORNEY FEES 4. DOE 2'S SPECIAL
MOTION TO STRIKE EAGLE'S COMPLAINT**

Case Number:

1-05-CV050179

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below the document was mailed at SAN JOSE, CALIFORNIA on : August 9, 2006.

Kiri Torre, Chief Executive Officer/Clerk

BY _____, Deputy
Margie Hijduk

Karineh Khachatourian, Esq.
Jeffrey M. Ratnoff, Esq.
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Proof of service
Clerk's Certificate of Service