

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

2197-1001 p
JDC/JMR/HNC

MINUTE ORDER

DATE: 10/09/2013

TIME: 10:20:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2013-00036966-CU-DF-CTL CASE INIT. DATE: 02/28/2013
CASE TITLE: **Shames vs. Utility Consumers Action Network [Imaged]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Defamation

EVENT TYPE: Civil Jury Trial

APPEARANCES

On its own Motion, the Court sets aside Judgment of Dismissal filed and signed on 9/25/13 because the SLAPP motion did not dispose of all causes of action, i.e. did not dispose of 6th cause of action for unauthorized computer use and access , 18USC 1050, and Penal Code §502 and trespass to chattels.

The Court exercises its inherent powers to correct errors by setting aside the Judgment of Dismissal signed on 9/25/13.

The Court Clerk is to notify all parties that Status Conference of 10/18/13 at 1:00 pm remains on calendar and the Court orders the Clerk to issue the tentative ruling on the demurrer to the 6th cause of action today which the Court will discuss with parties at the 10/18/13 1:00 p.m. status conference. Both sides are Ordered to have representatives present at the Status Conference fully prepared to discuss tentative ruling issued today.

Ronald S. Prager

Judge Ronald S. Prager

Shames v. Utility Consumers' Action Network, et al

The Court rules on defendant Michael Aguirre's (Aguirre) demurrer to Complaint as follows:

The demurrer to the sixth cause of action for unauthorized computer use and access is sustained with leave to amend for the reasons stated below.

One, the opposition brief was not timely filed. (Code Civ. Proc., §1005.)

Two, Plaintiff failed to state the parties affected by the claim. (Cal. Rules of Ct., rule 2.112.) Thus, the claim is uncertain. (See Weil & Brown, Cal. Pract. Guide: Civil Procedure Before Trial (The Rutter Group 2013) ¶6:112-6:113, p. 6-30.)

Three, the allegations are uncertain as pled. In paragraph 121, Plaintiff alleges that a "UCAN employee and DOES 1-10 gained unauthorized access into the GoDaddy account," then later alleges that other named defendants causing him harm. In addition, Plaintiff refers to "Defendants" (See Verified Complaint, ¶¶127-128, and 131) without defining who is encompassed within that term.

However, the Court declines to sustain the demurrer on the following grounds asserted by Aguirre.

Simmons v. Allstate Insurance Co. (2001) 92 Cal.App.4th 1068 (hereafter *Simmons*) is factually distinguishable from this case in that Plaintiff is not asking to amend the Complaint but is instead arguing that the claim is adequately pled in the operative Complaint.

In addition, the allegation that "[t]he source of the leaked and missing documents was not identified" is not equivalent to the statement that Aguirre was not the source of the leak. Thus, it does not unequivocally preclude the possibility that he was a source of the leak.

Finally, the Court notes that the sixth cause of action was not the subject of Aguirre's anti-SLAPP motion. Furthermore, Aguirre is being accused of improper conduct in this cause of action. Thus, the litigation privilege does not apply.

Plaintiff is directed to file and serve his first amended complaint by October 11, 2013, as this Court previously ruled that Plaintiff should file said pleading by this date in response to defendant UCAN's demurrer. Furthermore, if Aguirre wishes to file a demurrer to the FAC, it must appear ex parte by October 24, 2013 to obtain expedited scheduling of the motion.

IT IS SO ORDERED.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

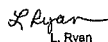
Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Shames vs. Utility Consumers Action Network [Imaged]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2013-00036966-CU-DF-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 10/09/2013.

Clerk of the Court, by: 
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