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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER RECOUVREUR,

Plaintiff,

v.

CHARLES CARREON,

Defendant.

No. 3:12-cv-03435

Date: November 15

Time: 10 AM

Courtroom #3, 17th Floor

**JOINT CASE MANAGEMENT STATEMENT & [PROPOSED] ORDER**

Because defendant was previously unwilling to meet and confer about a case management statement, and had not responded to a telephone call trying to confer about this statement, plaintiff unilaterally submits this CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California dated July 1, 2011, and Civil Local Rule 16-9.

**1. Jurisdiction & Service**

The Court has jurisdiction under 28 U.S.C. §§ 1331, 1337 and 1338, and 15 U.S.C. § 1121. As shown in plaintiff's motion to declare service complete, defendant Carreon has been evading service; the Court decided that plaintiff's efforts to complete service were not yet sufficient to justify alternate service. Since that ruling, plaintiff has raised funds needed to hire a new process server, who is trying to serve defendant. Plaintiff asks the Court to postpone for seventy-five days the deadline for service.

**2. Facts**

Plaintiff Recouvreur has created a non-commercial, satirical blog, criticizing defendant Carreon, using defendant Carreon's name as the domain. Mr. Carreon threatened to sue Mr. Recouvreur for trademark

1 infringement over the blog. Mr. Recouvreur seeks a declaratory judgment of noninfringement.

### 2 **3. Legal Issues**

3 The parties dispute whether Mr. Recouvreur's blog infringes the trademark in the name Charles Carreon,  
4 whether it makes fair use of the mark, and whether Mr. Recouvreur is engaged in cybersquatting. Among  
5 other cases, *Bosley Medical v. Kremer*, 403 F.3d 672 (9th Cir. 2005), and *Nissan Motor Co. v. Nissan*  
6 *Computer Co.*, 378 F.3d 1002 (9th Cir. 2004), preclude reliance on trademark law to stop the use of a web  
7 site posted at a domain name that uses a trademark to identify a site for non-commercial criticism of the  
8 trademark holder. Cases from other circuits are in accord, and also bar any claim for cybersquatting. *Utah*  
9 *Lighthouse Ministry v. Foundation for Apologetic Information & Research*, 527 F.3d 1045 (10th Cir. 2008);  
10 *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005); *TMI v. Maxwell*, 368 F.3d 433, 436-438 (5th Cir.  
11 2004); *Lucas Nursery & Landscaping v. Grosse*, 359 F.3d 806 (6th Cir. 2004); *Taubman v. WebFeats*, 319  
12 F3d 770 (6th Cir. 2003).

### 13 **4. Motions**

14 Plaintiff's motion requesting an order deeming service complete was denied. Plaintiff expects to move for  
15 summary judgment soon after defendant answers the complaint or otherwise responds.

### 16 **5. Amendment of Pleadings**

17 Plaintiff has amended the complaint once, to add his actual name. Plaintiff does not anticipate adding parties  
18 or claims. Defendant has hinted at plans to file a counterclaim and to add plaintiff's former employer as  
19 a defendant to that claim. *See* Document No. 19-1, Exhibit M.

### 20 **6. Evidence Preservation**

21 The parties have not communicated with each other about this issue. However, defendant Carreon, without  
22 sending a copy to counsel for plaintiff, sent a document preservation demand to Walgreens, which employed  
23 Recouvreur when this case was first filed. *Id.*

### 24 **7. Disclosures**

25 There have not been any initial disclosures pursuant to Fed. R. Civ. P. 26.

### 26 **8. Discovery**

27 No discovery has been taken. Plaintiff cannot predict what discovery may be needed until defendant  
28 answers, but, as indicated above, plaintiff expects to move for summary judgment soon after defendant

1 answers the complaint or otherwise responds.

2 **9. Class Actions**

3 This case is not a class action.

4 **10. Related Cases**

5 No related cases or proceedings are pending before another judge of this court, or before another court or  
6 administrative body.

7 **11. Relief**

8 Plaintiff seeks a declaratory judgment of non-infringement and an award of attorney fees pursuant to the  
9 Lanham Act.

10 **12. Settlement and ADR**

11 There are no prospects for settlement.

12 **13. Consent to Magistrate Judge for All Purposes**

13 Plaintiff does not consent to have a magistrate judge conduct all further proceedings including trial and entry  
14 of judgment.

15 **14. Other References**

16 The case is not suitable for referral to binding arbitration, a special master, or the Judicial Panel on  
17 Multidistrict Litigation.

18 **15. Narrowing of Issues**

19 No issues can be narrowed. There is no suggestion to expedite the presentation of evidence at trial (e.g.,  
20 through summaries or stipulated facts), and no request to bifurcate issues, claims, or defenses.

21 **16. Expedited Trial Procedure**

22 Plaintiff does not agree to the expedited trial procedure of General Order 64, Attachment A.

23 **17. Scheduling**

24 There are no proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions,  
25 pretrial conference and trial. Until defendant has answered, the setting of dates is premature. As indicated,  
26 plaintiff expects to move for summary judgment soon after defendant answers the complaint or otherwise  
27 responds.

28 **18. Trial**

1 The case will not be tried to a jury because only equitable relief is sought. As indicated, plaintiff expects  
 2 to move for summary judgment soon after defendant answers the complaint or otherwise responds.

3 **19. Disclosure of Non-party Interested Entities or Persons**

4 Only individuals are parties to this case. Nobody besides the individual plaintiff and defendant has either  
 5 (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other  
 6 kind of interest that could be substantially affected by the outcome of the proceeding. Defendant apparently  
 7 believes that Walgreens may have an interest in the case, insofar as he has indicated that he would like to  
 8 find out whether he can hold Walgreens liable in some way for the trademark infringement that he alleges  
 9 against plaintiff.

10 Dated: November 8, 2012

11 /s/ Paul Alan Levy  
 12 Counsel for plaintiff

13 **CASE MANAGEMENT ORDER**

14 The above CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case  
 15 Management Order for this case and all parties shall comply with its provisions. [In addition, the Court  
 16 makes the further orders stated below:]

17  
 18 IT IS SO ORDERED.

19 Dated:

20 UNITED STATES DISTRICT JUDGE  
 21  
 22  
 23  
 24  
 25  
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 27  
 28

**CERTIFICATE OF SERVICE**

On this 8th day of November, 2012, I am sending a copy of this Case Management Statement to defendant Charles Carreon at chas@charlescarreon.com, the address at which defendant has agreed to accept emails from the Court's ECF system.

/s/ Paul Alan Levy  
Paul Alan Levy