

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO.: 09-80396 CIV-MARRA

VISION MEDIA TV GROUP, LLC, a  
Florida limited liability company, JOHN  
VAZAIOS, CHRISTIAN KELCH, GARY  
JAMES, LINDA SHIELDS, MATTHEW  
McMAHON, LINDA GIBBS, LINDA  
GALLIGAN, TONY LANDA, PAUL BEMIC,  
PAUL DEMIC, CHRIS KELCH, DIANA,  
JANETTE MORRISON, SET PETERS, JEFF  
SLAVIN, CATHY PROCTOR, KRISTIN SLOAN,  
BILL HOUGH, DR. MATT McMAHON,  
MICHAEL RAWLINSSON, LEON GROBER,  
PAUL DEMNICK, KATE LARSE, and ALEX BERRY,

Plaintiffs,

vs.

JULIA FORTE, personally and JULIA FORTE  
d/b/a [www.800Notes.com](http://www.800Notes.com), ADVENT LLC, JANE  
DOE (a/k/a "BEWARE"),

Defendants.

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**PLAINTIFFS' REPLY AND SUPPORTING MEMORANDUM OF LAW  
IN RESPONSE TO DEFENDANTS' OPPOSITION AND AMENDED  
OPPOSITION TO MOTION TO STRIKE AND FOR GAG ORDER**

Plaintiffs VISION MEDIA TV GROUP, LLC, a Florida limited liability company, JOHN  
VAZAIOS, CHRISTIAN KELCH, GARY JAMES, LINDA SHIELDS, MATTHEW  
McMAHON, LINDA GIBBS, LINDA GALLIGAN, TONY LANDA, PAUL BEMIC, PAUL  
DEMIC, CHRIS KELCH, DIANA, JANETTE MORRISON, SET PETERS, JEFF SLAVIN,  
CATHY PROCTOR, KRISTIN SLOAN, BILL HOUGH, DR. MATT McMAHON, MICHAEL  
RAWLINSSON, LEON GROBER, PAUL DEMNICK, KATE LARSE, and ALEX BERRY  
(hereinafter collectively "VISION MEDIA"), by and through their undersigned counsel, and

pursuant to the applicable Federal Rules of Civil Procedure and the local rules of the Southern District of Florida, herein files its reply in opposition to Defendants' Opposition To Motion To Strike And For Gag Order<sup>1</sup> and to its Amended Opposition To Motion To Strike And For Gag Order as follows.

### **INTRODUCTION AND BACKGROUND INFORMATION**

The issues in the pending litigation ("Internet Litigation") are two-fold. First, there is an anonymous 'blogger' who calls himself "BEWARE". BEWARE is using the defendant, [www.800Notes.com](http://www.800Notes.com), website to post defamatory and untrue information ("Negative Postings") regarding the business practices of VISION MEDIA and its host, Hugh Downs. VISION MEDIA seeks to prove that the Negative Postings are untrue, defamatory and damaging to VISION MEDIA'S business and, as a result, that VISION MEDIA has a cause of action against BEWARE sounding in, without limitation, defamation. Should VISION MEDIA prove that, at minimum, that there are sufficient issues of material fact that the information that BEWARE is posting on the defendant, [www.800Notes.com](http://www.800Notes.com), website is defamatory so as to preclude the entry of a motion for summary judgment in favor of the defendants, VISION MEDIA will provide the Court with, what it believes, is sufficient case law that stands for the proposition that VISION MEDIA is entitled to obtain the identity of BEWARE from [www.800Notes.com](http://www.800Notes.com) and, at that time, VISION MEDIA will file a separate action for defamation as a result of such conduct<sup>2</sup>. This has caused other anonymous bloggers to use the word 'scam' and associate such word with VISION MEDIA; all based on the original false information posted by BEWARE.

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<sup>1</sup> DE 21.

<sup>2</sup> As it is unknown, at this time, as to whether "BEWARE" is a resident of the State of Florida or elsewhere, despite VISION MEDIA'S best efforts in seeking to obtain the information from the defendant, [www.800Notes.com](http://www.800Notes.com), VISION MEDIA filed a notice of voluntary dismissal, without prejudice, with respect to the allegations it is directing against BEWARE for posting such defamatory and false information regarding VISION MEDIA.

The second issue is whether [www.800Notes.com](http://www.800Notes.com) and its principal, JULIA FORTE (“FORTE”) have taken certain actions that would preclude it from asserting immunity from prosecution from VISION MEDIA. While FORTE will provide the Court with case law that stands for the proposition that there is statutory immunity for internet service providers, such as [www.google.com](http://www.google.com) or, here, [www.800Notes.com](http://www.800Notes.com), such statutory immunity is qualified as it is expressly limited by the very statute it seeks to enforce and case law and precedent interpreting same. VISION MEDIA will be providing the Court with evidence to support its contention that [www.800Notes.com](http://www.800Notes.com), by and through its principal, FORTE, is negatively manipulating the content of the postings of [www.800Notes.com](http://www.800Notes.com) to further promote the Negative Postings. VISION MEDIA has evidence of certain postings (“The Positive Postings”) that were posted on the [www.800Notes.com](http://www.800Notes.com) internet website to refute the Negative Postings being made by BEWARE and to reaffirm the fact that VISION MEDIA is a good, credible, and reputable company. The Positive Postings were removed from [www.800Notes.com](http://www.800Notes.com). Only the Negative Postings remained. VISION MEDIA submits that the conduct was perpetrated by [www.800Notes.com](http://www.800Notes.com) and FORTE; subjecting each such defendant to liability. Indeed, the record evidence confirms such fact as FORTE, by and through her attorney, Paul Levy, Esquire, admitted to manipulating the content on the defendant [www.800Notes.com](http://www.800Notes.com) website that Defendant FORTE has total ownership and control over. VISION MEDIA will take the position that such conduct takes FORTE and her company, [www.800Notes.com](http://www.800Notes.com) outside the statutory immunity being asserted by the party defendants.

Defendants’ have responded to all such allegations through their January 21, 2010 piecemeal filing of their motion to dismiss and motion for summary judgment and then counsel for Defendants, Paul Levy, being associated with the Ralph Nader public interest law group, then

took it upon himself to continue the defamatory, smearing campaign directed to VISION MEDIA to presumably create continued attention, publicity and financial support for himself and for his public interest law group through the posting of the procedurally incorrect, piecemeal motion to dismiss and for summary judgment. VISION MEDIA responded to same through the filing of the motion to strike and the motion to preclude the Defendants counsel, Paul Levy, Esquire, from engaging in further defamatory conduct through requesting judicial intervention to preclude Paul Levy from litigating the Internet Litigation through the media and, instead, filing the appropriate documents in this Court and allowing the judicial system to proceed in the normal course.

Apparently, Mr. Levy was unmoved by VISION MEDIA'S position as it has now posted yet another blog on January 28, 2010; this one entitled "Vision Media Requests Injunction Against Blogging That Casts It In A Negative Light"<sup>3</sup>. A copy of the blog is attached hereto as **EXHIBIT "A"**. There, while Mr. Levy responded to the motion to strike with a short, three paragraph response (unaccompanied by a memorandum of law), it appears from the most recent blog that Mr. Levy would rather disparage anyone, including the undersigned counsel, that does not agree with Mr. Levy's position. The blog goes so far as to call the undersigned counsel's motion to strike 'bizarre'<sup>4</sup>; never once referring to it being 'bizarre' though court filings.

VISION MEDIA does, however, agree with one position, the filings in the Internet Litigation are available for the public<sup>5</sup>. So then query why would Defendants' counsel, Paul Levy, post the motions through his public interest website internet blog? VISION MEDIA submits that the answer is quite obvious. Those who are not in the legal community are not

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<sup>3</sup> Query where in the motion to strike the motion for summary judgment does VISION MEDIA request the Court issue an injunction? The answer is equally obvious. It is not there.

<sup>4</sup> See line 2 of the blog.

<sup>5</sup> See second paragraph of the document previously identified as **EXHIBIT A**.

going to ‘sit around’ and pay to read court filings; irrespective of whether the payment is 8 cents or 8 dollars. Those who are not in the legal community, however, are more likely to ‘Google’ Ralph Nader; he being, of course, a former United States presidential candidate and well known political crusader. If one ‘Google’s’ Ralph Nader, one will immediately locate Public Citizen. This is the public interest group that Paul Levy, Esquire is affiliated with. “Public Citizen” is on the first page of the Google search of Ralph Nader. It is impossible to miss. It is the fourth one down. It is evidenced by the attached **EXHIBIT “B”**. An ordinary reader is far more inclined to do a “Google” search on Ralph Nader; be directed to “Public Citizen”; then be directed to “Public Citizen Consumer Law & Policy Blog”; and then read about all the horrible things that VISION MEDIA is allegedly engaged in; all to promote and seek publicity for itself and its public interest law group while throwing VISION MEDIA and its host, Hugh Downs, ‘under the bus’, and without having the merits of the Internet Litigation be adjudicated on its merits.

The Court should put an immediate end to the circus. This is the reason, in part, for the motion to strike. Going to the actual opposition and amended opposition that Defendants’ counsel filed in response to the motion to strike, VISION MEDIA would submit that the motion should be denied on procedural and on substantive grounds. Procedurally, neither the Defendants’ original opposition papers nor its amended opposition papers are accompanied by an opposing memorandum of law and, thus, is a violation of Rule 7.1 C of the Local Rules of Court. By rule, this constitutes grounds for granting VISION MEDIA’S Motion To Strike by Default. Substantively, Defendants are equally incorrect regarding their position on the page limitation required by the Local Rules of Court and on the alleged lack of authority of the Court to put an end to the Defendants’ counsel’s circus and public smearing campaign against VISION MEDIA and now against their counsel. The reasons are the basis of the reply. They are set forth below.

**MEMORANDUM OF LAW**

**I. VISION MEDIA'S MOTION TO STRIKE SHOULD BE GRANTED ON PROCEDURAL GROUNDS BECAUSE THE DEFENDANTS' OPPOSITION AND AMENDED OPPOSITION ARE IN VIOLATION OF RULE 7.1 C OF THE LOCAL RULES OF COURT**

Procedurally, Defendants' opposition and amended opposition both fail because neither filing complies with Rule 7.1 C of the local rules of court. That local rule requires each party who opposes a motion to serve an opposing memorandum of law. An additional review of Rule 7.1 C clearly provides the Court with authority to grant the motion by default should the opposing party fail to serve an opposing memorandum of law. Here, Defendants opposition and amended opposition each came unaccompanied by a memorandum of law. The opposition and amended opposition are each in violation of Rule 7.1 C of the local rules of court. The Court has the authority to, and should, grant VISION MEDIA'S motion by default.

**II. VISION MEDIA'S MOTION TO STRIKE SHOULD BE GRANTED ON SUBSTANTIVE GROUNDS**

**A. The Court Should Reject Defendants' Position That Their Motion To Dismiss and Motion For Summary Judgment Does Not Violate The Page Limitation Prescribed By The Local Rules of Court**

Defendants' legally insufficient response to VISION MEDIA'S motion to strike cites to *DeMaria vs. Ryan P. Relocator Co.*, 512 F.Supp.2d 1249 (S.D. Fla. 2007). There, the Court noted that the defendant employer's motion for summary judgment violated the local rules of court through improperly filing its statement of undisputed facts as an **exhibit**<sup>6</sup> to the motion for summary judgment rather than filing the statement as it own document. This does nothing to distinguish the decision in *Lawson vs. Dollar General Corporation, et.al.*, 2006 WL 1722345 \*1 (M.D. Fla. 2006) that notes the 'widely accepted standard that the statement of undisputed facts should be included in the memoranda and further viewed the conduct of the attorney

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<sup>6</sup> Bold and underline font added for additional emphasis.

representing the defendant filing such piecemeal documents as attempting to ‘circumvent the rule’<sup>7</sup>. *Lawson*, 2006 WL 1722345 \*1. The only thing that is ‘bizarre’ here is that Defendants’ counsel, a seasoned attorney who is presumably well acquainted with federal practice and the local rules of court that govern such federal practice, first violated the local rules through attempting to circumvent the page limitation prescribed by the local rules of court only to then file another motion, this time the opposition and amended opposition to the motion to strike without a supporting memorandum of law that is **required** to be filed in support of the opposition. Neither of which was accomplished in the filings. All of which are grounds for the entry of VISION MEDIA’S requested relief, by default.

**B. The Court Should Put An End To Defendants’ Conduct Of Litigating The Internet Litigation Through The Media**

VISION MEDIA would further point to well established case law that stands for the proposition that litigation should be conducted through the court system; not the media. *In re Joseph D. Morrissey*, 168 F.3d 134, 136, 140 (4<sup>th</sup> Cir. 1999) (affirming the lower court order that a local rule prohibiting attorney’s extrajudicial comments regarding pending litigation is constitutional as not being an abrogation of the attorney’s right to free speech and further affirming the lower court order that denied the attorney’s motion for contempt charges pending against the attorney by reasoning that limitations on attorney’s speech must be aimed at the two evils that threaten the integrity of the judicial system: (i) comments that will likely influence the outcome of a trial and (ii) statements that will prejudice the jury venire even if an untainted jury panel can eventually be found). There, the court reasoned that the attorneys’ extrajudicial comments to the media publicly called into question the credibility of a key witness that would likely influence the outcome of the trial. The attorney then made a statement to a reporter that

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<sup>7</sup> Italics and underline added for additional emphasis.

cast doubt on the strength of the government's case through the attorney drawing on his own prior experience as a former prosecutor. Such comments went directly to the merits of the case and is the type of behavior that the United States Supreme Court in *Gentile vs. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991) expressed its concern about and thought that the conduct could and should be prohibited. *Joseph D. Morrissey*, 168 F.3d at 140. The decision in *Morrissey*, 168 F.3d at 140 further notes that the United States Supreme Court in *Gentile* stands for the proposition that the attorney restriction on free speech must be narrowly tailored, it must be neutral as to all points of view, apply equally to all attorneys in the case **and only postpone lawyers comments until after the trial.** *Joseph D. Morrissey*, 168 F.3d at 140 citing *Gentile*, 501 U.S. 1030 at 1075-1076. VISION MEDIA agrees with the approach of the United States Supreme Court. Defendants' counsel should be required to wait until the conclusion of the pending Internet Litigation to make further 'blogs' about all the bad conduct allegedly engaged in by VISION MEDIA, a well respected company, and its equally well respected host, Hugh Downs, as very comments being made by Defendants' counsel are the comments that VISION MEDIA contends are defamatory. Again, ordinary citizens interested in the activities of Ralph Nader have an ease and convenience of viewing all such documents, as illustrated above; giving a populist view to the alleged bad conduct of VISION MEDIA without allowing the case to proceed in its ordinary course through the court system.

### **CONCLUSION**

VISION MEDIA would respectfully request that the Court reject the Defendants opposition and amended opposition and grant its motion to strike Defendants motion to dismiss and motion for summary judgment and further preclude any further internet blogging of the Internet Litigation by Defendants' counsel. VISION MEDIA would further request that, should

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the motion be denied, that it be entitled to additional time to respond to the motion to dismiss and motion for summary judgment on its merits. VISION MEDIA would further request any further relief that the Court any and the grant its motion to dismiss and for summary the motion to strike Defendants' Motion To Dismiss Or For Summary Judgment and Memorandum of Law In Support For Failure To Comply With The Local Rules of Court. Plaintiffs would further request that the Court deems fair, just and equitable.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was sent via electronic transmission on this the 1<sup>st</sup> day of February, 2010 to **Lee E. Levenson, Jr.**, co-counsel for Plaintiffs, 2500 Quantum Lakes Drive, Suite 203, Boynton Beach, Florida 33426 and to **Paul Alan Levy, Esquire**, Public Citizen Litigation Group, 1600 20<sup>th</sup> Street, N.W., Washington, D.C. 20009-1001.

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