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7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 CHRISTOPHER RECOUVREUR,)

11 Plaintiff,)

12 v.)

13 CHARLES CARREON,)

14 Defendant.)

No. 3:12-cv-03435

15 **THIRD AFFIDAVIT OF PAUL ALAN LEVY**

16 1. My name is Paul Alan Levy. I am lead counsel for plaintiff. I make this affidavit in support of
17 plaintiff's opposition to the motion for an extension of time.

18 2. After our motion for award of service expenses and related attorney fees was filed, Mr. Carreon
19 approached me to request an extension of time to respond to the complaint. I told him that plaintiff would
20 agree to an extension that was as long as defendant needed. In response, he asked for two weeks, and
21 eventually sent me a proposed stipulation to that effect. I agreed that he could file it with my e-signature.

22 3. Mr. Carreon also suggested that the case could be settled, and asked me to send him a draft
23 "release." I sent a draft settlement agreement with a proposed declaratory judgment on the morning of
24 November 29, 2012. On December 3, 2012, he and I had a discussion about the possible terms of settlement.
25 During that conversation, Mr. Carreon demanded a resolution on his own terms, including the
26 relinquishment of any claims for attorney fees, which he claimed he could not afford anyway, and warned
27 me that the litigation would be extensive and time-consuming if his offer were rejected. He also described
28 a financial transaction that he would be unable to complete if the litigation continued (to protect his privacy,

1 I am not providing any details, although I can do so under seal if the Court deems it necessary). He warned
2 that he would sue Public Citizen if my client's refusal to agree to his terms prevented the consummation of
3 the transaction. I attach as Exhibit Y an exchange of emails that embodied these discussions, as well as
4 discussion about extensions, with the specific details about the financial transaction redacted. The lettering
5 is sequential from my previous affidavits, for ease of reference.

6 4. I told Mr. Carreon orally and in a series of emails that plaintiff would be willing to consider
7 evidence of his claimed inability to pay in deciding how to respond to his position. Attached Exhibit Z is
8 one of those emails. No such evidence has been provided. I have also offered to separate the issue of fees
9 from the discussion of settlement on the merits, so that Mr. Carreon could resolve the merits while leaving
10 any financial issues related to fees for later resolution, by motion practice or otherwise.

11 5. After these discussions took place, Mr. Carreon told me that he wanted an extension of time to
12 file his opposition to the motion for award of service expenses and related attorney fees. His reasoning was
13 that the motion for expenses and fees, and his planned motion to dismiss on unexplained jurisdictional
14 grounds relating to "standing," were so closely related that it made no sense to have them decided at separate
15 hearings. My refusal of that request, while also offering to agree to a short extension of two days in an
16 attempt at accommodation, is reflected in Exhibit Y.

17 6. The offer of judgment that is attached to Mr. Carreon's motion for extension was sent to me after
18 I declined to agree to his requested extension. Mr. Carreon had not previously told me that he planned to
19 make an offer of judgment.

20 7. After Mr. Carreon shared his proposed briefing and hearing schedule with me, but before he filed
21 his motion for an extension, I told him that Ms. Gellis planned to be traveling on January 24, and that on
22 January 31 (the Court's following motion day) I would be traveling as well.

23 I hereby certify under penalty of perjury that the foregoing is true and
24 correct. Executed on December 5, 2012.

25 
26 Paul Alan Levy
27
28

From: Paul Alan Levy
Sent: Tuesday, December 04, 2012 6:23 PM
To: 'Charles Carreon, Esq.'; cathy@cgcounsel.com; Julie Murray
Subject: RE: Here is the exchange we had yesterday afternoon

Given that you have never looked at the issue, it is very odd that you are basing your arguments on the assumption that you are right.

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From: Charles Carreon, Esq. [mailto:chascarreon@gmail.com]
Sent: Tuesday, December 04, 2012 6:08 PM
To: Paul Alan Levy
Subject: Re: Here is the exchange we had yesterday afternoon

Paul:

Hmmm. Do you have a cite for that proposition. It seems counterintuitive, although I have never parsed the issue.

Nonetheless, it would seem that courtesy and court efficiency would dictate consolidating the hearing dates and briefing schedule.

Are you certain you will not reconsider?

Regards,
Charles

On Tue, Dec 4, 2012 at 4:02 PM, Paul Alan Levy <plevy@citizen.org> wrote:
You are mistaken in the first sentence. Even if you are right on jurisdiction (which you aren't) you will be liable for the service costs. Just as, for example, lack of subject matter jurisdiction is not a defense to sanctions (well established at the Supreme Court level) You don't get that back even if you win on the merits.

So the motions are completely unrelated.

**Levy Affidavit
Exhibit Y**

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From: Charles Carreon, Esq. [mailto:chascarreon@gmail.com]
Sent: Tuesday, December 04, 2012 5:57 PM
To: Paul Alan Levy
Subject: Re: Here is the exchange we had yesterday afternoon

Paul,

What's confusing is why you want to hold my feet to the fire on the motion for service costs when you have already agreed to allow me until December 20th to file a motion that, if decided in my favor, would render your motion for service costs moot.

Particularly with the holiday season upon us, we certainly don't want to have a January 3rd hearing on a motion that I will argue on January 24th you had no standing to make. I'm just trying to engage in efficient calendaring.

Charles

On Tue, Dec 4, 2012 at 3:49 PM, Paul Alan Levy <plevy@citizen.org> wrote:
I cannot understand how you could now be confused

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From: Paul Alan Levy
Sent: Monday, December 03, 2012 5:35 PM
To: 'Charles Carreon, Esq.'
Subject: Proposed extension

Yes, you may file the extension stipulation that was attached to your email; I consent to it.

But Charles, given the representations that you have made below and during in our telephone conversation today about your lack of funds, and given your statements this afternoon about your intention to drag out and multiply litigation, to sue Public Citizen if my client does not agree to

your terms, and the like, I am not inclined to agree to a lengthy extension that would have the effect of moving the hearing on this issue. Indeed, it seems to me that it would be useful to clarify the possible settlement issues to get a quick resolution of your claimed inability to pay. I might add that, only a few months ago, you told me "[t]hat [you are] capable of employing counsel to handle [your] claim against her, who will incur attorneys fees and seek recovery of the same. [You] filed pro se against Inman simply for the sake of convenience and the need for speed, and not from a lack of resources." Because I assume that you would not have misrepresented the facts in a communication with opposing counsel, I am going to be very interested to learn what changes in your finances have occurred in the past four months.

If you need a couple of days to respond to the motion on expenses and fees, of course, I am glad to agree to that, so long as my week to reply moves accordingly.

As for telephone argument, if there are no factual issues that makes a great deal of sense. Perhaps it makes sense to postpone that issue until we see your papers. I do have the impression that it only takes a request from one side to get the hearing set to occur by telephone (that is what happened with the two CMC's). Of course, if the judge feels that it would be more helpful to have counsel present, I'll certainly want to respect that.

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From: Charles Carreon, Esq. [mailto:chascarreon@gmail.com]
Sent: Monday, December 03, 2012 4:54 PM
To: Paul Alan Levy
Subject: Re: Draft declaratory judgment and settlement agreement

Paul:

Here's the stipulation to which you agreed. This email will confirm that I am authorized to file it with your signature.

As an additional matter, can I send you a stipulation extending time to file an opposition to your motion for service costs until the same date, i.e., December 20th, and continuing the hearing date until an appropriate date after the holidays?

Finally, I will be requesting leave to appear by telephone at the hearings on my Rule 12 motion and your motion for costs. May I have your position on that?

Charles

On Mon, Dec 3, 2012 at 1:04 PM, Paul Alan Levy <plevy@citizen.org> wrote:
Did you try to call me at 3 PM eastern time? Would it be better for me to call one of the 520 numbers below?

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From: Charles Carreon, Esq. [mailto:chascarreon@gmail.com]
Sent: Monday, December 03, 2012 1:45 PM

To: Paul Alan Levy
Subject: Re: Draft declaratory judgment and settlement agreement

Paul,

I am a lot less heated about the matter these days, and I don't think you'll find us far apart. In all candor, I am actually on the very verge [REDACTED] and this litigation is hanging up the process, so [REDACTED] hasten the resolution. Thus, even better than an extension would be a resolution.

I don't have any funds to pay the attorneys fees claimed in your motion; however, I'll pay the service expenses of \$375, sign a mutual release, and stipulate to your declaratory judgment in essentially the form requested, with language added to make clear that it cannot be used for commercial purposes, nor may the domain be sold to anyone but me. I would like to have the option to buy the domain from Mr. Recouvreur when and if he wants to stop using it for satirical purposes, and would be glad to pay all of his registration fees as the agreed price.

Regards,
Chas

On Sun, Dec 2, 2012 at 6:02 PM, Paul Alan Levy <plevy@citizen.org> wrote:
I can chat with you tomorrow afternoon at 3 PM eastern time, as you suggested in your subsequent email. I am generally easy about giving opposing lawyers extensions, but let's see whether we are at all close on the resolution of the case.

Good luck in your argument on personal jurisdiction in American Buddha this coming week. I was aware of this planned hearing – if Cathy had not served you last month, we had targeted this as another venue to serve you.....

Paul Alan Levy

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From: Charles Carreon, Esq. [mailto:chascarreon@gmail.com]
Sent: Friday, November 30, 2012 6:47 PM
To: Paul Alan Levy
Subject: Re: Draft declaratory judgment and settlement agreement

Mr. Levy:

Thank you for sending the draft documents. I am disposed to resolve this matter, and would like to speak with you next week.

Regarding scheduling. I have a mediation in Oakland on December 5th, and argument in the SDNY on the 7th, so my week is a little squeezed, and as you have previously noted, absent an extension of time, defendant's response is due on December 6th.

Accordingly, I would request an extension of ten days to file the response, and will be happy to prepare a stipulation for your approval that will not require Court approval, pursuant to L.R. 6-1: 6-1. Enlarging or Shortening Time
(a) When Stipulation Permissible Without Court Order. Parties may stipulate in writing, without a Court order, to extend the time within which to answer or otherwise respond to the complaint, or to enlarge or shorten the time in matters not required to be filed or lodged with the Court, provided the change will not alter the date of any event or any deadline already fixed by Court order. Such stipulations shall be promptly filed pursuant to Civil L.R. 5.

I will separately send you a calendar invitation to discuss settlement on Monday.

Thank you for your attention to this request.

Very truly yours,
Charles Carreon, Esq.
2165 S. Avenida Planeta
Tucson, AZ 85710
Tel 1: 520-841-0835
Tel 2: 520-762-7314
Fax: 520-843-2083

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From: Paul Alan Levy
Sent: Tuesday, December 04, 2012 6:43 PM
To: Charles Carreon, Esq. (chascarreon@gmail.com); cathy@cgcounsel.com; Julie Murray
Subject: Your asserted inability to pay

I am willing to receive your proof on a lawyers eyes only basis, so long as I have the freedom to get help from a financial professional.

But note that I am unlikely to see a simple sheet with a bunch of unsupported (and unsworn) numbers on it as meaning very much. It might provide a basis for further inquiry

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**Levy Affidavit
Exhibit Z**