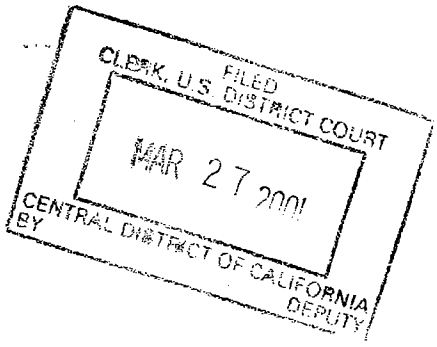
COPY

MEGAN E. GRAY (SBN 181204)
BRIAN A. ROSS (SBN 193506)
BAKER & HOSTETLER LLP
333 South Grand Avenue, Suite 1800
Los Angeles, California 90071-1523
(213) 975-1600 / Fax: (213) 975-1740

Attorneys for Defendant
RONALD READER
(previously sued as JOHN DOE 2,
aka ELECTRICK_MAN)



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

GLOBAL TELEMEDIA INTERNATIONAL, INC., a Delaware corporation; JONATHON BENTLEY-STEVENS, an individual; REGINA S. PERALTA, an individual,

Plaintiffs,

v.

DOE 1 aka BUSTEDAGAIN40; DOE 2 aka ELECTRICK_MAN; DOE 3 aka BDAMAN609; and DOES 4 through 35, inclusive,

Defendants.

Case No.: SACV 00-1155 DOC (EEx)

1. Notice of Motion and Motion for Statutory Attorneys' Fees and Costs and Request for Sanctions; Memorandum of Points and Authorities in support thereof;

2. Declaration of Megan E. Gray [Filed Concurrently];

3. Declaration of Ann Beeson [Filed Concurrently]; and

4. [Proposed] Order [Lodged Concurrently]

Date: April 30, 2001
Time: 8:30 a.m.
Courtroom: 9D
Judge: Honorable David O. Carter

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TABLE OF AUTHORITIES

PLEASE TAKE NOTICE THAT, on April 30, 2001, at 8:30 a.m. or as soon thereafter as the matter may be heard, in Courtroom 9D of the above-entitled Court, located at 411 West Fourth Street, Santa Ana, California, Defendant Ronald Reader, previously sued as John Doe 2, aka ELECTRICK_MAN, will and does hereby move the Court for an award of attorneys' fees and costs pursuant to Code of Civil Procedure Section 425.16 and sanctions for the filing and prosecution of a frivolous lawsuit pursuant to Fed. R. Civ. P. Rule 11.

The Motion is made on the grounds that Defendant is the prevailing party and is entitled to an award of his reasonable attorneys' fees and costs incurred in the successful defense of this action. Defendant also requests that the fee award be enhanced pursuant to Ketchum v. Moses, 24 Cal. 4th 1122, 104 Cal. Rptr. 2d 377, 17 P.3d 735, 2001 Cal. LEXIS 916 (Feb. 26, 2001). Defendant also seeks sanctions against the Plaintiffs' attorneys for filing and prosecuting a frivolous lawsuit, which had as its primary purpose the intimidation of critical speech protected under the California and United States constitutions.

This Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Megan E. Gray, the Declaration of Ann Beeson, the pleadings and papers on file in this action, and such arguments as may be presented at the time of any hearing on this matter.

Dated: March 27, 2001

MEGAN E. GRAY
BRIAN A. ROSS
BAKER & HOSTETLER LLP

Megan E. Gray

Attorneys for Defendant
RONALD READER
(previously sued as John Doe 2, aka
ELECTRICK_MAN)

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Global Telemedia International, Inc. ("GTMI") and GTMI officers Jonathon Bentley-Stevens ("Bentley-Stevens") and Regina S. Peralta ("Peralta") (collectively, "Plaintiffs") filed a lawsuit for defamation based on Defendant Ronald Reader's ("Reader") statement posted online in March 2000: "The thing that concerns me is their PR statements give them the appearence [sic] of being so high tech, so cutting edge but their real life product is so slow or non-existant [sic]." This statement was made in the context of a rousing debate on an Internet message board. Reader's statement, as well as being an expression of his opinion, was also substantially true, as Plaintiffs well knew, and as Plaintiffs even acknowledged in their own press releases.

On April 6, 2000, before incurring any attorneys' fees in this matter, Reader wrote to Plaintiffs and apologized for criticizing them. He pleaded with Plaintiffs to drop the lawsuit.[1] Plaintiffs refused, and Reader was forced to retain counsel. In November 2000, Reader's counsel spoke with Plaintiffs' counsel and alerted him to the anti-SLAPP statute and the potential for an attorneys' fee award.[2] However, Plaintiffs again refused to dismiss the lawsuit.

On several other occasions, Reader's counsel repeatedly invited Plaintifs to dismiss the lawsuit. See Declaration of Megan E. Gray filed concurrently with this Motion ("Gray Decl."), ¶¶ 10-13, Exhs. C-F. Notably, while Reader's Special Motion to Strike was pending, Plaintiffs issued press statements in which they echoed the very statement over which they were suing Reader. Before Reader's counsel filed a supplemental brief with the Court presenting evidence of these press releases, she again invited Plaintiffs to dismiss the lawsuit. She also informed Plaintiffs' counsel that she would seek sanctions against Plaintiffs' attorneys if they insisted on continuing with this frivolous lawsuit. Gray Decl., ¶ 11, Exh. D. However, Plaintiffs refused to dismiss the lawsuit.

On February 23, 2001, the Court determined that Reader's statement was, in fact, protected opinion, and granted the Special Motion to Strike under Cal. Code Civ. Proc. § 425.16. As the

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[1] See Supporting Decl. of Ronald Reader, filed with Special Motion to Strike, ¶ 13, Exh. 5.
[2] See Supporting Decl. of Megan E. Gray, filed with Special Motion to Strike, ¶ 25.

prevailing party, Reader is entitled to recover his attorneys' fees and costs pursuant to Cal. Code Civ. Proc. § 425.16(c).

Within days after the Court's ruling, Reader's counsel notified Plaintiffs' counsel of the total attorneys' fees incurred to date, and requested payment in that amount. She further alerted opposing counsel to a recent California Supreme Court decision permitting enhanced attorneys' fees awards under Section 425.16: Ketchum v. Moses, 24 Cal. 4th 1122. Moreover, she informed opposing counsel that, should they refuse to voluntarily abide by the strictures of Section 425.16 and pay these fees, making a formal Motion for Attorneys' Fees necessary, Reader would seek an enhanced fee award under Ketchum v. Moses, and would also seek sanctions against Plaintiffs' counsel for the filing and prosecution of this meritless action. Gray Decl. ¶ 13. Plaintiffs refused to pay any portion of Reader's attorneys' fees, forcing Reader to bring this Motion.

Based on the evidence previously submitted to this Court, and based on the evidence submitted to the Court in this Motion, it is a foregone conclusion that Plaintiffs filed this lawsuit to punish Reader for his critical, but protected speech, and it is clear that Plaintiffs believe themselves to be entirely immune to any award of attorneys' fees that this Court may grant.

II. THE MINIMUM AWARD OF ATTORNEYS' FEES SHOULD BE $49,702.44

The defense of this lawsuit has required substantial effort. Reader's counsel not only prepared the papers removing this case to federal court, but also prepared dispositive motion papers, including several declarations and evidentiary objections, and this motion for attorneys' fees and sanctions.[3] As a result, Reader has incurred $49,702.44 in attorneys' fees and costs. Attorney fee awards in amounts similar to or greater than those incurred by Reader have been upheld in appellate decisions involving special motions to strike. See, e.g., Macias v. Hartwell, 55 Cal. App. 4th 669, 64

[3] All of the fees incurred in the defense of this litigation, including those fees incurred in the preparation of the Motion for Attorneys' Fees, are recoverable. "...[a]n attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee. [Citation omitted.] We explained that the purpose behind statutory fee authorizations – i.e., encouraging attorneys to act as private attorneys general and to vindicate important rights affecting the public interest, 'will often be frustrated, sometimes nullified, if awards are diluted or dissipated by lengthy, uncompensated proceedings to fix or defend a rightful fee claim.' [Citation omitted.]" Ketchum v. Moses, 2001 Cal. LEXIS 916 at *19.

Cal. Rptr. 2d 222 (1997) (award of $44,445 upheld); Church of Scientology v. Wollersheim, 42 Cal. App. 4th 628, 658, 49 Cal. Rptr. 2d 620, 638 (1996) (affirming award of over $130,000 in attorneys' fees); Ketchum v. Moses, 24 Cal. 4th 1122, 104 Cal. Rptr. 2d 377, 17 P.3d 735 (Feb. 26, 2001) (lodestar affirmed at $70,106).

The determination of whether or not fees are reasonable is vested in the discretion of the trial court. Church of Scientology, 42 Cal. App. 4th at 658-59. In making this determination, the Court ". . . may and should consider 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded . . . ; the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the case, and the time consumed.'" [Citation omitted.] Id.

Defending against "cybersmear" litigation (as it is called) is difficult because it involves educating a court about the relatively new phenomenon of Internet message boards, conveying the type of animated and robust conversations that transpire there, and applying the First Amendment to this relatively nascent forum. As demonstrated in Reader's Request for Publication, lodged on March 8, 2001, there are few court decisions in this area, and because of this novelty, drafting the Special Motion to Strike required extraordinary preparatory work. In the Special Motion to Strike, Reader argued that Plaintiffs' claims were barred by a number of constitutionally-mandated defenses, including that (1) Reader's statement is protected speech about a matter of public interest; (2) Reader's statement is not an assertion of fact, and therefore cannot be defamatory; (3) even if Reader's comments are considered statements of fact, they are substantially true; (4) Reader did not act with actual malice; and (5) Reader's statement did not cause any damage to Plaintiffs' reputations.

In this particular case, in order to establish the substantial truth of Reader's statement, the defense also required a great deal of time researching the intricate corporate structures and dealings of GTMI, a publicly-owned company that operates in a surprisingly perplexing and suspicious

fashion.[4] For example, the true nature and extent of GTMI's programs and product roll-outs could only be pieced together by examining and comparing the sporadic, contradictory statements that GTMI made in years of cryptic and forward-looking (if not outright misleading) press releases, SEC filings, articles compiled on GTMI's own website, and statements distributed on Internet message board postings, which postings were buried among thousands of other postings, with hundreds more added each day. Moreover, GTMI and its public relations agents befriended various message-board participants, coordinated malicious online attacks against Reader, and made public, unfiltered statements online concerning Reader and the other defendants – all of which came to light during an investigation of the particular message board where Reader made the statements at issue. In addition, GTMI's corporate structure includes purported entities located in several countries (the United States, Australia, Philippines), incestuously intertwined in a series of shell-corporation takeovers, buyouts, internal restructurings, and reverse mergers, and many of these maneuvers appear to have resulted in investigations and/or lawsuits. See, e.g., Special Motion to Strike, Sections I(B), pages 1-3, V(B)(1), pages 14-19; see also, Supporting Decl. of Megan E. Gray, filed with Special Motion to Strike, ¶¶ 5, 6, 14-24.

All of this time and effort was worthwhile, as it resulted in the Court granting the Special Motion to Strike, sparing Reader the significant cost of litigating a pernicious, unmeritorious lawsuit. The hours spent were justified.

Not only were the hours justified, but the hourly rates charged were reasonable. Reader's counsel, Megan E. Gray, is a nationally recognized pioneer and leader in the area of "cybersmear" litigation. Nonetheless, Reader's counsel charged their standard hourly rates, which indeed, are actually lower than comparable attorneys in this area.[5] Gray Decl., ¶¶ 2-7.

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[4] The amount of attorney time required in this case was increased by the refusal of Plaintiffs' counsel to provide the most basic of information, such as Proofs of Service that list the addresses of other defendants. This made Reader's necessary showing for removal to federal court more difficult. See Declaration of Brian A. Ross in Support of Reader's Motion for Removal, ¶ 6, filed November 22, 2000.

[5] This is one of reasons why an enhancement is appropriate. See Section III below.

Moreover, the ultimate work product was of the highest quality and achieved the desired results. Therefore, at a minimum, the Court should award Reader the attorneys' fees expended. However, the Court should also enhance this award, as discussed below.

III. THE COURT SHOULD AWARD READER NOT ONLY THE ATTORNEYS' FEES EXPENDED, BUT SHOULD ALSO ENHANCE THAT AWARD

The California Supreme Court recently issued a decision permitting fee enhancements in SLAPP cases. Ketchum v. Moses, 24 Cal. App. 4th 1122. While Ketchum approved a fee enhancement based on the contingent nature of the case and because of the exceptional representation by defendant's counsel, the Supreme Court did not foreclose fee enhancements in non-contingency fee cases, as here. In fact, the Supreme Court's opinion indicated that fee enhancements are appropriate under a variety of circumstances.

The touchstone, or lodestar, figure is the basic fee for comparable legal services in the community. This is what is requested above. The basic fee may be adjusted by the Court based on factors that include the skill displayed in presenting the questions involved, and the extent to which the nature of the litigation precluded other employment by the attorneys.[6] Ketchum v. Moses, 2001 Cal. LEXIS 916 at *15, citing Serrano v. Priest, 20 Cal. 3d 25, 49, 141 Cal. Rptr. 315, 569 P.2d 1303, 1316 (1977). Another basic factor is the strength or societal importance of the public policy vindicated by the litigation. Serrano v. Priest, 20 Cal. 3d at 45, 569 P.2d at 1314. The purpose of such an adjustment is to fix a fee at the fair market value for the particular action.

A. Counsel's Hourly Fee Does Not Reflect Her Expertise In This Litigation, Nor Does It Reflect The Skill That Counsel Demonstrated

"[A] trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by

[6] The lodestar may also be increased based upon "the novelty and difficulty of the questions involved" (Ketchum v. Moses, 2001 Cal. LEXIS 916 at *15, 24 Cal. 4th 1122), but Reader does not believe enhancement on this ground is appropriate here, because the lodestar figure (in the hours expended) takes this into account. Enhancement of the fee award cannot be calculated in such a way that results in double-counting. Id. at *32.

an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation." Ketchum v. Moses, 2001 Cal. LEXIS 916 at *32, 24 Cal. 4th 1122.

Such a multiplier is appropriate here because the hourly rate for Reader's counsel does not take into account that she is the foremost private attorney in the country defending individuals who have been sued for posting innocuous comments on Internet message boards. In fact, she is the only private attorney in the nation with any significant experience in this type of legal representation. Her work has been featured in the *National Law Journal* and the *Wall Street Journal*, among other publications. Gray Decl., ¶ 2, Exh. A. Her briefs in "cybersmear" litigation have been relied on and plagiarized by practically every lawyer defending an individual who has been the victim of a SLAPP suit arising out of statements made online.[7] See Declaration of Ann Beeson, ¶ 2; see also Gray Decl., ¶ 2. It is remarkable that a fifth/sixth year associate has established this skill and experience. Despite her youth, Reader's counsel has ably defended this lawsuit, as even Plaintiffs' own counsel acknowledged in their pleadings. See Plaintiff's Opposition to Defendant Reader's Special Motion to Strike, p. 2.

Ms. Gray's skill and expertise in this litigation is not reflected in her hourly fee. Her experience and skill are commensurate with that of a junior partner in this area of the law, who would typically command a reasonable hourly rate of $350. Gray Decl. ¶ 2. However, Ms. Gray's hourly fee is $250.[8] Accordingly, a multiplier should be applied to the fees.

B. The Nature Of "Cybersmear" Litigation Is Such That Enhancement Is Necessary To Maintain Free Speech Protections For Internet Posters

"In cases involving enforcement of constitutional rights, but little or no damages, such fee enhancements may make such cases economically feasible to competent private attorneys." Ketchum v. Moses, 2001 Cal. LEXIS 916 at *17, 24 Cal. 4th 1122. With respect to Cal. Code Civ. Proc. § 425.16(c), ". . . the legislative aim in including the attorney fee provision was apparently to

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[7] By using the term "plagiarized," counsel does not intend any derogation, because such litigation is justly defended, and these efforts are to be encouraged.

[8] Even ignoring her "cybersmear" expertise, Ms. Gray's hourly fee is actually lower than associates of her class working in the internet/media practice at other firms. See Gray Decl., ¶¶ 4-7.

strengthen enforcement of certain constitutional rights, including freedom of speech and petition for redress of grievances, by placing the financial burden of defending against so-called SLAPP actions on the party abusing the judicial system, and by encouraging private representation . . ." Id. at *25-26.

1. This Litigation Vindicates an Important Legal Right with Implications Beyond the Case at Bar

"Cybersmear" litigation is often a situation of "Goliath" chasing "David." Typically, a publicly-traded corporation or other powerful entity, angered by statements posted online, seeks to embarrass and harass the speaker into silence by using swift, forceful legal tactics to uncover the speaker's true identity and then "slap" him/her with an intimidating lawsuit, or silence him with threats of continuing the lawsuit. See Gray Decl., Exh. A; see also, Supporting Decl. of Megan E. Gray, filed with Special Motion to Strike, ¶ 11 and Exh. "I" thereto. Such tactics are usually sufficient to accomplish the client's goal: an Internet forum where posters, if they have nothing positive to say about a plaintiff, don't say anything at all. The judicial system as a whole is witnessing a burgeoning amount of litigation (conservative figures estimate more than 500 of these "cybersmear" cases) over critical, but protected, statements made on Internet message boards. Gray Decl., ¶ 2. California courts in particular are victims of this scourge because California is home to Yahoo!, which hosts the most popular message-board forum. Gray Decl., ¶ 2.

These cases represent a unique threat to free speech rights because they are so easy to initiate and so costly to defend. From the plaintiff's perspective, usually a large and well-financed company, there is only a slim chance that a defendant will mount a legal challenge and will prevail on a motion resulting in an attorneys' fee award of a few tens of thousands of dollars -- this is not a sufficient deterrent. On the other hand, for the average person, a few thousand dollars, even if there is a good chance that eventually it will be recouped, is financially crippling. The very thought of that there are over 500 of these cyberSLAPP cases would cause any person of moderate financial means to

voluntarily chill his speech, which is precisely what Section 425.16 and the First Amendment are supposed to guard against.

2. Defense of Cybersmear Litigation Precludes Other Legal Employment

Many competent lawyers shy away from defending these cases not merely because the defendants are typically unsophisticated individuals with little or no resources to hire competent counsel, but because defending such cases may result in the loss of large corporate clients who themselves may have been criticized online. To explain further, an individual sued for defamation is unlikely to hire a law firm on a continuing basis, but a company will – and most firms do not want to be conflicted out of more lucrative litigation in the future. Gray Decl., ¶ 2. Even more importantly, lawyers do not want to antagonize current clients, whose corporate executives often have egos that have already been pricked by criticism on Internet message boards.

It was for these very reasons that, at one point, Reader's counsel was ordered by her own law firm to cease representing defendants in "cybersmear" litigation or otherwise making public statements that supported such efforts.[9] Because of the relatively unattractive nature of this line of work, fee enhancements are a necessary means for defendants to obtain competent defense counsel and credibly deter meritless SLAPP suits.

For all of these reasons, Reader requests a fee enhancement of 2.0 (like that employed in the Ketchum case), resulting in a total fee award of $99,404.88.

IV. PLAINTIFFS' COUNSEL SHOULD BE SANCTIONED FOR PERMITTING THIS LAWSUIT TO BE FILED AND PROSECUTED

Plaintiffs' counsel should be sanctioned under Fed. R. Civ. P. Rule 11 for filing this meritless lawsuit and permitting it to go forward primarily for the improper purposes of harassing Reader, chilling the exercise of his First Amendment rights, unnecessarily delaying the inevitable outcome of this litigation, and needlessly increasing its cost to the parties. Reader does not request monetary

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[9] Shortly after Ms. Gray's resignation as result of this dictate, the law firm reconsidered its decision and, for the time being at least, has allowed her representation of "cybersmear" defendants to continue. Gray Decl., ¶ 2.

sanctions greater than the requested attorneys' fee award, but merely requests that counsel be held responsible, along with their clients, for that sum.

> "By presenting to the Court (whether by signing, filing, submitting or later advocating) a pleading, written motion or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonably under the circumstances,
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . .

Fed. R. Civ. P. Rule 11(b).

"Rule 11 does not prohibit merely intentional misconduct. Inexperience (and) incompetence . . . may all contribute to a violation." Cabell v. Petty, 810 F.2d 463, 466 (4th Cir. 1987). Sanctions may be awarded under Rule 11 not only because of filing meritless papers, but also where an attorney reaffirms or argues positions contained in earlier-filed papers after learning such positions are without evidentiary support or legal merit. [Committee Notes on Amendments to Federal Rules of Civil Procedure (1993) 146 F.R.D. 401, 585; Battles v. City of Ft. Myers, 127 F.3d 1298, 1300 (11th Cir. 1997); Childs v. State Farm Mut. Auto. Ins. Co., 29 F.3d 1019, 1025 (5th Cir. 1994).

If a Rule 11 violation exists, the Court is authorized to impose an appropriate sanction, limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Fed. R. Civ. P. Rule 11(c)(2). Under the circumstances, making Plaintiffs' counsel jointly and severally liable for the attorneys' fee award, along with their clients, is reasonable and the minimum necessary to deter the filing of future meritless actions.

A. Given the Evident Opinionated Nature and Substantial Truth of Reader's Statements, this Lawsuit Was Frivolous

This Court granted the Special Motion to Strike on the grounds that Reader's statement was protected opinion. Thus, the Court did not have occasion to reach the question of whether Reader's

statement was substantially true. However, that ground remains paramount, and also justifies sanctions.

Reader's statement was obviously an opinion, for all the reasons stated in the Special Motion to Strike. Any person looking at the message board would quickly realize this. Plaintiffs and their counsel chose to ignore this obvious reality. Presumably, they made this choice because the drive to penalize critical posters was all-encompassing.

In addition, it is evident from the papers signed by Plaintiffs' counsel and filed with this Court that, in fact, Reader's statement was substantially true and that Plaintiffs knew that the statement was substantially true. Plaintiffs' counsel did not investigate the facts, however superficially, prior to filing this lawsuit, or apparently, even while opposing Reader's Special Motion to Strike.

It seems evident that, despite filing a complaint alleging the falsity of Reader's statement, Plaintiffs' counsel did not discuss with their clients whether or not Reader's statement that GTMI's product roll-out was, in fact, slow or non-existent.[10] Reader's Special Motion to Strike listed examples of GTMI's slow or non-existent product roll-out *ad naseum*.[11] It appears that Plaintiffs' counsel did not discuss the truth or falsity with their clients at that point, because no effort was made in the Opposition to refute these statements (despite Plaintiff counsel's generalized assertion that "Reader's statements... are not remotely true..."),[12] with one huge exception. The Opposition generally asserted that GTMI had products "on the market" and Bentley-Stevens filed a declaration stating that the SmartCard was "on the market."[13] However, the SmartCard was not on the market, as Reader established in his Reply. See Reply in Support of Special Motion to Strike, page 8, fn 17. More importantly, it appears that Bentley-Stevens forgot the specifics of his declaration when he, a few short weeks later, issued a press release stating that GTMI was "close to releasing" the SmartCard and acknowledging

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[10] Complaint ¶ 19.
[11] Special Motion to Strike, pages 13-18.
[12] Opposition to Special Motion to Strike, page 10.
[13] Opposition, page 10; Bentley-Stevens Declaration ¶ 16. These assertions were made, despite the fact that Plaintiffs earlier admitted, in a September 2000 press release, that the roll-out of their products was slow. See Reply in Support of Motion to Strike, page 8.

delays. See Supplemental Brief re Subsequently Discovered Evidence, filed/lodged February 9, 2001.

Plaintiffs' counsel insisted on pressing forward with the lawsuit, even when, Reader's counsel presented Plaintiffs' counsel with evidence of Plaintiffs' own admissions in press releases that made the conclusion of substantial truth irrefutable. Gray Decl., ¶ 11, Exh. D. Moreover, Plaintiffs' counsel, in permitting Jonathan Bentley-Stevens' declaration to be filed (and uncorrected by them when presented with details establishing its falsity) practiced deception before this Court.

Although Plaintiffs' counsel were warned repeatedly that sanctions would be sought if they persisted in pursuing this meritless claim against Reader, Plaintiffs' counsel continued the representation and kept this case alive for many months.

B. Unless Plaintiffs' Counsel Are Held Accountable, It Is Extremely Unlikely That The Attorneys' Fee Award Will Be Paid

As Plaintiffs' counsel are well aware, Plaintiffs will not pay any attorneys' fee award that is entered against them. This appears to be the strategy in other GTMI litigation as well, including litigation involving the same counsel as in the case at bar. See Section V below. Therefore, Reader will face the prospect of spending exorbitant sums to collect, at most, a fraction of the fee award. Indeed, Bentley-Stevens has testified that GTMI does not have any bank accounts, and that to pay its bills, he or another corporate officer will write checks from their own bank accounts. Gray Decl., ¶ 14(e). The only realistic chance of Reader recovering his attorneys' fees is by imposing monetary sanctions on Plaintiffs' counsel pursuant to Fed. R. Civ. P. Rule 11, making them jointly and severally liable for Reader's attorneys' fee award.

V. PLAINTIFFS' PAST PRACTICES MANDATE THAT THIS COURT EXPRESSLY RETAIN JURISDICTION TO ENFORCE ITS ATTORNEYS' FEE AWARD

An attorneys' fee award is extremely unlikely to be paid by Plaintiffs. Reader faces the high likelihood of being forced to fund a separate collection lawsuit and/or judgment debtor and contempt proceedings. Reader does not have the financial means to fund these additional efforts. Unless he can collect the attorneys' fee award, Plaintiffs will have accomplished everything they set out to do in this litigation: namely, punish Reader and cause him extreme hardship for his critical statements.

As part of Reader's counsel's research into the substantial truth of Reader's statement, counsel spoke with the attorneys representing defendants in other litigation with GTMI. See Gray Decl., ¶ 14. As part of this research, Reader's counsel learned that Plaintiffs are nearly impossible to collect from. Id. This fact is not hard to believe – as evident from Bentley-Stevens' deceptive declaration filed in this action, the SEC investigations against him, the investigative news reports about him and GTMI, and the financial games played to drum up additional investments. See Declaration of Jonathon Bentley-Stevens Re: Motion Opposition, filed on or about January 22, 2001; see also, Reader's Special Motion to Strike, Section I(B), page 1; see also Supporting Decl. of Megan E. Gray, filed with Special Motion to Strike, ¶¶ 4-6. Plaintiffs are quite accomplished at avoiding being held responsible for their actions.

For example, Reader's counsel learned from Patrick Shaw, a Dallas, Texas attorney who represented a certain client involved in a potential business venture a few years ago with Bentley-Stevens, that client invested a significant amount of money with Bentley-Stevens to fund the purchase of a timber plant in the Philippines. When the plant was foreclosed upon, a dispute arose between the parties, and Bentley-Stevens ultimately agreed to return a portion of the client's investment. However, the client has never received any of the promised funds. Moreover, it has been nearly impossible for Mr. Shaw to trace Bentley-Stevens' convoluted finances and enforce the parties' settlement agreement. See Gray Decl., ¶ 14(a).

In addition, Reader's counsel learned that, in K&S International Communications, Inc. v. Global Telemedia International, Inc, K&S had sued GTMI in Florida state court for breach of contract. K&S obtained an award of $2,536,906.60 against GTMI, and judgment in that amount was entered on December 18, 1998. Gray Decl., ¶ 14(b), Exh. G. In April 1999, the parties tried to settle the matter, agreeing that GTMI would pay to K&S the total sum of $325,000, in installments. GTMI then tried to renegotiate the settlement for a bank instrument instead. Gray Decl., ¶ 14(c), Exh. H. When GTMI failed to pay even this substantially reduced amount, K&S, unable to collect in Florida, hired John Meindl, Esq., of Barger & Wolen, to pursue GTMI in California and collect on the

Florida judgment.[14] In June 2000, K&S filed an Application for Entry of Judgment on Sister State Judgment, and judgment was entered later that month in Orange County. Bentley-Stevens and Regina S. Peralta were ordered to appear, but they did not. They were then ordered to debtors' examinations, but did not appear, so the court set an order to show cause re contempt. It is worth noting that that GTMI is represented in the K&S litigation by the same counsel representing Plaintiffs in the instant action, and GTMI appears to be practicing a fraud upon the Court by hiding its assets.[15] Gray Decl., ¶ 14(d), Exh. I.

Reader's counsel spoke with Mr. Meindl about K&S's collection efforts against GTMI. Mr. Meindl explained that the only valuable asset of GTMI that he could identify was some shares of stock in subsidiaries to GTMI's parent company, Bentley House Furniture Company.[16] Mr. Meindl even explained that Bentley-Stevens had testified during his deposition that GTMI does not have any bank accounts, and that to pay bills, Bentley-Stevens or another corporate officer will write checks from their own bank accounts. Accordingly, the court ordered GTMI, Bentley-Stevens, and Peralta to turn over the shares of stock to K&S. However, when Mr. Meindl tried to collect the shares, GTMI, Bentley-Stevens, and Peralta evaded collection by playing "keep away," moving the shares from person to person. They even transferred the shares to GTMI's counsel for awhile. At one point, a marshal visited Bentley-Stevens' office to levy on the shares, and Bentley-Stevens said that the shares were not there. A few weeks later though, when Mr. Meindl deposed Bentley-Stevens, he determined from the chronology of facts that Bentley-Stevens must have had the shares at the time of the marshal's visit, and was not truthful with the marshal. Bentley-Stevens could not explain this, except by purporting to have hurt his head two days before the deposition, which made him incoherent. Finally though, close to the contempt hearing date, the defendants caved and negotiated a settlement with K&S for an undisclosed fraction of the $3,088,956.36 judgment. To date

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[14] By that time, the amount of the unpaid Florida judgment, plus accrued interest, had grown to $3,088,956.36.

[15] In this litigation, Plaintiffs are represented by two law firms, Law Offices of Curtis C. Chen & Associates, and Law Offices of Philip N. Friedman. However, only the former represents GTMI in the K&S litigation.

[16] This stock, one must assume, is virtually valueless now.

however, it is unknown whether or not K&S has successfully collected any part of this fractional settlement from GTMI. Id. at ¶ 14(e).

In order to ensure that Plaintiffs pay Reader's attorneys' fee award, and that Plaintiffs' counsel pay any Court-imposed sanctions, this Court must expressly retain jurisdiction to enforce its Orders in this matter.

VI. CONCLUSION

This lawsuit was filed as part of a transparent effort to punish and silence individuals who are critical of Plaintiffs' corporate performance. The Complaint is a textbook example of a SLAPP lawsuit. The attorneys' fees incurred by Reader could have been easily avoided or substantially reduced by Plaintiffs, if they had so chosen. Unfortunately, Plaintiffs pursued a different course of action. Cal. Code Civ. Proc. § 425.16 deems that Plaintiffs, not Reader, must suffer the consequences of filing an unmeritorious laawsuit in violation of Reader's free-speech rights. The Court should order Plaintiff to pay, at a minimum, the $49,702.44 in attorneys' fees and costs incurred by Reader. Given the skill with which these issues were presented, the strength and societal importance of the public policy vindicated by the litigation, the risk that Reader's counsel will be precluded from future work because of this representation, and the urgent need to make the defense of similar "cybersmear" cases attractive to competent counsel, the lodestar figure of $49,702.44 should be enhanced, using a multiplier of 2.0, to increase the award to $99,404.88.

Also, the Court should order Plaintiffs' counsel to be jointly and severally liable with their clients for improperly filing this unmeritorious action, and for vigorously opposing Reader's Special Motion to Strike and refusing to dismiss the action, even after Plaintiffs' own public statements affirmed the truth of the very statement over which Plaintiffs sued Reader. Unless such sanctions are imposed, Reader is unlikely to actually receive payment of any attorneys' fee award, and Plaintiffs (and their counsel) will have achieved the very goals that they sought with this litigation: to punish Reader and make him pay for exercising his free speech rights.

Finally, in order to ensure that Plaintiffs pay Reader's attorneys' fee award, and that Plaintiffs' counsel pay any Court-imposed sanctions, this Court should expressly retain jurisdiction to enforce its Orders in this matter.

Dated: March 27, 2001

MEGAN E. GRAY
BRIAN A. ROSS
BAKER & HOSTETLER LLP

Megan E. Gray

Attorneys for Defendant
RONALD READER
(previously sued as John Doe 2, aka ELECTRICK_MAN)