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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

LAWRENCE B. LOCKWOOD, PANIP, LLC,

Plaintiffs,

v.

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, JONATHAN HANGARTNER, STEVE P. HASSID,

Defendants.

Case No. CV 09-5157 JFW (AGRx)

NOTICE OF MOTION AND DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' STATE LAW CLAIMS PURSUANT TO CAL. CIV. PROC. CODE § 425.16

Submitted Herewith:
(1) Memorandum of Points and Authorities;
(2) Declaration of Dennis J. Smith;
(3) Request for Judicial Notice; and
(4) [Proposed] Order

Hearing
Date: November 9, 2009
Time: 1:30 p.m.
Ctrm: 16 - Spring, Hon. John F. Walter

TO: PLAINTIFFS LAWRENCE B. LOCKWOOD AND PANIP, LLC AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on November 9, 2009, at 1:30 p.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable John F. Walter, Courtroom 16, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012, Defendants Sheppard, Mullin, Richter & Hampton LLP, Jonathan Hangartner, and Steve P. Hassid will bring on for hearing the following motion.

MOTION

Defendants hereby move to strike Plaintiffs' state law claims for malicious prosecution, interference with prospective economic advantage, and fraud — the first through third causes of action, respectively, in Plaintiffs' Complaint filed July 15, 2009 — and for an award of attorneys' fees and costs under California's Anti-SLAPP Law, CAL. CIV. PROC. CODE § 425.16.

The grounds for this motion are:

1. All of Plaintiffs' state law claims are subject to the Anti-SLAPP statute.

2. All of Plaintiffs' state law claims are barred by applicable statutes of limitations.

3. Plaintiffs' claims for interference with prospective economic advantage and fraud are further barred by the litigation privilege.

4. Plaintiffs' claim for interference with prospective economic advantage is further barred because Plaintiffs are seeking damages for alleged interference with potential relationships that never arose.

5. Plaintiffs' state law claims for malicious prosecution and fraud are further barred by federal preemption. There is no private cause of action for alleged malicious prosecution or fraud on the U.S. Patent and Trademark Office ("PTO").

6. Plaintiffs' state law claim for malicious prosecution is further barred because (a) the PTO conducted an independent investigation in response to Defendants' reexamination requests; and (b) Defendants cannot effectively defend themselves without revealing privileged communications with, and confidential information learned from, their clients.

7. Plaintiffs' state law claim for fraud fails to state a claim for relief because Defendants' alleged mischaracterizations of publications and patents in their clients' reexamination requests simply did not constitute fraud.

8. Under CAL. CIV. PROC. CODE § 425.16(c), if Plaintiffs fail to prove a probability of success in opposing this motion, the state law claims in the Complaint must be stricken and Defendants must be awarded their attorneys' fees and costs.

In support of this motion, Defendants rely on the accompanying (1) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' STATE LAW CLAIMS PURSUANT TO CAL. CIV. PROC. CODE § 425.16, (2) DECLARATION OF DENNIS J. SMITH IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE; (3) DEFENDANTS' REQUEST FOR JUDICIAL NOTICE; DECLARATION OF DARREN M. FRANKLIN IN SUPPORT OF DEFENDANTS' REQUEST FOR JUDICIAL NOTICE, the pleadings and other papers on file in this action, and any further papers and evidence that may be submitted and any oral argument that may be presented at the hearing of this motion.

In compliance with the Court's Standing Order, also submitted herewith is a [PROPOSED] ORDER STRIKING PLAINTIFFS' STATE LAW CLAIMS PURSUANT TO CAL. CIV. PROC. CODE § 425.16.

This motion is made following the conference of counsel pursuant to LOCAL RULE 7-3 which took place on August 19, 2009.

Dated: September 11, 2009

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By */s/ Darren M. Franklin*
DARREN M. FRANKLIN
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SHEPPARD, MULLIN, RICHTER & HAMPTON LLP,
JONATHAN HANGARTNER and STEVE P. HASSID