



150 Post Street
Suite 520
San Francisco, CA 94108

Phone 415.955.1155
Fax 415.955.1158
www.krinternetlaw.com

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The Hon. Lucy H. Koh
United States District Court, N.D. California
280 South 1st Street
Courtroom 8 - 4th Floor
San Jose, California 95113

VIA ELECTRONIC FILING & OVERNIGHT DELIVERY

**RE: Motion to Compel Defendant Skywalker to Respond to First Set of Interrogatories and Requests for Production;
Art of Living Foundation v. Does 1-10, Case No. 10-cv-5022 LHK**

Dear Judge Koh:

Pursuant to the Minute and Case Management Order entered on January 19, 2012 [D.E. No. 141], Plaintiff submits this letter brief in support of its motion to compel Defendant Skywalker to respond to certain discovery requests. The Court should grant Plaintiff's motion because Skywalker has refused to respond to the most basic discovery, relying on his right to remain anonymous, and thereby depriving Plaintiff of any real opportunity to prosecute this action.

CERTIFICATION OF MEET-AND-CONFERENCE EFFORTS

Before filing this motion, Plaintiff's counsel engaged in good faith meet-and-confer efforts with Defendants' counsel regarding the issues in this motion. (Declaration of Karl S. Kronenberger in Support of Plaintiff's Motion to Compel ("Kronenberger Decl.") ¶¶3-4.)

BACKGROUND

On August 24, 2011, Plaintiff served: 1) Plaintiff's First Set of Interrogatories to Defendant Doe/Skywalker; and 2) Plaintiff's First Set of Requests for Production of Documents to Defendant Doe/Skywalker (collectively, the "Discovery Requests"). Among other things, Plaintiff sought information relating to Skywalker's identity, including the following interrogatories:

- IDENTIFY YOUR actual name. (Rog No. 1.)
- IDENTIFY YOUR address. (Rog No. 2.)

While this discovery was pending, Doe Defendant, specially appearing under the pseudonym "Skywalker," moved for relief from Magistrate Judge Lloyd's order denying his motion to quash a subpoena intended to discover his identity from third-party Internet Service Providers. In support of Skywalker's motion,

Skywalker's counsel argued and the Court agreed that Plaintiff could prosecute this action without Skywalker's identity. Since then, Skywalker has objected and refused to respond to several of Plaintiffs' Discovery Requests that seek information directly relevant to this lawsuit.

ARGUMENT

This case is not simply about a speaker posting allegedly defamatory statements on a website. Rather, this case involves a defendant, who admittedly had a relationship with Plaintiff or one of Plaintiff's affiliated organizations; who gained access to Plaintiff's confidential texts as a result of that relationship; and, who then disclosed Plaintiff's texts on the Internet. Based on these circumstances, Plaintiff is entitled to discovery about several topics directly related to Skywalker, his relationship to Plaintiff, his relationship to Plaintiff's competitors, and his acquisition and use of Plaintiff's texts. What follows is a non-exhaustive list of questions that Plaintiff has sought to answer through discovery, but where Plaintiff's discovery efforts have been frustrated due to Skywalker's anonymity.

- Is Skywalker a competitor of Plaintiff, or is Skywalker associated with or employed by a competitor? The blog at issue is replete with references to other people and organizations that teach breathing, meditation, and yoga. In a competitive environment, businesses frequently operate or otherwise support supposedly "neutral" review websites, which focus on other organizations in the same industry.
- Is Skywalker a former teacher, student, volunteer, or employee of Plaintiff or an affiliated organization? If so, which organization? If Skywalker was a teacher for Plaintiff or an affiliated organization, where did Skywalker receive his teacher training and by whom? Plaintiff is entitled to information regarding Skywalker's relationship with the organization, his relationship with his teachers, his access to Plaintiff's texts, and his agreements to keep those texts confidential.
- What contracts exist between Skywalker on the one hand and Plaintiff or an affiliated organization on the other hand? Did Skywalker have an employment agreement with Plaintiff or with an affiliated organization?
- Did Skywalker have any history of conflict or misconduct with Plaintiff or an affiliated organization? Was Skywalker terminated by Plaintiff or an affiliated organization as an employee, volunteer, teacher, contractor, or vendor? If so, was Skywalker engaged in misconduct leading up to any such termination?
- How did Skywalker acquire Plaintiff's texts? Who did he receive them from? In what context did he receive them? Who else observed Skywalker's acquisition of the texts?
- Is Skywalker located in the United States or does he reside in another country? If Skywalker was a teacher for Plaintiff or an affiliated organization, did he receive his training where he currently resides? If Skywalker was a student of Plaintiff or an affiliated organization, where did he take his courses?

- What other websites and blogs does Skywalker own or operate? Where else has Skywalker commented on Plaintiff or affiliated organizations? Where else did Skywalker disclose Plaintiff's texts?
- What communications has Skywalker sent or received about Plaintiff and Plaintiff's texts?
- Did Skywalker disclose Plaintiff's texts in venues other than over the Internet, such as in a competitive studio offering breathing, meditation, and yoga exercises?

As Skywalker's discovery responses show, Plaintiff has not received complete responses to any of these questions. (Kronenberger Decl. ¶2 & Exs. A-B.) Skywalker's discovery responses are so deficient that they make it impossible for Plaintiff to gather basic information essential to its claims. Moreover, Skywalker's discovery responses were clearly drafted by his attorney and/or have been filtered of any information that might be relevant to this action. These responses make clear that Plaintiff cannot prosecute this action without Skywalker's identity.

Perhaps most telling, **to date, Skywalker has produced only one document.**¹ To justify this production, Skywalker has relied on his First Amendment right to remain anonymous. Specifically, Skywalker has refused to respond to the following basic discovery requests, all of which are relevant to this action: Interrogatories Nos. 1, 7, 8, 9, 10, 14; Requests for Product Nos. 1, 2, 4, 6, 8, 12, 13, 14, 22, 23, 24.

As this letter shows, allowing Skywalker to remain anonymous has prevented Plaintiff from obtaining the most basic discovery. The truth is that discovery does not work where the responding party's attorney blocks access to the responding party. For discovery to work, the party propounding discovery must have actual access to the responding party—whether such access is through an in-person deposition or through a robust document production and unfiltered responses. Unless the Court allows Plaintiff to conduct complete discovery on Skywalker, including an in-person deposition, Plaintiff will be deprived of any actual ability to engage in discovery or to prosecute this case.

For the reasons set forth above, the Court should compel Skywalker to respond to Plaintiff's Discovery Requests.

Respectfully submitted,

KRONENBERGER ROSENFELD, LLP

s/ Karl S. Kronenberger

Karl S. Kronenberger

¹ The single document that Skywalker has produced contains analytic information for the blog located at <aolfree.wordpress.com>.