

EXHIBIT A

COPY

MAY 09 2013



MICHAEL K. JEANES, CLERK
S. LaSPALUTO
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Attorney for Plaintiffs

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 ROMEO FILIP, a married man, BATTLE
10 FOAM, LLC, an Arizona limited liability
11 company, and OUTLAW MINIATURES,
12 LLC, an Arizona limited liability company,

Plaintiffs,

13 vs.

14 NICOLAS HAYDEN and JANE DOE
15 HAYDEN, husband and wife; DOE
16 INDIVIDUALS OR ENTITIES 1-10,

Defendants.

Case No. CV2013-007123

VERIFIED COMPLAINT

19 Plaintiffs Romeo Filip ("Filip"), Battle Foam, LLC, an Arizona limited liability
20 company ("Battle Foam"), and Outlaw Miniatures LLC, an Arizona limited liability company
21 ("Outlaw Miniatures") (together with Filip and Battle Foam, collectively referred to as
22 "Plaintiffs"), for their complaint against Nicolas Hayden ("Defendant") and Jane Doe Hayden,
23 and Doe Individuals or Entities 1-10 (collectively referred to as "Defendants"), allege as
24 follows:

25 **JURISDICTION AND PARTIES**

26 1. Filip is and was, at all times relevant hereto, a resident of Maricopa County,
27 Arizona.

1 15. Battle Foam has established itself as the premier packaging company in this
2 close-knit and competitive industry.

3 16. Outlaw Miniatures is a company in its developmental stage.

4 17. Outlaw Miniatures is an entity separate and apart from Battle Foam.

5 18. Outlaw Miniatures intends to manufacture miniature war gaming figurines for the
6 miniature war game entitled "Wild West Exodus."

7 19. Outlaw Miniatures, via kickstarter.com, procures agreements with "kickstarter"
8 investors with regard to raising capital for its business operations.

9 20. "Kickstarter" investors' identities and the amount of their investments are made
10 available on Outlaw Miniatures' kickstarter.com webpage.

11 21. Defendant is a recognized blogger/commentator in the miniature war-gaming
12 community.

13 22. Defendant publishes online articles under the pen name "TastyTaste."

14 23. Defendant owns the website and domain name: bloodofkittens.com.

15 24. Defendant also controls a Facebook account under the profile name: Blood of
16 Kittens.

17 25. Upon information and belief, Defendant also owns and/or controls multiple other
18 domain names and social media accounts.

19 26. Defendant typically provides his readers with updates regarding current events in
20 the miniature war-gaming community.

21 27. Defendant attends miniature war-gaming tournaments and conventions across the
22 country.

23 28. Defendant has actual knowledge of the identities of Plaintiffs' current and
24 potential customers, business partners, and business relationships.

25 29. Defendant has direct access to a substantial amount of Plaintiffs' current and
26 potential business partners and customers through publishing online articles and attending war-
27 gaming tournaments and conventions.

28

1 30. Over time, Defendant has attacked the business reputations of Filip and Battle
2 Foam.

3 31. On or about March 7, 2013, Defendant engaged in defamatory conduct by
4 intentionally publishing false information about Filip and Battle Foam to third-parties with the
5 intent of damaging the reputations of Filip and Battle Foam.

6 32. Specifically, Defendant wrote and posted an online article entitled “Meat for
7 Meta: Bad Battle Foam Practices” (the “Defamatory Article”) on his website
8 bloodofkittens.com. A true and correct copy of the Defamatory Article is attached hereto as
9 **Exhibit A.**

10 33. Defendant falsely accused Filip of physically and verbally threatening potential
11 Battle Foam customers.

12 34. Defendant falsely accused Filip of lying to current and potential Battle Foam
13 customers.

14 35. Defendant falsely accused Filip of lying to current and potential business
15 partners.

16 36. Defendant falsely accused Filip of consistently defaulting on agreements with
17 current and potential business partners.

18 37. Defendant falsely accused Battle Foam of lying to current and potential Battle
19 Foam customers.

20 38. Defendant published his false statements to an unknown amount of third-parties
21 by posting the Defamatory Article online.

22 39. Upon information and belief, Defendant published the Defamatory Article to,
23 among other things, increase the number of visits to his website bloodofkittens.com because
24 Defendant financially profits from each visit.

25 40. The Defamatory Article falsely alleges or implies that Battle Foam has an
26 operational or financial interest in Outlaw Miniatures and Wild West Exodus.

27 41. The Defamatory Article attempts to dissuade potential customers and business
28 partners from engaging in business with Outlaw Miniatures and purchasing Wild West Exodus

1 because of the alleged, unrelated bad business practices of Filip and Battle Foam.

2 42. Defendant has actual knowledge of Outlaw Miniature's efforts to raise capital for
3 its developing business.

4 43. By publishing his Defamatory Article and directly contacting potential and
5 current customers and business partners, Defendant caused potential "kickstarter" investors to
6 retract their investments in Outlaw Miniatures.

7 44. Upon information and belief, many of Battle Foam's potential customers have
8 already decided to purchase products from Battle Foam's competitors in the industry.

9 45. Plaintiffs have incurred damages as a result of Defendant's defamatory statements
10 and intentional misconduct, including, but not limited to:

- 11 • loss of long-time and potential customers;
- 12 • loss of third-party "kickstarter" investors;
- 13 • loss of investment capital;
- 14 • loss of good will in the miniature war-gaming community;
- 15 • loss of a positive business reputation in the miniature war-gaming community;
- 16 and,
- 17 • actual and potential partnerships with other manufacturers in the miniature war-
18 gaming industry.

19 46. By letters dated April 1, 2013 and April 5, 2013, Filip and Battle Foam requested
20 that Defendant cease and desist from his tortious conduct. Filip and Battle Foam also provided
21 Defendant with a reasonable settlement offer.

22 47. Defendant was aware that the Filip and Battle Foam were prepared to file suit
23 against him in this Court if he chose not to work with them to resolve the parties' dispute.

24 48. Defendant ignored both the demand and offer articulated in the April 1, 2013 and
25 April 5, 2013 letters.

26 49. Instead, Defendant filed an unlimited civil action in the Superior Court of the
27 State of California, Contra Costa County, MSC13-00674, seeking a declaration from the court
28 as to whether his statements in the Defamatory Article are defamatory (the "California

1 Lawsuit”). A true and correct copy of the Complaint filed in the California Lawsuit is attached
2 hereto as **Exhibit B**.

3 50. Upon information and belief, Defendant strategically filed the California Lawsuit
4 as a defensive tactic to garner a forum more favorable to his own interests, cause Plaintiffs to
5 expend fees and costs in defending against a suit in California, and delay Plaintiffs from taking
6 appropriate legal action in Arizona.

7 51. Upon information and belief, since filing the California Lawsuit, and while the
8 parties were engaged in good faith settlement negotiations, Defendant again purposefully
9 interfered with Plaintiffs’ business operations and relationships.

10 52. Upon information and belief, Defendant communicated, orally and via e-mail,
11 with several current and potential customers and business partners of Plaintiffs in an attempt to
12 weaken or terminate the Plaintiffs’ business relationships and expectancies with those third-
13 parties.

14 53. On May 1, 2013, Defendant wrote and posted an online article entitled “Network
15 News: Battlefoam v. Blood of Kittens” (the “California Lawsuit Article”) on his website
16 bloodofkittens.com, which article offers Defendant’s summary of the parties’ dispute. A true
17 and correct copy of the California Lawsuit Article is attached hereto as **Exhibit C**.

18 54. The California Lawsuit Article falsely accuses Battle Foam of taking legal action
19 against Defendant.

20 55. The California Lawsuit Article falsely implies that Battle Foam and Filip have not
21 engaged in good faith settlement discussions with Defendant regarding the parties’ dispute.

22 56. Battle Foam and Filip have attempted to work with Defendant to amicably
23 resolve this dispute for nearly two months prior to filing this action.

24 **COUNT I**
25 **(Defamation)**

26 57. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-56.

27 58. Defendant made statements in the Defamatory Article about Filip and Battle
28 Foam that were false.

1 misconduct and by Filip and Battle Foam gave publicity to the matter and placed Filip and
2 Battle Foam before the public in a false light.

3 68. These statements regarding alleged bad faith actions and misconduct by Filip and
4 Battle Foam are highly offensive to a reasonable person.

5 69. Defendant had knowledge of or acted in reckless disregard as to the falsity of the
6 publicized matter and the false light in which Filip and Battle Foam were placed.

7 70. Defendant's conduct alleged herein was intentional, gross, wanton, malicious and
8 oppressive. This conduct demonstrates spite, ill will or reckless indifference towards Filip and
9 Battle Foam. Punitive damages are warranted.

10 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- 11 A. For damages in an amount to be determined at trial;
12 B. Pre- and post-judgment interest;
13 C. For punitive damages in an amount to be determined at trial;
14 D. In the event judgment is obtained by default, Plaintiffs' attorneys' fees in the
15 sum of \$5,000 and for court costs expended, plus interest accruing thereon at the statutory rate of
16 10% per annum from the date of judgment, until paid;
17 E. For such other and further relief as the Court may deem just and proper.

18 **COUNT III**
19 **(Intentional Interference with Contract)**

20 71. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-70.

21 72. Outlaw Miniatures, via kickstarter.com, procures agreements with third-party
22 "kickstarter" investors with regard to raising capital.

23 73. "Kickstarter" investors' identities and the amount of their investments are made
24 available on Outlaw Miniatures' kickstarter.com webpage.

25 74. Battle Foam lists its partners, with which it has a contractual relationship, on the
26 main page of its website.

27 75. Based on the foregoing, and as a result of Defendant's knowledge of Plaintiffs'
28 business practices and current events within the miniature war-gaming industry, Defendant

1 knew about such contractual relationships.

2 76. Defendant communicated, orally and via e-mail, with several current and
3 potential customers and business partners of both Battle Foam and Outlaw Miniatures in an
4 attempt to weaken or terminate their contractual relationships with Battle Foam and Outlaw
5 Miniatures.

6 77. Defendant intentionally, without just cause or excuse, and with the willful intent
7 to injure Plaintiff, interfered with Plaintiffs' contractual relationships by falsely accusing the
8 Battle Foam and Filip of dishonesty and bad faith business practices, which caused a
9 termination of those relationships.

10 78. Defendant's conduct was improper.

11 79. Plaintiffs suffered damages caused by the termination of their contractual
12 relationships. Defendant's willful intent to injure Plaintiffs warrants punitive damages.

13 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- 14 A. For damages in an amount to be determined at trial;
15 B. Pre- and post-judgment interest;
16 C. For punitive damages in an amount to be determined at trial;
17 D. In the event judgment is obtained by default, Plaintiff's attorneys' fees in the
18 sum of \$5,000 and for court costs expended, plus interest accruing thereon at the statutory rate of
19 10% per annum from the date of judgment, until paid;
20 E. For such other and further relief as the Court may deem just and proper.

21 **COUNT IV**
22 **(Intentional Interference with Business Expectancy)**

23 80. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1-79.

24 81. Outlaw Miniatures, via kickstarter.com, procures contracts with third-party
25 "kickstarter" investors with regard to raising capital.

26 82. Outlaw Miniatures had business relationships with the third-party "kickstarter"
27 investors and the reasonable expectation of continued business with them.

28

1 83. Battle Foam lists its partners, with which it has a contractual relationship, on the
2 main page of its website.

3 84. Based on the foregoing, and as a result of Defendant's knowledge of Plaintiffs'
4 business practices and current events within the miniature war-gaming industry, Defendant
5 knew about these business relationships and expectancies.

6 85. Battle Foam had business relationships with its customers and business partners
7 and the reasonable expectation of continued business with them.

8 86. Defendant communicated, orally and via e-mail, with several customers and
9 business partners of both Battle Foam and Outlaw Miniatures in an attempt to weaken or
10 terminate Battle Foam's and Outlaw Miniatures' business relationships with and expectancies
11 from those third parties.

12 87. Defendant intentionally, without just cause or excuse, and with the willful intent
13 to injure Plaintiffs, interfered with Plaintiffs' business expectancies by falsely accusing
14 Plaintiffs of dishonesty and bad faith business practices, which caused a termination of those
15 relationships and expectancies.

16 88. Defendant's conduct was improper.

17 89. Plaintiffs suffered damage caused by the termination of its business relationships
18 with and expectancies from third-parties. Defendant's willful intent to injure Battle Foam
19 warrants punitive damages.

20 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- 21 A. For damages in an amount to be determined at trial;
22 B. Pre- and post-judgment interest;
23 C. For punitive damages in an amount to be determined at trial;
24 D. In the event judgment is obtained by default, Plaintiff's attorneys' fees in the
25 sum of \$5,000 and for court costs expended, plus interest accruing thereon at the statutory rate of
26 10% per annum from the date of judgment, until paid;
27 E. For such other and further relief as the Court may deem just and proper.
28

COUNT V
(Preliminary & Permanent Injunctive Relief)

90. Plaintiffs incorporates by reference the allegations set forth in paragraphs 1-89.

91. Defendant has defamed Filip and Battle Foam.

92. Defendant has placed Filip and Battle Foam in a false light.

93. Defendant has intentionally interfered with contracts to which Plaintiffs are parties.

94. Defendant has intentionally interfered with Plaintiffs' business expectancies.

95. Defendant's tortious conduct has damaged Plaintiffs, including but not limited to, the following:

- loss of long time and potential customers;
- loss of third-party "kickstarter" investors;
- loss of investment capital;
- loss of good will in the miniature war-gaming community'
- loss of a positive business reputation in the miniature war-gaming community; and,
- actual and potential partnerships with other manufacturers in the miniature war-gaming industry.

96. Any further defamatory and/or tortious conduct would continue to irreparably damage Plaintiffs.

97. Because of the nature of Defendant's defamatory and tortious conduct and the damage it has caused and thereafter will cause, Plaintiffs have no adequate remedy at law.

98. A preliminary and permanent injunction prohibiting Defendant from engaging in further defamatory and tortious attacks against Plaintiffs is necessary in order to protect Plaintiffs from suffering irreparable harm.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

A. For a preliminary and permanent injunction directing Defendant to cease and desist from further defamatory and tortious attacks against Plaintiffs; and

1
2
3 **VERIFICATION**

4 STATE OF ARIZONA)
5) ss.
6 COUNTY OF MARICOPA)

7 Romeo Filip declares as follows:

8 I am Romeo Filip, a Plaintiff in the lawsuit, Romeo Filip, Battle Foam, LLC, and Outlaw
9 Miniatures LLC v. Nick Hayden et al. filed in Maricopa County Superior Court. I am
10 authorized to make this verification. I have reviewed the Complaint and know the contents
11 thereof. The allegations contained in the Complaint are true in substance and in fact, to the best
12 of my knowledge.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on 8th day of May, 2013.


15 
16 _____
17 Romeo Filip

Exhibit A

Meat for Meta: Bad Battlefoam Practices

TastyTaste :

-
-
- [Pin it](#)
-
-
-
-
- Email

If you have been reading this website since the beginning you've known Blood of Kittens has often illuminated some of the worst behavior many in our community have perpetuated.

At times I have gone after Battlefoam for their sometimes ruthless tactics to corner the foam market.

Recently, it seemed like Battlefoam more importantly their owner Romeo has been keeping a decently low profile.



As it turns out, a pattern has developed that would make anyone squeamish dealing with Battlefoam.

It all started a few years ago when Romeo threw a tantrum at NovaOpen because the TO promised the biggest event ever and couldn't deliver. Now that doesn't seem too bad, but when you take into account that Romeo made the TO's mother cry that is saying something!

Then you have the case of Romeo promising a lifetime discount for anyone tattooing Battlefoam on their body. Well one sad individual did such a thing and Romeo denied ever making the offer. So, with email trail in hand the tattooed man got into a haggling argument over the percentage of the discount, with I think a final agreement settling at 30% off.

Then there was last years Adepticon where Romeo threw another tantrum because a random podcast was trying to give a competitors foam away as prize support. Then, the following WargamesCon Romeo tried to change/reduce his prize support after already agreeing to a set amount. This continued to Feasts of Blades where Romeo changed the rules of the game by providing prize support not in the form of bags or foam, but in the form of three-month memberships to the 40k Radio forums a "\$30 value". Intentionally, never defining what prize support ever meant. Then there was last years Duelcon where Romeo partnered up with another gentleman to run the event. So, when the Warmachine side of the event fell flat Romeo attempted to fire the partner, somehow forgetting that he was in 50/50.

Now it comes to this year and Romeo is at it again, demanding Adepticon give him an entire ballroom for Battlefoam claiming that since Privateer Press and Flames of War get one he should too. Forgetting that Privateer Press and Flames of War actually pay for their Ballrooms and vendor booths, which unlike Battlefoam only ever provides prize support for space.

It also very curious because Privateer Press and Flames of War make games and those ballrooms are used for you know actual games. So, unless Battlefoam has some sort of foam game I am unaware of I just don't get it.

Finally, Romeo went psychotic tirade on the Infinity forums.

It all started when Romeo complained about being shitty at Infinity on 40k Radio.

That elicited the Corvus Belli forums members to troll Romeo trash talking.

In response Romeo when on (now deleted flame war) the forum threatening to come out and beat the shit out certain board members for their comments.

Then there is the continued foam wars has with Sabol and KR Multicase. Now you wonder why anyone would want to do business with Battlefoam? Well the answer is of course Battlefoam makes an amazing product. At some point though the behavior of the owner should be worth something.

Even when Battlefoam gives out honest prize support there is always a catch, like bags without any foam.

Now Battlefoam as embarked on another adventure with a Kickstarter for a game called *Wild West Exodus*. Unless you dig deep you would never know that Outlaw Miniatures and Battlefoam were the same thing. Now everything looks legit and product has been building for some time, but with Kickstarters loose rules I wonder if many of those pledges are ever going to see products without foamy "strings attached".

That is the main reason for this post is a warning for anyone considering investing in *Wild West Exodus* because once bitten by Battlefoam there is no going back.

www.kickstarter.com/projects/wildwestexodus/wild-west-exodus-core-rulebook-and-dice-set

[Edit project](#)
[Dashboard](#)
[Backer report](#)
[Post update](#)
Back 01/06/2013

[Log In with Facebook](#)

Website: wildwestexodus.com

[See full bio](#)

TK 8 minutes ago [Backer info](#)

@Outlaw

I think it is a matter of buyers remorse sometimes followed by really eating at them how much they want this stuff. Been struggling with that myself but have the self control to not just bump up my pledge.

While Ks is not really binding up until your card gets charged. I feel like if I pledge something I have an obligation to meet that pledge, which is why I have limited it to what I KNOW I will have available. That may go up at the last minute but it will not go down.

I could imagine though, that if I put together a wish list of everything I wanted and figured my money that way, I could be bouncing all over the place then pulling and restructuring how much to spend and where to allocate it. Sometime more options is too much for some poor souls.

Arto Ahonen 8 minutes ago [Backer info](#)

This seems to be working again. So the "Official way" is everything up front??? But we can do something after the project has ended???

My head hurts... (not because of this pledge thing, but for other reasons. :))

I guess I got all the miniatures I want and order the buildings straight from M&S then.

Darnok 12 minutes ago [Backer info](#)

Maybe my Avalar looks a bit dark-council-ish but for some reasons my questions tend to get ignored. XD

Again

Do the M&S bases count for "M&S terrains ets" for the purpose of trading? Take me as an example. I've pledged "Shameless", and would rather have more models than the bases and the barricades. Am I right that I could trade them for \$29 worth of models (2x89 for ten bases each, \$11 for the barricades)?

Thanks in advance, you are always very helpful. It is appreciated. :)

Andrew 'Draw' Wood (AKA Doctor Warlock) 15 minutes ago [Backer info](#)

Has everyone seen this - is it someone just being a dick (I hope) and stinging the Pot?

http://www.kickstarter.com/projects/wildwestexodus/wild-west-exodus-core-rulebook-and-dice-set

Pledge \$10 or more

12 backers

Guilty - Official Thank You in the Rulebook and on the Website, Beta Game Rules in PDF Version, Wild West Exodus Comic Issue #1 - Kickstarter Exclusive Cover Signed Art Print, Kickstarter Exclusive Dark Council Patch, Wild West Exodus Set of Four Dice and Wild West Exodus Season 1 Comic Book Subscription (6 Issues)

Estimated delivery: Apr 2013

Pledge \$26 or more

13 backers

Rotten - Official Thank You in the Rulebook and on the Website, Beta Game Rules in PDF Version, Wild West Exodus Comic Issue #1 - Kickstarter Exclusive Cover Signed Art Print, Kickstarter Exclusive Dark Council Patch, Wild West Exodus Set of Four Dice and Wild West Exodus Season 1 Comic Book Subscription (6 Issues)

Estimated delivery: Jun 2013

Add \$15 to ship outside the US

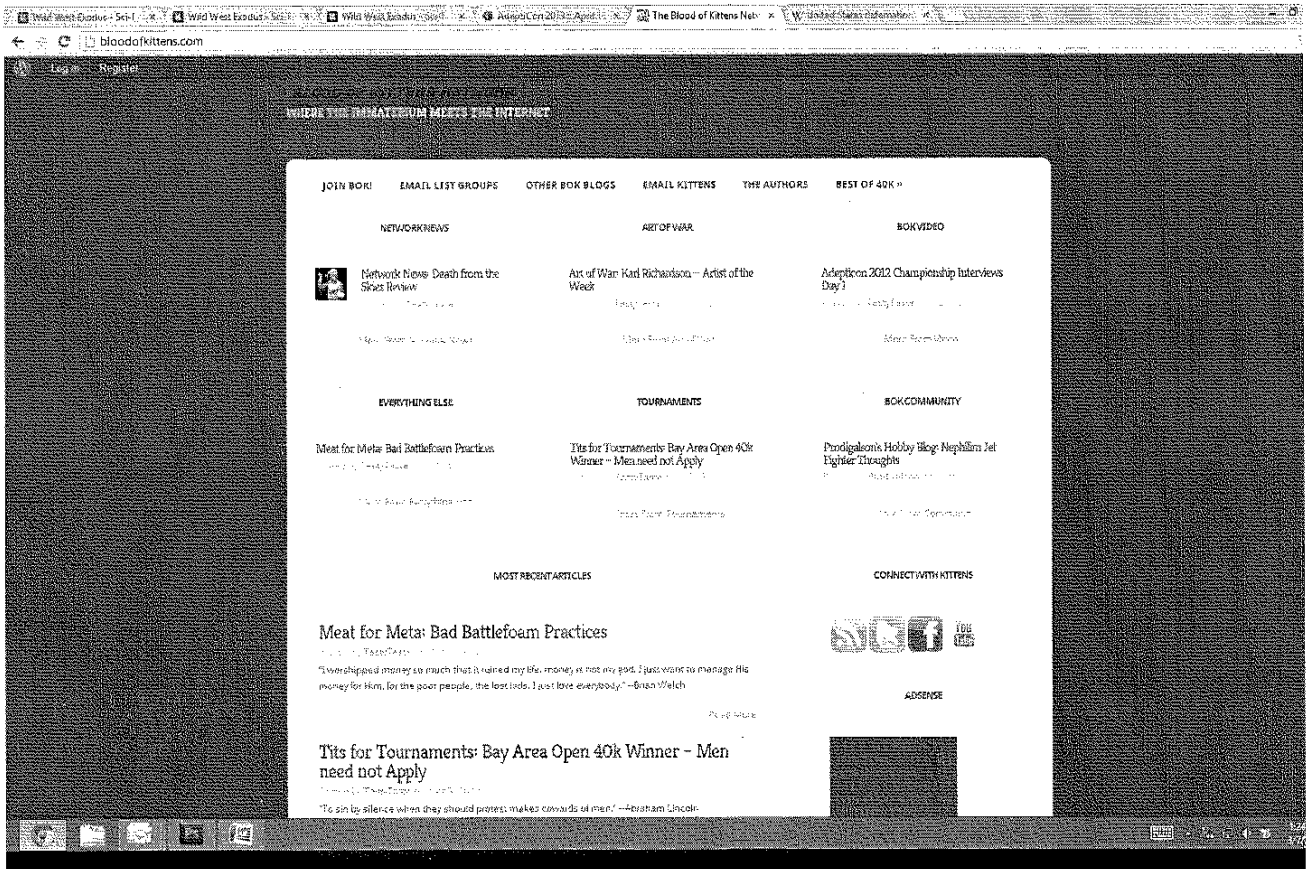
Pledge \$40 or more

5 backers

Evil - Wild West Exodus Core Rulebook (Hardback)

Estimated delivery: Sep 2013

The screenshot shows a web browser window with multiple tabs. The active tab is 'bloodofkittens.com/blog/2011/03/07/meat-for-meta-bad-battlefoam-practices/'. The browser's address bar shows the URL. The page content includes a navigation menu with links like 'JOIN BOK!', 'EMAIL LIST GROUPS', 'OTHER BOK BLOGS', 'EMAIL KITTENS', 'THE AUTHORS', and 'BEST OF BOK'. Below the navigation is an advertisement for 'EVERYTHING YOUR BUSINESS NEEDS WITHIN ONE SOLUTION' with a 'Go Live Today' button. The main article title is 'Meat for Meta: Bad Battlefoam Practices'. The article text discusses 'Battlefoam' and mentions 'Romeo' and 'T.O.'. There is a photo of a man in a white tank top and a white cap. To the right of the article is a 'Find us on Facebook' section for 'Blood of Kittens' with a 'Like' button and a follower count of '1,314'. Below that is a 'BOK CONTENT' section with a 'Select Category' dropdown. At the bottom right, there is an 'ADSENSE' section with a 'WAP THUNDER' logo and a circular graphic. The browser's taskbar at the bottom shows various icons and the system clock.



Domain name: BLOODOFKITTENS.COM

Registrant Contact: Nick Hayden
Whois Privacy Protection Service, Inc.
Whois Agent ()

Fax:
PMB 368, 14150 NE 20th St - F1
C/O BLOODOFKITTENS.COM
Bellevue, WA 98007
US

Administrative Contact:
Whois Privacy Protection Service, Inc.

Whois Agent
(gskhxpmt@whoisprivacyprotect.com)
+1.4252740657
Fax: +1.4259744730
PMB 368, 14150 NE 20th St - F1
C/O BLOODOFKITTENS.COM
Bellevue, WA 98007
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Technical Contact:

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+1.4252740657
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PMB 368, 14150 NE 20th St - F1
C/O BLOODOFKITTENS.COM
Bellevue, WA 98007
US

Status: Active

Name Servers:

ns1.bloodofkittens.com
ns2.bloodofkittens.com

Exhibit B

ANSWER 5/8/13
on call
(S)

FILED

2013 APR -8 P 1:33

RECEIVED
COSTA COUNTY CLERK
COURT HOUSE
SAN FRANCISCO, CALIFORNIA

1 **D. GILL SPERLEIN (172887)**
2 **THE LAW OFFICE OF D. GILL SPERLEIN**
3 345 Grove Street
4 San Francisco, California 94102
5 Telephone: (415) 404-6615
6 Facsimile: (415) 404-6616
7 gill@spereinlaw.com

8 **MARC JOHN RANDAZZA (269535)**
9 6525 W. Warm Springs Road, Suite 100
10 Las Vegas, NV
11 Telephone: (888) 667-1113
12 mf@randazza.com

13 Attorneys for Plaintiff

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT _____

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
CONTRA COSTA COUNTY
UNLIMITED JURISDICTION**

C-13-00674

) CASE NO.:

15 **NICOLAS HAYDEN, an individual,**

) **COMPLAINT FOR DECLARATORY
RELIEF**

16 Plaintiff,

) **JURY TRIAL DEMANDED**

17 vs.

18 **BATTLE FOAM, LLC, an Arizona
19 Company, and ROMEO FILIP, an
20 individual,**

FAX FILED

21
22 Defendants.

INTRODUCTION

23
24
25 1. Plaintiff Nicolas Hayden seeks a declaration under California code of Civil
26 Procedure §1060, that he has not defamed Defendants Battle Foam LLC and Romeo Filip
27 ("Defendants"). Because the complained-of statements Plaintiff made in his article about
28

1 Defendants, who are public figures, were true, substantially true, or statements of opinion,
2 none of the comments referenced in Defendants' cease and desist letters give rise to a
3 cause of action for defamation.
4

5 2. A present adjudication is necessary to guide Hayden's future actions
6 including his right to engage in speech protected by the California Constitution.
7

8 **THE PARTIES**

9 3. Plaintiff Hayden is an individual and owner and operator of Blood of Kittens
10 Network, a blog about the miniature war-gaming community. Hayden resides in Pinole,
11 California.
12

13 4. Defendant Battle Foam, LLC is an Arizona corporation. Battle Foam
14 manufactures custom-cut foam packaging for the transport of miniature war figurines.
15

16 5. Defendant Romeo Filip is the owner and operator of Battle Foam, LLC and
17 resides in Gilbert, Arizona.
18

19 **JURISDICTION**

20 6. It is proper for Plaintiff to pursue this action as an unlimited civil action
21 pursuant to California Civil Code §88, because an action for declaratory relief is not an
22 action of the type identified as a limited civil action.
23

24 7. Plaintiff is informed and believes and based thereon alleges that at all times
25 relevant to the dispute referenced in this Complaint, Defendant Battle Foam, LLC, was and
26 is doing business in the State of California.
27

28 8. California is the appropriate jurisdiction because Plaintiff resides in
California, because the article at issue was published from within California, and because

1 Defendants willfully transmitted a cease and desist letter to Plaintiff in California, directed
 2 at a known California individual, with the successful intent of causing an action (or
 3 reaction) in this state. Therefore, under the California Long-Arm Statute (C.C.P. § 410)
 4 and under the Due Process Clause of the United States Constitution, the California
 5 Superior Court unlimited jurisdiction is the proper jurisdiction for the resolution of this
 6 dispute.
 7
 8

9 9. Venue in the Superior Court of California Contra Costa County is proper
 10 pursuant to sections 395 and/or 395.5 of the California Code of Civil Procedure.
 11

12 **FACTS COMMON TO ALL CLAIMS**

13 10. Blood of Kittens Network is a blog about the miniature war-gaming
 14 community. The blog, owned and operated by Hayden, features news articles and
 15 commentary about the miniature war-gaming community and events.
 16

17 11. On March 7, 2013, Hayden published an opinion piece entitled "Meat for
 18 Meta: Bad Battlefoam Practices" under the pen name TastyTaste. See Exhibit A. The
 19 article consisted of entirely of Hayden's own opinions or to the extent the article stated
 20 facts Hayden believed such facts to be true. Hayden knew such facts to be true through
 21 firsthand knowledge or reasonably believed such facts to be true because they came
 22 through reliable sources.
 23

24 12. Defendant Battle Foam manufactures packaging material for miniature war-
 25 gaming figures and sponsors war-gaming tournaments.
 26
 27
 28

1 13. On April 4, 2013, Hayden received an April 1, 2013-dated cease and desist
2 letter from Defendants accusing him of making defamatory statements in the article. See
3 Exhibit B.
4

5 14. Defendants accused Plaintiff of making the following statements about
6 Defendant Filip: "physically and verbally threatening potential Battle Foam customers";
7 "lying to current and potential Battle Foam customers and business partners"; and
8 "consistently defaulting on agreements with current and potential business partners." See
9 Exhibit B.
10

11 15. Defendants accused Plaintiff of making the following statements about
12 Battle Foam, LLC: "lying to current and potential Battle Foam customers and business
13 partners"; and "consistently defaulting on agreements with current and potential business
14 partners."
15

16 16. Defendants demanded that Plaintiff pay \$2,500.00 in attorney fees and either
17 post an affidavit to his blog renouncing his earlier comments or present evidence of the
18 truthfulness of his comments. Defendants stated that Hayden did not acquiesce to their
19 demands by 5 p.m. on April 8, 2013, they would file suit.
20

21 17. Plaintiff contends that all of the statements made in the article are opinions
22 or are truthful facts based on Plaintiff's experiences with Defendants, as well as, the
23 experiences of others. Both truth and substantial truth serve as affirmative defenses to a
24 claim of defamation and statements of opinion are not defamatory. Because all of the
25 comments are true, substantially true, or a statement of opinion, the statements Plaintiff
26 made on his blog about Defendants cannot be defamatory.
27
28

1 18. Defendants are public figures well known within the miniature war-gaming
2 community.

3
4 19. In defamation actions, limited-purpose public figures are people who have
5 "either voluntarily injected themselves into a particular public controversy, or who have
6 been drawn into such controversies." Nation-wide fame is not necessary for someone to
7 achieve the status of a public figure; rather, for purposes of defamation, it matters if the
8 person is a public figure within the community where he was defamed.
9

10 20. Corporations also can be considered limited-purpose public figures when the
11 controversy involves the product or area in which the corporation markets.
12

13 21. In order to prove defamation, a public figure plaintiff must show that the
14 speaker made the allegedly defamatory statements with actual malice, or with knowledge
15 that it was false or with reckless disregard as to their falsity. Public figures who sue for
16 defamation must establish a probability that they can produce clear and convincing
17 evidence that the speaker made the allegedly defamatory statements with knowledge of
18 their falsity or with reckless disregard of their truth or falsity.
19
20

21 22. Battle Foam has established itself as the premier packing company in this
22 close-knit and highly competitive industry. Furthermore, Battle Foam has inserted itself
23 into the miniature war-gaming community through sponsorship of tournaments, of which
24 Defendant Filip is a frequent attendee. Filio operates and stars in one of the biggest
25 podcasts for the community, 40kradio and is involved in other gaming podcasts as well.
26 He appears on videos for the wargaming news outlet - Bestofwar.com. Both Battle Foam
27 and Filip are clearly public figures within the community of miniature war-gaming, where
28

1 they competitively market their product. Therefore, Defendants are public figures who
2 must prove, by clear and convincing evidence that Plaintiff acted with actual malice in
3 publishing his article to Blood of Kittens.
4

5 23. The statements contained in Plaintiff's article about public figure Defendants
6 Battle Foam and Filip were true, substantially true, or were pure opinion. Defendants
7 cannot prove by clear and convincing evidence that Plaintiff made any of the statements
8 with actual malice.
9

10 **FIRST CAUSE OF ACTION**
11 **(Declaratory Judgment)**

12 24. Plaintiff repeats and incorporates by this reference each and every allegation
13 set forth in the preceding paragraphs.
14

15 25. Battle Foam and Filip claim that Hayden's statements are defamatory and
16 have threatened to bring a lawsuit against Hayden on this basis.
17

18 26. An actual controversy has arisen and now exists between Plaintiff and
19 Defendants concerning their respective rights and duties in that Plaintiff contends that his
20 statements are not defamatory, whereas Defendants dispute these contentions and contends
21 that the statements are defamatory.
22

23 27. Plaintiff desires a judicial determination of his rights and duties, and a
24 declaration as to whether his statements concerning defendants are defamatory.
25

26 28. A judicial declaration is necessary and appropriate at this time under the
27 circumstances in order that Plaintiff may ascertain his rights to engage in speech. Hayden's
28 right to engage in protected speech is being harmed by the unsettled state of affairs.

1 29. An actual, present, and judiciable controversy has arisen among Hayden,
2 Battle Foam, and Filip concerning Hayden's published statements.

3
4 30. Hayden seeks a declaration from this Court that Hayden's article about
5 Battle Foam and Filip does not constitute defamation.

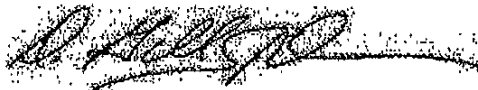
6 PRAYER

7
8 WHEREFORE, Plaintiff respectfully seeks the following relief:

- 9 a. A declaration that Hayden's article about Battle Foam and Filip is not
- 10 defamation;
- 11 b. Costs of litigation and reasonable attorneys fees; and
- 12 c. Such other and further relief as this Court deems just and proper.
- 13
- 14
- 15

16 Dated: April 8, 2013

Respectfully submitted,

17
18 

19
20 by:

21 _____
D, GILL SPERLEIN
22 THE LAW OFFICE OF D. GILL SPERLEIN

23
24
25 MARC J. RANDAZZA
RANDAZZA LEGAL GROUP

26
27 Attorneys for Plaintiff


Exhibit C

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 X Convert Select
 MCR Digital Recording ECR TurboCourt - Legal Paper... WestlawNext
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http://bloodofkittens.com/blog/2013/05/01/network-news-ba Network News: Battlefoam ...
 Network News: Battlefoam ...

Network News: Battlefoam v. Blood of Kittens

Posted by TastyTaste on May 1, 2013



This is the official announcement by Blood of Kittens that Battlefoam LLC has taken legal action against this site over a post made in March.

Everything in that post I believe is true, gathered from sources and material available from the Internet, and since being threatened with legal action, I have done subsequent research and gotten sworn statements from witnesses that further prove its truth. For the time being, while certain aspects of the case are pending, the original post in question has been taken down.

However, it will be back up as soon as possible, and in no way should the fact that I took it down be viewed as an admission of any wrong doing. I took it down to try and facilitate a constructive dialogue with the party who made the legal threat, Romeo Filipo of Battlefoam. It has not seemed to help, but I don't want it to be said that I did not try everything in my power to maintain the high ground. Romeo and Battlefoam seem to insist upon forcing me to prove my statements were true, in a court of law. Once I do, not only will I put the article back up, but I will put the judgment there too, as the ultimate proof of the truth of my statements.

To better understand what is going on here is Battlefoam's original C&D and my legal response to it:

[Battlefoam C&D Full](#)
[Blood of Kittens Battlefoam Response](#)

These documents are matter of public record and because lawyers are now involved, I cannot go into as much detail as I would like, but let these documents reflect exactly what this case is about.

Blood of Kittens takes its ability to present hard hitting news and information very importantly, and this

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 Everything you want from sellers you trust.
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 5/9/2013

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Network News: Battlefield ... X

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Email

These documents are matter of public record and because lawyers are now involved, I cannot go into as much detail as I would like, but let these documents reflect exactly what this case is about.

Blood of Kittens takes its ability to present hard hitting news and information very importantly, and this site will continue to do so for as long as possible.

I was lucky enough to procure a pro-bono defense, but that didn't stop me from incurring a sizable amount of legal costs. The money I would normally use for the hosting Blood of Kittens has been effected. In order for Blood of Kittens to operate I have to do something I thought I would never need to do, and ask the community for help with donations.

In light of a completely unrelated site take downs, I think it is essential, more than ever, to keep on doing what this site does, be it rumors, news, or blunt commentary about all aspects within our community. So, if you like to support that continuation please donate whatever you can, I don't expect the donations to reach the level to pay back the money I have invested, but anything will help.

Your Donation Amount:
0.00

Your total amount is : 0.00 (Currency: USD)


Donate

If by some miracle I get donations exceeding the funds lost, the overage will go to the organization that made it possible for me to get the amazing lawyers defending the site today.

The Online Media Legal Network.

OMLN provides an invaluable legal referral service, with their main goal to find pro-bono or reduce rate lawyers to defend online journalists and bloggers. So, if you don't like Blood of Kittens at least consider donating to them, because defending journalism and freedom of speech is something everyone can get behind.

START SHOPPING



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lawyers to defend online journalists and bloggers. So, if you don't like Blood of Kittens at least consider donating to them, because defending journalism and freedom of speech is something everyone can get behind.

Bok Rumor & News Group

You can also get updates on all new posts by liking Blood of Kittens on Facebook at...

Like on Facebook

You can also follow Bok on Twitter at...

Follow Bok Twitter

Don't forget to visit the [Church of Kelly](#) for all your Phil Kelly praising needs.

If you have questions or comments your always welcome to email me through [Blood of Kittens contact form](#).

2:46 PM
5/9/2013

COPY

MAY 09 2013



MICHAEL K. JEANES, CLERK
S. LaSPALUTO
DEPUTY CLERK

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8 E-mail: devin@maypotenza.com

9 Attorney for Plaintiffs

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 ROMEO FILIP, a married man, BATTLE
13 FOAM, LLC, an Arizona limited liability
14 company, and OUTLAW MINIATURES,
15 LLC, an Arizona limited liability company,

16 Plaintiffs,

17 vs.

18 NICOLAS HAYDEN and JANE DOE
19 HAYDEN, husband and wife; DOE
20 INDIVIDUALS OR ENTITIES 1-10,

21 Defendants.

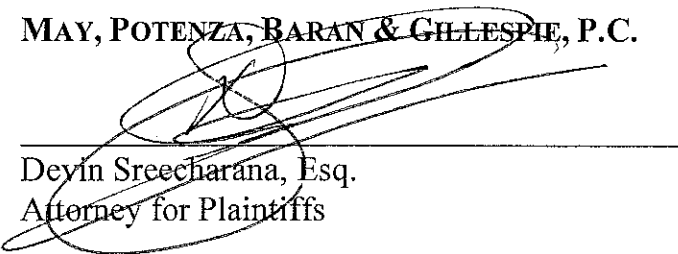
Case No. CV2013-007123

**CERTIFICATE OF
COMPULSORY ARBITRATION**

22 Pursuant to Rule 72, Ariz.R.Civ.P., the undersigned certifies that they know the dollar
23 limits and any other limitations set forth by the local rules of practice for Maricopa County
24 Superior Court, and further certifies that this case is not subject to compulsory arbitration as
25 provided by Rules 72 through 76 of the Ariz.R.Civ.P.

26 DATED this 9th day of May, 2013.

27 **MAY, POTENZA, BARAN & GILLESPIE, P.C.**

28 
Devin Sreecharana, Esq.
Attorney for Plaintiffs

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9 Attorney for Plaintiffs

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11 **IN AND FOR THE COUNTY OF MARICOPA**

12 ROMEO FILIP, a married man, BATTLE
13 FOAM, LLC, an Arizona limited liability
14 company, and OUTLAW MINIATURES,
15 LLC, an Arizona limited liability company,

16 Plaintiffs,

17 vs.

18 NICOLAS HAYDEN and JANE DOE
19 HAYDEN, husband and wife; DOE
20 INDIVIDUALS OR ENTITIES 1-10,

21 Defendants.

Case No. CV2013-007123

**WAIVER OF SERVICE
OF SUMMONS**

22 To: Devin Sreecharana
23 May, Potenza, Baran & Gillespie, PC
24 201 N. Central Avenue, Suite 2200
25 Phoenix, Arizona 85004

26 1. I acknowledge receipt of your request that, on behalf of my clients Nicolas
27 Hayden and Jane Doe Hayden (collectively, "Hayden"), I waive service of Summons in the
28 action of *Romeo Filip v. Nicolas Hayden, et al.*, which is case number CV2013-007123 in the
Superior Court of the State of Arizona in and for the County of Maricopa. I also have received
a copy of the Complaint in the action, and a means by which I can return the signed waiver to
you without cost to me.

1 2. I, on behalf of Hayden, agree to save the cost of service of a Summons and an
2 additional copy of the Complaint in this lawsuit by not requiring that Hayden be served with
3 judicial process in the manner provided by the Arizona Rules of Civil Procedure.

4 3. I, on behalf of Hayden, will retain all defenses or objections to the lawsuit or to
5 the jurisdiction or venue of the court except for objections based on a defect in the summons or
6 in the service of the summons.

7 4. I understand that a judgment may be entered against Hayden if an Answer or
8 motion under Rule 12 is not served upon you within sixty (60) days after May 29, 2013.

9 Dated this 29 day of May, 2013.

10 

11
12 Marc John Randazza
13 Randazza Legal Group
14 6525 W. Warm Springs Road, Suite 100
15 Las Vegas, Nevada 89118
16 Attorneys for Defendant

17 DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

18 Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to
19 cooperate in saving unnecessary costs of service of the summons and the pleading. A defendant
20 located in the United States who, after being notified in an action asked by a plaintiff to waive
21 service of a summons, fails to do so will be required to bear the costs of such service unless good
22 cause be shown for its failure to sign and return the waiver.

23 It is not good cause for a failure to waive service that a party believes that the complaint is
24 unfounded, or that the action has been brought in an improper place or in a court that lacks
25 jurisdiction over the subject matter of the action or over its person or property. A party who
26 waives service of the summons retains all defenses and objections (except any relating to the
27 summons or to the service of the summons), and may later object to the jurisdiction of the court
28 or to the place where the action has been brought.

 A defendant who waives service must, within the time specified on the waiver form, serve
on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and also must
file a signed copy of the response with the Court. If the answer or motion is not served within
this time, a default judgment may be taken against that defendant. By waiving service, a
defendant is allowed more time to answer than if the summons had been actually served when the
request for waiver of service was received.