

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAY MARVIN,

Plaintiff,

Vs.

JANICE SHELL, aka JANICE456,
JOHN DOE I, aka SCION, and
JOHN DOE II, aka SALEMSHEXNY,

Defendants.

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02 C 2963

Judge Manning

Magistrate Judge Schenk

FILED

MAY 08 2003

MICHAEL W. DODDINS
CLERK, U.S. DISTRICT COURT

DOCKETED

MAY 19 2003

NOTICE OF MOTION

TO: John Blim
Blim & Edelson
53 W. Jackson Blvd. Ste. 1642
Chicago IL 60604

On May 15, 2003 at 11 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Blanche Manning in Room 2125 of the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, and present the enclosed Motion to Dismiss John Doe I and John Doe II.


Richard C. Balough

Dated: 8 May 2003

RICHARD C. BALOUGH
656 West Randolph St.
Suite 500 West
Chicago, IL 60661
312.902.9970
Fax: 312.902.9981
Attorney for Plaintiff

260

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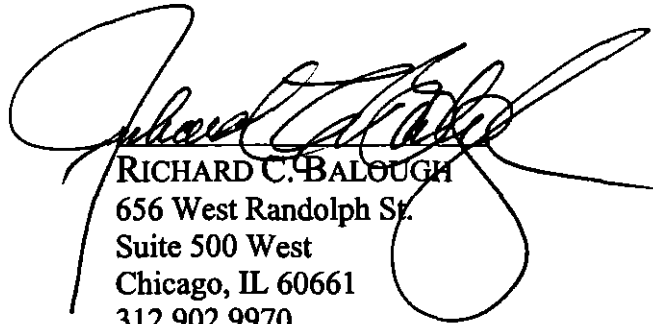
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EASTERN DIVISION

NOTICE OF FILING

To: Mr. John Blim
Blim & Edelson, LLC
53 W. Jackson Blvd. Ste. 1642
Chicago IL 60604

DOCKETED
MAY 19 2003

Please take notice that on this 8th day of May 2003, Plaintiff has filed his Motion to Dismiss John Doe I and John Doe II, a copy of which is attached hereto.



RICHARD C. BALOUGH
656 West Randolph St.
Suite 500 West
Chicago, IL 60661
312.902.9970
Fax: 312.902.9981
Attorney for Plaintiff

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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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MAY 19 2003

**MOTION TO DISMISS DEFENDANTS JOHN DOE I, AKA SCION, AND
JOHN DOE II, AKA SALEMSHEXNY**

Plaintiff Jay Marvin files this Motion to Dismiss Defendants John Doe I, aka SCION, and John Doe II, aka SALEMSHEXNY, and in support thereof respectfully would show the court as follows:

1. On April 25, 2002, Plaintiff, a citizen of the State of Illinois, filed his original complaint in this case based upon diversity against defendants Janice Shell, aka Janice 456, John Doe I, aka SCION, and John Doe II, aka SALEMSHEXNY, alleging that each defendant individually posted various messages on an Internet message board that were false and defamed and libeled plaintiff.
2. On June 10, 2002, this court entered a docket entry, dismissing the entire complaint *sue sponte* without prejudice based on the fact that plaintiff had alleged diversity of all parties based upon information and belief. The court ordered plaintiff to refile his complaint by July 1, 2002, consistent with the docket order. The Docket Entry is attached as Exhibit A.

26

3. At the time of the June 10, 2002 order, only defendant Janice Shell, a citizen of the State of Pennsylvania, had been served with the complaint in this case. She was the only active defendant in the case when the docket entry was entered.
4. Neither John Doe I, aka SCION, nor John Doe II, aka SALEMSHEXNY, had been served with process nor had either entered an appearance in this case at the time of the June 10, 2002 docket entry nor since that date.
5. On June 25, 2002, plaintiff filed his First Amended Complaint and Jury Demand. Consistent with the June 10, 2002 docket entry, only allegations against defendant Shell were included in the Amended Complaint and all allegations, references and counts relating to John Doe I and John Doe II were eliminated. Since the June 10, 2002 docket entry had dismissed the original complaint in its entirety, plaintiff believed it was not necessary to file a separate motion to dismiss John Doe I and John Doe II since by the court's own docket entry, they already had been dismissed as defendants.
6. The allegations in the First Amended Complaint concern numerous false statements that also are slander and libel *per se* statements concerning plaintiff written solely by Defendant Janice Shell and posted by her on an Internet message board. Each post is a separate publication. Defendant Shell has admitted to authoring and to posting the Internet message board posts that are the subject of this lawsuit. See Stipulation attached as Exhibit B.

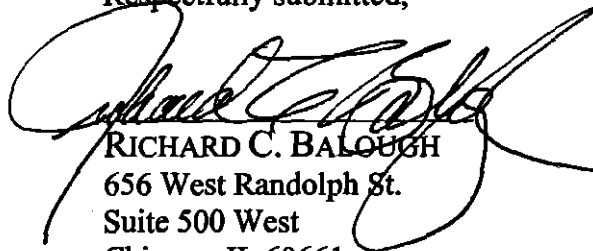
7. John Doe I, aka SCION, subsequently has been identified by plaintiff as Gerard Mooney, a Canadian citizen. A separate lawsuit against him concerning his own false Internet postings and e-mails that have slandered and libeled plaintiff has been filed and is pending in the Circuit Court of Cook County, Illinois. A copy of the complaint in that case is attached as Exhibit C.
8. The causes of action in this case against Janice Shell are for her postings and only her postings and e-mails concerning plaintiff. The causes of action against her are separate and apart from any causes of action against John Doe I, aka SCION, and John Doe II, aka SALEMSHEXNY.
9. Neither John Doe I, aka SCION, nor John Doe II, aka SALEMSHEXNY, is a necessary party to this lawsuit. The causes of action alleged in the original complaint—since dismissed in its entirety by the June 10, 2002 docket entry—against John Doe I, now identified as Gerard Mooney, and John Doe II, were for their own individual postings on the Internet concerning plaintiff. Any relief against John Doe I and John Doe II would not affect Defendant Shell. Complete relief for Defendant Shell's actions can be accorded in this case without John Doe I or John Doe II. Defendant Shell's ability to protect her interests is not impaired by the absence of John Doe I and John Doe II as parties and Janice Shell is not subject to a substantial risk of multiple or inconsistent obligations without John Doe I or John Doe II as parties. The interests of Janice Shell are

separate and distinct from those of John Doe I and John Doe II. See *Davis v. Emerald Casino, Inc.*, 268 F. 3d 477 (Seventh Cir. 2001).

10. Plaintiff's attorney discussed the filing of this motion in person with defendant's attorney Jay Edelson on April 30, 2003. Plaintiff's attorney also sent an e-mail to defendant's attorney John Blim further advising defendant's counsel of this motion. Defendant's attorney John Blim refused to state whether he would support or contest this motion. See Exhibit D attached.

Wherefore, plaintiff requests that this court enter an order dismissing John Doe I aka SCION and John Doe II aka SALEMSHEXNY as defendants in this case.

Respectfully submitted,

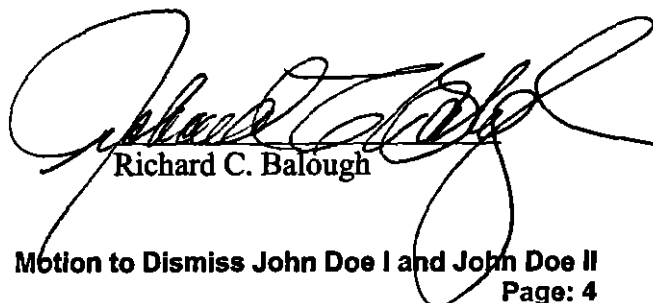


RICHARD C. BALOUGH
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Suite 500 West
Chicago, IL 60661
312.902.9970
Fax: 312.902.9981
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Richard C. Balough, an attorney, does hereby certify that he caused a copy of Plaintiff's Motion to Dismiss John Doe I and John Doe II was served by placing the same with the U.S. Postal Service with adequate postage paid on this 8th day of May 2003 addressed to the following:

Mr. John Blim
Blim & Edelson
53 West Jackson Ste. 1642
Chicago IL 60604



Richard C. Balough

**SEE CASE
FILE FOR
EXHIBITS**