

**Crystal M. Henry, OSB # 04312**

**The VanderMay Law Firm**

Capitol Center Building

388 State Street, Suite 340

Salem, Oregon 97301

Telephone: (503) 588-8053

Facsimile: (503) 588-3624

Attorney for Plaintiffs Keith Goodridge Construction  
and Keith Goodridge

UNITED STATES DISTRICT COURT

THE DISTRICT OF OREGON

KEITH GOODRIDGE CONSTRUCTION, )  
KEITH GOODRIDGE, and MARJORIE )  
GOODRIDGE, )

Plaintiffs, )

v. )

WYBS, INC., a Delaware Corporation, )  
doing business as MERCHANTCIRCLE, )  
SUSAN GATCHELL, and ANTHONY )  
GATCHELL )

Defendants. )

Case No. 6:08-CV-6313-TC

PLAINTIFFS' MEMORANDUM  
OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AN  
ORDER REMANDING THIS  
ACTION TO LINN COUNTY  
CIRCUIT COURT

COMES NOW the Plaintiffs, Keith Goodridge Construction, Marjorie Goodridge and  
Keith Goodridge, by and through their counsel of record, Crystal M. Henry and The VanderMay  
Law Firm, submits this memorandum of law in support of Plaintiffs' Motion for an Order  
Remanding this Action to Linn County Circuit Court.

1 PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AN ORDER REMANDING  
THIS ACTION TO LINN COUNTY CIRCUIT COURT

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Salem, Oregon 97301  
(503) 588-8053

I. STATEMENT OF FACTS

At all times relevant herein, Keith Goodridge and Marjorie Goodridge are and were natural persons living just outside the City of Lebanon, County of Linn, State of Oregon.

At all times relevant herein, Keith Goodridge Construction is and was a sole proprietorship wholly owned by Plaintiff Keith Goodridge, with its principal place of business located just outside the City of Lebanon, County of Linn, State of Oregon.

At all times relevant herein, WYBS, Inc., is and was a Delaware corporation doing business under the fictitious name MerchantCircle, who owns the web site www.MerchantCircle.com, registered to do business in the State of California. Both WYBS, Inc. and MerchantCircle advertise a principal place of business at 201 Main Street, Suite 100, Los Altos, CA 94022. To the knowledge of Plaintiffs, neither entity name is registered to do business in the State of Oregon.

Under information and belief, Defendants Susan and/or Anthony Gatchell "Attorney" operate under the fictitious name "Attorney," and state that they have knowledge of persons who have done business with Plaintiffs. Susan and Anthony Gatchell reside in the city of Lebanon, Linn County, Oregon.

Plaintiffs selected the Linn County Circuit Court as the forum to hear this matter. Plaintiffs initially pled in a John Doe Defendant because Plaintiffs were unaware of the identity of the John Doe Defendant. Therefore, Plaintiffs were unable to determine the citizenship of the

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2 PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AN ORDER REMANDING  
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The VanderMay Law Firm  
388 State Street, Suite 340  
Salem, Oregon 97301  
(503) 588-8053

unnamed Defendant at the time when Defendant WYBS asked that this matter be removed to Federal Court.

Defendant WYBS was in possession of the information Plaintiffs needed to determine the true identity of the John Doe Defendant. However, Defendant WYBS did not produce this information to Plaintiffs until November 18, 2008. This information was provided by defense counsel by letter dated November 18, 2008, which is attached hereto as Exhibit 1 and incorporated herein. The information provided was in the form of an ISP address for the computer that had posted the subject matter that is the basis for the complaint in this matter. Included in the information is the postal code of 97355, which indicates that the poster is located in Oregon. Plaintiffs requested this information from the defense by letter on July 15, 2008, which is attached hereto as Exhibit 2 and incorporated herein.

This information was provided from the defense to the Plaintiffs approximately one week after the time to challenge the removal to Federal Court had expired. The defense had the information that determined the John Doe in this matter was actually located in the State of Oregon and that it defeated federal jurisdiction on diversity grounds available during the entire pendency of this case.

## II. LEGAL ARGUMENT

Under the current text of 28 USC 1447(e), the Court is authorized to deny joinder or permit joinder and remand the action to state court following Plaintiffs post-removal joinder of a diversity destroying Defendant.

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To determine whether or not non-diverse Defendants should be joined in the action remanded, *Alpers Jobbing Inc. v. Northland Cas. Co.* states that relevant inquiry is the extent to which the purpose of amending the complaint's to defeat federal jurisdiction, whether Plaintiff has been dilatory in asking for amendment, whether Plaintiff will be significantly injured if an amendment is not allowed and any other factors bearing on the equity. 28 U.S.C.A. § 1447(e) *Alpers Jobbing Inc. v. Northland Cas. Co.*, 173 F.R.D. 517 (E.D.MO 1997).

In determining whether a party must be joined as a necessary party, in *Ibc Aviation services, Inc. v. Compania Mexicana de Aviacion, S.A. de C.V.*, a contractor could not obtain complete relief in absence of joinder when an airline employee, who was responsible for overseeing the performance of the contractor providing freight handling at an airport, was required to be joined to the contractor's suit against an airline. The suit alleged a breach of contract and commercial tort. Joinder resulted in destruction of jurisdiction and required the case be remanded to state court because much of the wrongful conduct was attributable to the employee. The contractor could not obtain complete relief in the absence of joinder. *IBC Aviation Services, Inc. v. Compania Mexicana de Aviacion, S.A. de C.V.*, 125 F. Supp.2d 1008 (N.D.Cal. 2000).

When post-removal joinder of non-diverse defendants destroys diversity jurisdiction, the case must be remanded. 28 U.S.C. 1447(e) *Cobb v. Delta Exports, Inc.*, 186 F.3d 675 (C.A.5(La.) 1999). *Burns v. National Credit Union Administration*, 122 F.3d 1251 (C.A. 1997).

In the case at bar, Plaintiffs' claims against Defendant WYBS for defamation, IIED, and

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Interference with Business Relations is based on a consumer review that was posted on the website, www.MerchantCircle.com. Plaintiffs allege that MerchantCircle.com is responsible for this content by virtue of publishing the information in multiple in directories, encouraging and soliciting such postings, profiting from said postings, and protecting the identity of the author of the posting. Now that Plaintiffs are in a position to identify the individuals that authored the posting, those individuals need to be made Defendants in this action in that they are the parties that made the initial publication of the offensive material. They are necessary parties, like the airline employee in *IBC Aviation Service, Inc. v. Compania Mexican de Aviacion, S.A. de C.V.* because much of the alleged wrongful conduct is attributable to these parties and therefore Plaintiffs could not obtain complete relief in the absence of joinder.

Plaintiffs could not obtain a complete relief in the absence of joinder of these parties. Once these parties are joined there will no longer be complete diversity amongst the parties in this action because Plaintiffs are Oregon residents and the Defendants sought to be joined in this matter, Susan and Anthony Gatchell are Oregon residents.

Plaintiffs respectfully request that this Court allow joinder of Susan and Anthony Gatchell as Defendants. The joinder of Anthony and Susan Gatchell destroys diversity in this matter. No other basis for federal jurisdiction exists or has been complained beyond diversity.

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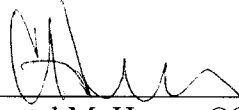
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Therefore, this Court has no original jurisdiction over this action. Plaintiffs respectfully request that this matter be remanded to Linn County Circuit Court for further proceedings with costs and attorney fees awarded to Plaintiff for improper removal.

DATED this the 24<sup>th</sup> day of February, 2009.

THE VANDERMAY LAW FIRM



Crystal M. Henry, OSB # 04312  
The VanderMay Law Firm  
388 State Street, Suite 340  
Salem, Oregon 97301  
(503) 588-8053

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Salem, Oregon 97301  
(503) 588-8053

**MILLER NASH**

WWW.MILLERNASH.COM

3400 U.S. Bancorp Tower  
111 S.W. Fifth Avenue  
Portland, Oregon 97204-3699  
OFFICE 503.224.5858  
FAX 503.224.0155Elisa J. Dozono  
elisa.dozono@millernash.com  
(503) 205-2450 direct line

November 18, 2008

**VIA E-MAIL AND U.S. MAIL**matt@vandermaylawfirm.com  
crystal@vandermaylawfirm.comMr. Matthew P. Zanotelli  
Ms. Crystal M. Henry  
The VanderMay Law Firm  
388 State Street, Suite 340  
Salem, Oregon 97301Subject: Keith Goodridge Construction and Keith Goodridge  
v. WYBS, Inc., dba MerchantCircle  
U.S. District Court Case No. 6:08-CV-6313-TC

Dear Mr. Zanotelli and Ms. Henry:

Under FRCP 26(d), a party may not seek discovery from any source before the parties have conferred pursuant to FRCP 26(f). We are happy to confer with you, but given that our motion to dismiss is under advisement, we hope you agree that it would be unreasonable for us to commence discovery efforts until after the motion is decided.

Nevertheless, without waiving any privileges or objections, we can provide you the following information regarding the posting made on June 4:

209.206.255.32 -- [04/Jun/2008:04:21:28 -0700] "POST" .....  
/business/Goodridge.Keith.Construction.541-258-8920/review/submit HTTP/1.1"  
163 302 "<http://www.merchantcircle.com/business/Goodridge.Keith.Construction.541-258-8920/review/create>" "Mozilla/4.0 (compatible; MSIE 7.0; Windows NT 6.0; SLCC1; .NET CLR 2.0.50727; Media Center PC 5.0; .NET CLR 3.0.04506)"  
"55e4c71boe617808bc693f426f9b2f89" "3be58c9d9230bcocf402478b59cadf09"  
"97355/11898673" "2"

PDXDOCS:1787637.1  
22E710-0001**PLAINTIFF'S  
EXHIBIT**tabbles  
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# MILLER NASH

WWW.MILLERNASH.COM

Mr. Matthew P. Zanotelli  
Ms. Crystal M. Henry  
November 18, 2008  
Page 2

We hope this information is helpful.

Very truly yours,

Elisa J. Dozono



FILE

**THE VANDERMAY LAW FIRM**  
Capitol Center Building  
388 State Street, Suite 340  
Salem, Oregon 97301

MAUREEN C. VANDERMAY  
MONTY K. VANDERMAY

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TELEPHONE (503) 588-8053 FAX (503) 588-3624

CRYSTAL M. HENRY  
MATTHEW P. ZANOTELLI

July 15, 2008

ATTN: Legal Compliance Officer  
MerchantCircle  
201 Main Street, Suite 100  
Los Altos, CA 94022

Sent Via U.S. Certified Mail and Regular U.S. Mail

RE: Keith Goodridge Construction  
Defamatory Posting  
Our File No.: 3161.01

To Whom it May Concern:

My firm represents the interests of Keith Goodridge Construction. All future communications from your office should be directed to this law firm.

Pursuant to Oregon Revised Statute 31.215, this is a demand for correction or retraction of a defamatory posting regarding Keith Goodridge Construction. Failure to make a timely retraction pursuant to ORS 31.215 may lead to liability for general libel damages pursuant to ORS 31.210.

On or about July 10, 2008, my client Keith Goodridge was bidding a job for a potential client. After the preliminary discussions where had with this client, his potential client asked him "How did you kill that teenager?" Mr. Goodridge was quite shocked to hear this accusation, and asked this potential client where he had heard such a rumor. The potential client stated that he had read this on the Internet, and had the courtesy to show Mr. Goodridge the website. The potential client took Mr. Goodridge to www.merchantcircle.com, where he read the following quote:

"KEITH GOODRIDGE CONSTRUCTION UNSAFE-CAUSED DEATH OF TEENAGER"

I am not at liberty to disclose all the facts as of this time, so I will share what information I can.

Keith A Goodridge Construction Manufactured/Built an outdoor arena in Lebanon, Oregon. There was a teenager riding in the arena and due to lack of proper building materials and lack of solid foundation for the structure it collapsed when the teenager and the horse bumped one of the main beams on the corner of the structure. The teen was killed and the horse struggled free only to be humanely destroyed later due to injuries. Parents of the teenager are seeking an undisclosed amount for obvious reasons.

June 04, 2008 by Attorney."

PLAINTIFF'S  
EXHIBIT  
2  
Page 1 of 2

Letter to Legal Compliance Officer

July 15, 2008

Page 2

Mr. Goodridge was both shocked and horrified to read this on your website, and immediately went to work ascertaining the validity of this claim. Over the next few days Mr. Goodridge went about contacting the only prior client for whom he had built an indoor horse arena. Mr. Goodridge was able to ascertain from that individual that, in fact, the arena had not collapsed and the arena's had not heard rumors or incidents of a teenager dying. Mr. Goodridge contacted the local police and the local paper regarding a teenager's death. As of this time, Mr. Goodridge has been unable to find any information regarding a dead teenager being involved with any of his projects.

As of this time, a reasonable investigation conducted by my client has shown that there is absolutely no truth to any portion of this posting. As such, my client is demanding a complete retraction of this posting on www.merchantcircle.com.

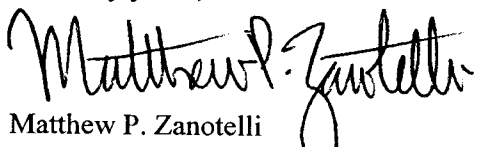
My client has the following sources which he offers you to call to verify that the information posted is not true. First, Mr. Goodridge invites you to call the owner of the only horse arena that he has constructed, a man named Robert Rollins at 541-451-5705. Further, information can be ascertained from the Albany Democrat Herald, the newspaper that is most local to Lebanon, Oregon at 541-926-2211. Contacting these sources should assist you in your ability to ascertain whether or not the posted material is at all truthful.

Additionally, we request your assistance in figuring out the identity, IP address, or any other information that you have about the individual posting this defamatory statement who appears to be self titled "Attorney." We request that this information be preserved for any future litigation that may ensue against the individual who posted this remark.

This notice of retraction is timely pursuant to ORS 31.215 as it is made within 20 days of the discovery of the defamatory statement by my client.

I personally logged on to your website one more time today to view the materials, and of July 15, 2008 this posting is still on your website. I would appreciate a immediate phone call from your legal counsel once this correction has been made. Thank you for your anticipated courtesies in this matter.

Sincerely yours,

  
Matthew P. Zanutelli  
Attorney and Counselor at Law

MPZ:tb

cc: Ketih Goodridge Construction  
File

enc: Courtesy copy of defamatory posting on www.merchantcircle.com

Exhibit 2  
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