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FEB 25 2008	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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UNITED STATES DISTRICT COURT FEB 25 2008

for the
For the DISTRICT OF Arizona

Jan E. Kruska)

Plaintiff)

v.)

Barbara W. Ochoa aka Petra Luna)

Defendant)


CV 08-54-PHX-SMM

**MOTION TO DISMISS UNDER RULE 12(b)
FOR LACK OF JURISDICTION, IMPROPER VENUE, INSUFFICIENT
SERVICE OF PROCESS, OR FAILURE TO STATE A CLAIM**

The defendant moves to dismiss the action because:

1. the defendant is not subject to the personal jurisdiction of this court;
2. venue is improper (this defendant does not reside in this district and no part of the events or omissions giving rise to the claim occurred in the district);
3. the defendant has not been properly served, as shown by the attached affidavits of Jan E. Kruska.
4. the complaint fails to state a claim upon which relief can be granted.

Date: 2/21/2008

 2-21-08

Barbara W. Ochoa
P.O. Box 572641
Tarzana, CA 91357
818 634 8551

Defendant :

I Barbara W. Ochoa aka Petra Luna hear by move to dismiss the complaint pursuant to Federal rule of procedure 12.

1. Lack of personal service. She had the papers sent to my old address. The elderly former roommate doesn't recall if she signed for it or not. Not subject to service of process in to California from Arizona.
2. Federal rule of civil procedure, Rule 4. United States District Court for the District of Arizona does not have jurisdiction over me. CA code. Civil Procedure 410.10 and Rule 4.2. Not doing business in Arizona. *International Shoe Co. vs Washington*, 326 U.S. 310, 319, 66 S. Ct. 154, 160, 90 L.Ed. 95. Suit cannot be brought against an individual unless they have minimum contacts with the forum state, and such lawsuit does not offend traditional notions of fair play and substantial justice.
3. Under 47 U.S.C.A. 230, *DiMeo vs Max* **433 F. Supp. 2d 523** no right of private action. Cannot use this law to sue. Government action only. See, *Cort v Ash*, 422 U.S. 66,78,95 S.Ct. 2080, 45 L.Ed.2d 26 (1975) Failure to plead pecuniary damages, 42 U.S.C. § 1983 for failure to state a claim and in dismissing for failure to exhaust administrative remedies. See, *Mapp v. Dovala* -- 03/17/1998
4. Rico: Can not prove Rico Act, Rule 223 (a)(1)(3) applies only to one who uses a telecommunication device "without disclosing ones identity". The bottom of the www.jankruska.com web site says "copyright Petra Luna".
5. Under 17 USCA s 107, we are not in violation of the Digital Millennium Copyright Act of 1998, Fair Use. See below.

Count I. Plaintiff Jan E. Kruska's accusation here is not true. I never stated that she was pro-pedophile, I only stated that her web sites are pro-pedophile and that can be proven with overwhelming evidence. Also, *Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), the United States Supreme Court held, voting 8-0, that the First Amendment's free-speech guarantee prohibits awarding damages to public figures to compensate for emotional distress intentionally inflicted upon them unless they can show that the statements

that gave rise to the distress were false and that the person that made those statements knew they were false or acted with reckless disregard for the truth in making the statements. Plaintiff Jan E. Kruska is a public figure fighting against the sex offender registry. See conclusion for evidence of Plaintiff admitting to being a sex offender.

Count II. 1st Amendment. Freedom of speech. I have the right to speak up in defense of children's safety.

Count III Plaintiff Jan E. Kruska's accusation here is not true. We asked her to take down her web sites that were putting out information that is harmful to children.

Count IV 47 U.S.C.A. has nothing to do with Defendant Barbara W. Ochoa. The statute states; No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Also, Must allege pecuniary damages. Failure to state a claim.

Count V I am not considered a person by 18 U.S.C. 1961. The law statute states (3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property. I own no property and "Petra Luna's Army" as she states, is not a for profit organization.

18 U.S.C. 1962 Fed Supp. Before Racketeer Influence and Corrupt Organizations Act (RICO) plaintiff can allege "pattern of racketeering activity" he must plead particular instances of racketeering activity" or "predicate acts" Plaintiff Jan E. Kruska has failed to do that.

Plaintiff Jan E. Kruska has also failed to prove two instances of racketeering activity within ten years of one another, 18 U.S.C. 1961.

Where plaintiff claims injury to her business, 18 U.S.C. 1962 does not state this. Complaints were only sent to free interactive web sites regarding Plaintiff, Jan E. Kruska's web pages/sites stating information that will endanger children.

The Amount of controversy is less than the sum or value specified by 28 U.S.C. 1332. The statute states: Sec. 1332. Diversity of citizenship; amount in controversy; costs. (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value

of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

Count VI Plaintiff Jan E. Kruska's accusation here is not true. I never asked anyone to kill plaintiff. Kruska can not prove this allegation. I have never contacted plaintiff by any means, ever. Even is this suit, the Plaintiff states there was no response from Defendant. Ochoa has not visited Arizona in the last 10 years.

47 U.S.C.A. 230, where she states (5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer. Not true and Plaintiff can not prove that I am in violation of this statute.

Concerning Violations of DMCA. Plaintiff Jan E. Kruska's accusation here is not true.

17 USCA 107

17 U.S.C.A. s 107

UNITED STATES CODE ANNOTATED

TITLE 17. COPYRIGHTS

CHAPTER 1--SUBJECT MATTER AND SCOPE OF COPYRIGHT

Current through P.L. 105-153, approved 12-17-97

s 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes **such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.** In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the

copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Count VII Can not prove intent to injure Plaintiff. Only asked for her to shut down web sites that contain material that will put children at risk.

Conclusion:

Plaintiff Jan Kruska is in clear violation of House Bill No. 250 with her web site <http://www.operationawarenesscom/>

See Below her page on “Duping Big Brother”page:

PLEASE LEARN MORE ABOUT CIVIL DISOBEDIENCE.

Civil disobedience encompasses the active refusal to obey certain laws, demands and commands of a government or of an occupying power without resorting to physical violence. Some tactics are legal and others are not. Please do your due diligence and research your states laws before making a decision to try any of the suggestions listed herein. Be prepared to be arrested. It is highly recommend that you know the law and repercussions of not following a specific law before resorting to civil disobedience. Prepare yourself for all possible repercussions. Civil Disobedience is most effective when very large groups of people join together in a concerted effort. Therefore it is vital to connect with others who share your concerns and issues. There is strength in numbers and Big Brother knows this.

When civil disobedience tells sex offenders to break the law, that is unacceptable. The sex offender registry was created to protect kids and she is asking dangerous child predators to interrupt these legal processes.

House Bill No. 250

SECTION 1. That Chapter 64, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-6408, Idaho Code, and to read as follows:

18-6408. RECKLESS ENDANGERMENT. (1) A person is guilty of reckless endangerment when he or she recklessly: (a) Engages in conduct that creates a substantial risk of death or serious physical injury to another person;

Jan's last name at the time of her arrest was Gustafson. Here is Jan's court info:

<http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/archive/caseInfo.asp?caseNumber=CR1992-004222>

Jan's criminal court record shows her case number is CR1992-004222-A.

Then one month afterwards, Jan decided to take the guilty plea bargain, changing it from not guilty to guilty:

7/10/1992 105 - ME: Plea Agreement/Change of Plea - Party (A)
7/10/1992 PAG - Plea Agreement - Party (A)

On her own website, in her own words, she states: "Yes, it is true. I am a registered sex offender."

On 2/20/2008 Plaintiff Jan E. Kruska and/or her supporters have "cyber attacked" by overloading the web sites systems. The site www.jankruska.com received over 10,000,000 hits in a 2 day period by cyber hackers, under violation of Federal Law and the site is inoperative at the current time.

We have only stated photos and information that she has put out herself. We are only trying to warn the public that her activities are encouraging sex offenders to beat the sex offender registry and put children at risk.

Wherefore Defendant Barbara W. Ochoa respectfully requests this honorable court to dismiss the complaints filed by Plaintiff Jan E. Kruska on all counts and to grant Defendant Barbara W. Ochoa any other relief to which she may be entitled.

Barbara W. Ochoa "aka" Petra Luna
P.O. Box 572641
Tarzana, CA 91357
(818)634-8551

X

Signature



2-21-08