

ROBERT A. DELSMAN, JR.  
3809 Little Fairfield street  
Eureka, CA 95503  
Telephone: (916)799-6374  
Fax: (707)441-9541  
Email: robdelsman@suddenlink.net  
DEFENDANT pro se

**FILED**  
MAY 11 2009  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SEDGWICK CLAIMS MANAGEMENT  
SERVICES, INC.,

Plaintiff,

vs.

ROBERT A. DELSMAN, JR.,  
Defendant

Case No.: CV 09 1468 SBA

**DEFENDANTS MOTION FOR SUMMARY  
JUDGEMENT:  
IMPROPER VENUE; FAILURE TO JOIN  
AN INDISPENSABLE THIRD PARTY  
UNDER RULE 19;**

Dated April 27, 2009

1 Defendant Robert A. Delsman, Jr. "Rob Delsman" makes the  
2 following known to the court. I am a disabled person, for the  
3 past three years I have been unable to work or provide for my  
4 family, I have been unable to care for myself without the  
5 assistance of my physician and my wife. Plaintiff Sedgwick  
6 Claims Management Services, Inc. has been in control of my  
7 income for the past three years and has caused me great physical  
8 difficulty and financial difficulty to near bankruptcy as a  
9 result of their actions.

10 As such, I am unable to secure the services of an attorney to  
11 assist me with this action. I have neither the financial  
12 resources nor legal expertise to prepare for this action.

13 In the preparation of my case I have had only one hour with the  
14 federal court pro bono project as they are very busy helping  
15 other persons as well.

16  
17 Plaintiff Sedgwick Claims Management Services, Inc., (Sedgwick  
18 CMS) brings these charges as a Strategic Lawsuit Against Public  
19 Participation or (SLAPP). This action is intended to intimidate,  
20 harass and terrorize Defendant Rob Delsman and his family by  
21 burdening Defendant with the cost of a legal defense which  
22 Defendant Rob Delsman cannot afford.

23  
24 Additionally, Plaintiff Sedgwick CMS brings these charges in an  
25 effort to terrorize other sick, injured and disabled persons  
26 that have posted their factual stories on websites and blogs  
27 that reside on the internet and maintained by Defendant Rob  
28 Delsman. Plaintiff Sedgwick CMS will continue these activities

1 until Defendant Rob Delsman, other sick, injured or disabled  
2 persons, sick, injured or disabled women and sick, injured or  
3 disabled persons of color are forced to abandon both criticism  
4 and opposition to the unlawful and immoral practices implemented  
5 by Plaintiff Sedgwick CMS.

6  
7 Defendant Rob Delsman asserts that the work product of sick,  
8 injured and disabled American citizens claimed to be in  
9 violation by Plaintiff Sedgwick CMS passes the fair use test  
10 under 17 U.S.C. § 107 in that the material is used for  
11 criticism, comment, news reporting, teaching, scholarship,  
12 satire and parody. Defendant Rob Delsman asserts that the  
13 purpose and character of the use, is for nonprofit educational  
14 purposes and is noncommercial in nature.

15  
16 Plaintiff Sedgwick CMS through this complaint has willfully and  
17 maliciously violated the First Amendment rights of sick, injured  
18 and disabled American citizens and caused original work product  
19 produced by sick, injured and disabled American citizens  
20 protected under 17 U.S.C. § 107 to be removed from YouTube,  
21 Google and IX webhosting by a false complaint.

22  
23 Plaintiff Sedgwick CMS through this complaint has willfully and  
24 maliciously violated 42 U.S.C § 1981 by actively denying the  
25 rights of sick, injured and disabled women and persons of color  
26 equal access to the internet as enjoyed by white citizens.

1 Plaintiff Sedgwick CMS through this complaint has willfully and  
2 maliciously violated 42 U.S.C § 1981 and caused original work  
3 product produced by sick, injured and disabled women and persons  
4 of color to be removed from YouTube, Google and IX webhosting by  
5 a false complaint.

6  
7 Defendant Rob Delsman asserts that the current relationship  
8 existing between Plaintiff and Defendant is subject to 29 U.S.C.  
9 §§ 1001-1461.the Employee Retirement Income Security Act  
10 (ERISA),

11  
12 Plaintiff Sedgwick CMS through this complaint has used content  
13 from Defendant Rob Delsman's websites and weblogs in a context  
14 intended to deceive and mislead the court as to the actual  
15 content and context. In one example Plaintiff Sedgwick CMS  
16 claims that the websites and weblogs promote "racist" and  
17 "intolerant", behavior. In actuality the website in question  
18 contains court documents that indicate Plaintiff Sedgwick CMS  
19 employee, Senior Claims Examiner Gloria Dyer stated that a  
20 claimant's mother "was a nigger living high." (Deposition of  
21 Judith Mehl, 44:18-19). The Plaintiff in this case was a young  
22 man, ventilator dependent quadriplegic and person of color.

23  
24 Plaintiff Sedgwick CMS through this complaint has willfully and  
25 maliciously violated 42 U.S.C § 1981 by actively denying the  
26 rights of Darien Smith a ventilator dependent quadriplegic and  
27 person of color by temporality removing his story from the  
28 internet but not stories submitted by white citizens.

1 This information can be viewed at:

2 [http://www.gesupplydiscrimination.com/files/html/sedgwick%20cms.](http://www.gesupplydiscrimination.com/files/html/sedgwick%20cms.shtml)  
3 [shtml](http://www.gesupplydiscrimination.com/files/html/sedgwick%20cms.shtml)

4  
5 Plaintiff Sedgwick CMS charges that other equally reprehensible  
6 and illegal material can be found at:

7 <http://sedgwickcms.blogspot.com/>

8 I would encourage the court to read and evaluate the stories  
9 that have been collected at this location.

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27 **Count 1- TRESPASS TO CHATTELS**  
28

1 Plaintiff Sedgwick CMS asserts in their complaint that they are  
2 administering an employee benefits plan for the benefit of  
3 General Electric Company "GE" and Metropolitan Life Insurance  
4 Company "MetLife" which is subject to 29 U.S.C. §§ 1001-1461  
5 The Employee Retirement Income Security Act of 1974 (ERISA).  
6 Defendant Rob Delsman agrees that the relationship between  
7 Plaintiff Sedgwick CMS and Defendant Rob Delsman is governed by  
8 29 U.S.C. §§ 1001-1461 The Employee Retirement Income Security  
9 Act of 1974 (ERISA). Defendant Rob Delsman asserts that **TRESPASS**  
10 **TO CHATTELS** alleged by Plaintiff Sedgwick CMS is inappropriate  
11 as no such provision for complaint or relief is provided under  
12 29 U.S.C. §§ 1001-1461. There is no prohibition contained in 29  
13 U.S.C. §§ 1001-1461 The Employee Retirement Income Security Act  
14 of 1974 (ERISA) regarding email messages, postcards, internet  
15 postings or other communications sent or received as part of the  
16 "denied claims appeal process".

17  
18 **COUNT 2- COPYRIGHT INFRINGEMENT**

19 **Plaintiff Sedgwick CMS failure to join an indispensable party**  
20 **under Rule 19.**

21  
22 Plaintiff Sedgwick CMS asserts that Sedgwick owns the exclusive  
23 rights in the copyright for the North and Posey photos and owns  
24 the copyright registrations for those photos. Plaintiff  
25 Sedgwick CMS states that the photos referred to as Plaintiff  
26 exhibits A and B "Posey" "North" copyright was obtained on March  
27 19, 2009 approximately one month after these images were  
28 displayed on a blog and website as an independent work product

1 from an unknown author. As such Plaintiff Sedgwick CMS fails to  
2 join the indispensable third party that created the content in  
3 question.

4  
5 **COUNT 3- INTERFERENCE WITH PROSPECTIVE ECANOMIC ADVANTAGE**  
6 **Improper Venue.**

7  
8 Plaintiff Sedgwick CMS claims injury of business relationships  
9 with Sears as a foundational issue of their complaint.  
10 Plaintiff Sedgwick CMS specifically identifies a postcard in  
11 their complaint that was mailed from Medford Oregon to a Sears  
12 Benefit Center in Seattle Washington. Medford Oregon is located  
13 within the jurisdiction of The United States District Court,  
14 District of Oregon not The United States District Court,  
15 Northern District of California.

16  
17 **Plaintiff Sedgwick CMS failure to join an indispensable party**  
18 **under Rule 19.**

19  
20 Sedgwick CMS fails to join the party in Medford Oregon  
21 responsible for the work product and dissemination of the  
22 postcard as part of their complaint.

23 Defendant Rob Delsman asserts that the postcard is not Defendant  
24 Rob Delsman's work product, Defendant Rob Delsman has not been  
25 to Medford Oregon, Defendant Rob Delsman knows no persons in  
26 Medford Oregon, and Defendant Rob Delsman has been unable to  
27 travel outside of Humboldt County California for approximately  
28 one year due to health conditions.

1 Plaintiff Sedgwick CMS claims injury of business relationships  
2 with Costco as a foundational issue of their complaint.  
3 Sedgwick CMS specifically identifies a postcard that was mailed  
4 to Costco located in Murray Utah from an unknown source.  
5 Defendant Rob Delsman asserts that the postcard is not Defendant  
6 Rob Delsman's work product nor was posted by Defendant Rob  
7 Delsman. Sedgwick CMS fails to join the author of the work  
8 product received by Costco in Murray Utah as part of their  
9 complaint.

10  
11 Plaintiff Sedgwick CMS alleges loss of \$75,000 on an estimate of  
12 anticipated earnings from Sears Holdings and Costco and not  
13 substantiated fact. There is no evidence that Sears or Costco  
14 terminated business relationships with Plaintiff Sedgwick CMS by  
15 means or reasons other than business necessity.

16  
17 **COUNT 4- TRADE LIBEL**

18 **Plaintiff Sedgwick CMS failure to join an indispensable party**  
19 **under Rule 19.**

20  
21 Plaintiff Sedgwick CMS asserts in their complaint that they are  
22 administering an employee benefits plan subject to 29 U.S.C. §§  
23 1001-1461 The Employee Retirement Income Security Act of 1974  
24 (ERISA) on behalf of clients identified as defendants currently  
25 listed in the Justia Federal District Court Filings and Dockets  
26 system.

27 Currently Plaintiff Sedgwick CMS is named as Defendant Sedgwick  
28 CMS in approximately 50 complaints for violations 29 U.S.C. §§

1 1001-1461 of The Employee Retirement Income Security Act of 1974  
2 (ERISA).

3 Plaintiff Sedgwick CMS has failed to join those specific  
4 Plaintiffs listed in the Justia Federal District Court Filings  
5 and Dockets system that have contributed original work product,  
6 stories or comments to the websites or blogs maintained on the  
7 internet by Defendant Rob Delsman.

8 Defendant Rob Delsman asserts that **TRADE LIBEL** alleged by  
9 Plaintiff Sedgwick CMS is inappropriate as no such provision for  
10 complaint or relief is provided under 29 U.S.C. §§ 1001-1461 The  
11 Employee Retirement Income Security Act of 1974 (ERISA).

12  
13 **COUNT 5- DEFAMATION AND LIBEL**

14 **Plaintiff Sedgwick CMS failure to join an indispensable party**  
15 **under Rule 19.**

16  
17 Defendant Rob Delsman asserts that the content contained on  
18 websites, blogs and editorials are the works of sick, disabled  
19 and injured persons "telling their stories and experiences" in  
20 regards to Plaintiff Sedgwick CMS and not the work product of  
21 Defendant Rob Delsman. Plaintiff Sedgwick CMS has failed to  
22 join those indispensable parties.

23 Plaintiff Sedgwick CMS states in their complaint that they are  
24 administering an employee benefits plan for the benefit of  
25 General Electric Company "GE" and Metropolitan Life Insurance  
26 Company "MetLife" that is subject to 29 U.S.C. §§ 1001-1461 The  
27 Employee Retirement Income Security Act of 1974 (ERISA).

28 Defendant Rob Delsman agrees that the relationship between

1 Plaintiff Sedgwick CMS and Defendant Rob Delsman are governed by  
2 29 U.S.C. §§ 1001-1461 The Employee Retirement Income Security  
3 Act of 1974 (ERISA).

4 Defendant Rob Delsman asserts that **DEFAMATION AND LIBEL** alleged  
5 by Plaintiff Sedgwick CMS are inappropriate as no such provision  
6 for complaint or relief is provided under 29 U.S.C. §§ 1001-1461  
7 The Employee Retirement Income Security Act of 1974 (ERISA).

8  
9 **COUNT 6- UNFAIR COMPETITION**

10 **Plaintiff Sedgwick CMS failure to join an indispensable party**  
11 **under Rule 19.**

12  
13 Defendant Rob Delsman asserts that the content contained on  
14 websites, blogs and editorials are the works of sick, disabled  
15 and injured persons "telling their stories and experiences" in  
16 regards to Plaintiff Sedgwick CMS and not the work product of  
17 Defendant Rob Delsman.

18 Sedgwick CMS asserts that Sedgwick owns the exclusive rights in  
19 the copyright for the North and Posey photos and owns the  
20 copyright registrations for those photos. Plaintiff Sedgwick  
21 CMS states that the photos referred to as Plaintiff exhibits A  
22 and B "Posey" "North" copyright was obtained on March 19, 2009  
23 approximately one month after these images were displayed on a  
24 blog and website as an independent work product from an  
25 unidentified authors. As such Plaintiff Sedgwick CMS fails to  
26 join the indispensable third party.

1 Plaintiff Sedgwick CMS asserts in their complaint that they are  
2 administering an employee benefits plan for the benefit of  
3 General Electric Company "GE" and Metropolitan Life Insurance  
4 Company "MetLife" which is subject to 29 U.S.C. §§ 1001-1461  
5 The Employee Retirement Income Security Act of 1974 (ERISA).  
6 Defendant Rob Delsman agrees that the relationship between  
7 Plaintiff Sedgwick CMS and Defendant Rob Delsman is governed by  
8 29 U.S.C. §§ 1001-1461 The Employee Retirement Income Security  
9 Act of 1974 (ERISA). Defendant Rob Delsman asserts that **UNFAIR**  
10 **COMPETITION** alleged by Plaintiff Sedgwick CMS is inappropriate  
11 as no such provision for complaint or relief is provided under  
12 29 U.S.C. §§ 1001-1461 The Employee Retirement Income Security  
13 Act of 1974 (ERISA).

14  
15 Further, Plaintiff Sedgwick CMS assertion that Defendant Rob  
16 Delsman has violated California Business and Profession Code  
17 Section 17200 is mute because 29 U.S.C. §§ 1001-1461 The  
18 Employee Retirement Income Security Act of 1974 (ERISA) preempts  
19 state law in regards to administration of benefits programs  
20 subject to 29 U.S.C. §§ 1001-1461 The Employee Retirement Income  
21 Security Act of 1974 (ERISA).

22 -----  
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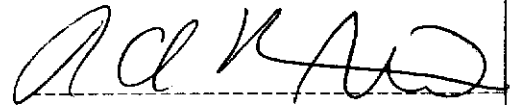
26 WHEREFORE, defendant Rob Delsman prays that this court enter  
27 summary judgment in favor of Rob Delsman and against Sedgwick  
28 CMS and as follows:

- 1 • for a permanent injunction prohibiting Plaintiff Sedgwick  
2 CMS from threatening, terrorizing or retaliating against  
3 any persons that place their work product or factual  
4 accounts on websites or weblogs maintained by Rob Delsman;
- 5 • for an order requiring Plaintiff Sedgwick CMS to notify  
6 YouTube, Google and IX webhosting with notice of summary  
7 judgment of the complaint within 5 days;
- 8 • for sanctions against Plaintiff Sedgwick CMS resulting from  
9 egregious behavior in filing a Strategic Lawsuit Against  
10 Public Participation or (SLAPP). The sole intent of this  
11 action is intended to intimidate, harass and terrorize  
12 Defendant Rob Delsman, sick, injured and disabled women and  
13 people of color until they are forced to abandon both  
14 criticism and opposition to the unlawful and immoral  
15 practices implemented by Plaintiff Sedgwick CMS.

16  
17  
18 Dated: 05/08/09

19 Respectfully submitted,

20 Robert A. Delsman, Jr.

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