

Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 15-1561-AG(Ex)	Date	June 20, 2016
Title	EMAZING LIGHTS, LLC v. RAMIRO MONTES DE OCA, ET AL.		

Present: The Honorable ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: [IN CHAMBERS] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Plaintiff Emazing Lights, LLC (“Plaintiff” or “Emazing”) initiated the present action in September 2015. (Dkt. 1.) In the original complaint, Plaintiff alleged that Ramiro Montes de Oca and Quantum Hex, LLC (“Quantum Defendants”) infringed U.S. Patent No. 9,148,931 (“the ’931 Patent”). Plaintiff then filed an amended complaint and added three more defendants: Rave Ready, LLC, KandeKreations, LLC, and OLS Com, LLC dba Orbit Light Show (“Distributor Defendants”) (First Amended Complaint, Dkt. 28.)

On May 9, 2016, RaveReady filed a motion to dismiss all causes of action against it under Rule 12(b)(6) and 35 U.S.C. § 299 (“Motion,” Dkt. 50.) Shortly thereafter, KandeKreations filed a joinder. (Dkt. 56.) Plaintiff opposes the Motion. (“Opposition,” Dkt. 54.)

The Court **GRANTS** Defendants’ Motion.

1. LEGAL STANDARD

A court will grant a motion to dismiss if the complaint does not allege claims upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

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In analyzing the complaint's sufficiency, a court must "accept[] all factual allegations in the complaint as true and constru[e] them in the light most favorable to the nonmoving party." *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012).

2. DISCUSSION

2.1 Local Rule 7-3

Emazing claims that RaveReady failed to comply with Local Rule 7-3, which provides that, "counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution." (Civil Local Rule 7-3.)

RaveReady admits that it did not discuss the substance of the contemplated Motion with Plaintiff. It alleges, however, that its counsel attempted to contact Plaintiff's counsel numerous times and in numerous ways before filing the Motion, but that Plaintiff's counsel did not respond in a timely manner. (Dkt. 50 at 4-5.) Emazing disputes this in a declaration.

Emazing has not alleged any prejudice caused by the failure to meet and confer. Accordingly, the Court elects to consider the Motion on the merits. *See Wilson-Condon v. Allstate Indem. Co.*, No. CV 11-05538 GAF (PJWx), 2011 WL 3439272, at *1 (C.D. Cal. Aug. 4, 2011) ("Nonetheless, Allstate does not appear to have suffered any prejudice from Plaintiff's failure to meet and confer sufficiently in advance . . . Thus, it appears that no prejudice will result if the Court considers the motion to remand on the merits notwithstanding Plaintiff's failure to comply with Local Rule 7-3.").

2.2 Dismissal under 12(b)(6)

2.1.1 Indirect Infringement Claims

Defendants argue that "the Amended Complaint does not provide 'fair notice' as to enable them to defend itself effectively" because it asserts direct, contributory, induced and willful infringement in one combined infringement count against them (Dkt. 50 at 5.) In response,

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Plaintiff clarifies that the Amended Complaint does not allege contributory or induced infringement claims against Defendants. (Dkt. 54 at 7 n.2.) Nevertheless, Defendants reply that the second claim for relief against them is ambiguous and fails to provide fair notice.

In light of Emazing's admission, the Court GRANTS the Motion to Dismiss to the extent the Amended Complaint alleges indirect infringement against RaveReady and KandeKreations.

2.1.2 Willful Infringement Claim

Defendants argue that Plaintiff has not sufficiently pleaded a claim for willful infringement. They rely on the Federal Circuit decision in *Seagate* and contend that the Amended Complaint must include facts to show that “the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.” (Dkt. 50-1 at 6) (citing *In re Seagate Tech., LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007)). The Court observes that the Supreme Court has recently rejected the *Seagate* framework concerning an award of enhanced damages under 35 U.S.C. § 284. *See Halo, Inc. v. Pulse, Inc.*, Nos. 14-1513, 14-1520, ___ U. S. ___, 2016 WL 3221515 (2016). Even under the more relaxed standard, however, the Court finds that the Amended Complaint lacks sufficient facts to state a cause of action for willful infringement.

To satisfy *Twombly* and *Iqbal* pleading standards, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A ‘bare recitation of the required legal elements for willful infringement’ or a ‘mere allegation, without more,’ that Defendants knew of the patents-in-suit will not survive a Rule 12(b)(6) motion.” *Irori Techs., Inc. v. Luminex Corp.*, No. 13-CV-2647, 2014 WL 769435, at *2 (S.D. Cal. Feb. 25, 2014) (citation omitted).

Here, only three statements in the amended complaint address willful infringement. First, “[Defendant’s] infringements of the Subject Patent. . . are willful, wanton, deliberate, without license, and with full knowledge of Plaintiff’s rights and ownership therein.” (Dkt. 28 ¶ 38.) Second, “[Defendant] acted in bad faith, in a knowing, willful, malicious, fraudulent and

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oppressive manner, and with the intent and purpose of advancing their own gain at the direct expense of Plaintiff's rights" (Dkt. 28 ¶ 41.) Third, "Plaintiff has provided written notice to each of Defendants of their infringing actions and has demanded that Defendants cease and desist from their wrongful activities." (Dkt. 54 at 7.)

The first two statements present legal conclusions without factual basis and are precisely the type of allegation deemed insufficient under the *Twombly/Iqbal* standard. On its face, the third statement also lacks an adequate factual basis to make a plausible allegation that the Defendants knew about the '931 Patent and acted in a manner that amounted to willful infringement. Although Plaintiff has attached copies to its Opposition of the written notice allegedly sent to Defendants (Dkt. 55-1), a court generally cannot consider material outside the complaint when ruling on a motion to dismiss. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001).

Accordingly, the Court GRANTS Defendants' motion to dismiss as to the willful infringement claim against RaveReady and KandeKreations, with leave to amend.

2.2 Dismissal under 35 U.S.C. § 299(a)

Defendants allege that joinder is improper under 35 U.S.C. § 299(a). Under subsection 299(a), accused patent infringers may be joined in one action if two requirements are met:

- 1) any right to relief is asserted against the parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process; and
- 2) questions of fact common to all defendants or counterclaim defendants will arise in the action.

35 U.S.C. § 299(a). Emazing does not address why joinder of the five defendants is proper in the amended complaint. In the Opposition, Emazing defends joinder on the basis that the

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