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OF THE
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September 5, 2014

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Re: *Mitchell Lane Publishers, Inc. v. Rasemas*
C.A. No. 9144-VCN
Date Submitted: September 3, 2014

Dear Counsel:

Plaintiff Mitchell Lane Publishers, Inc. ("Mitchell Lane") has moved, pursuant to Court of Chancery Rules 15(a) and 19, to file a Verified First Amended Complaint ("Amended Complaint") adding additional parties and new claims. Mitchell Lane seeks to (i) add two new parties, Thomas Cope ("Mr. Cope") and Patricia Cope ("Ms. Cope," and collectively with Mr. Cope, "the Copes") and (ii) add claims against the Defendants (Joseph Rasemas, Cynthia Rasemas, and Purple Toad Publishing, Inc. ("Purple Toad") collectively, the "Defendants"), as

well as the Copes, under Delaware’s Misuse of Computer System Information Act, 11 *Del. C.* § 935.

When a pleading can no longer be amended as a matter of course, “a party may amend the party’s pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires.”¹ While this Court’s policy “of freely allowing amendments to pleadings does not mean that there is no limit to the allowance of proposed amendments,”² motions for leave to amend under Rule 15(a) are “liberally granted.”³ In exercising its discretion, this Court considers factors such as the timeliness of the motion, the reasons for delay, and the prejudice that would be suffered by the party opposing the proposed amendment if the motion were granted.⁴

Mitchell Lane sought leave to file the Amended Complaint four days after its August 15 deposition of Mr. Cope. Mr. Cope’s deposition was taken two weeks

¹ Ct. Ch. R. 15(a).

² *Brown v. Ocean Drilling & Exploration Co.*, 1977 WL 9543, at *1 (Del. Ch. Nov. 1, 1977).

³ *New Castle Shopping, LLC v. Penn Mart Discount Liquors, Ltd.*, 2009 WL 5197189, at *1 (Del. Ch. Oct. 27, 2009).

⁴ *Brown*, 1977 WL 9543, at *1.

after the Copes produced documents responsive to subpoenas served by Mitchell Lane on June 1 and 2, 2014. Service of the subpoenas was made shortly after this Court granted Mitchell Lane's motions for commissions, and those commissions were timely sought after documents produced in discovery revealed previously unknown information. Mitchell Lane had no reason to know that it could allege claims against the Copes until it received the Copes' documents.

Further, the Copes will not suffer material prejudice from being added as defendants to the Amended Complaint. The Copes were aware of the current litigation and knew, or should have known, that Mitchell Lane might have sought to bring claims against them if Mitchell Lane had knowledge of the Copes' involvement with Purple Toad.⁵ Except for the count alleging violation of Delaware's Misuse of Computer System Information Act, the claims asserted against the Copes in the Amended Complaint are the same as the claims in the

⁵ The documents produced by the Copes included more than 148 emails between the Copes and Defendants Joseph Rasemas and Cynthia Rasemas. That number of emails can be contrasted with the 19 emails involving the Copes that were produced by the Original Defendants as part of their document production. *See* Pl.'s Reply Br. in Further Supp. of its Mot. For Leave to File Am. Compl. at 8.

original complaint. The Copes had notice of these claims and defending against them will not be materially prejudicial.

Mitchell Lane also sought to add claims under Delaware's Misuse of Computer System Information Act after becoming aware of new information through discovery. Mitchell Lane's delay in asserting these claims does not appear to stem from bad faith or dilatory motive, and the Defendants will not suffer undue prejudice in defending against the claims.⁶

Defendants specifically object to the Amended Complaint as it would apply to the Copes on the grounds that (i) this Court lacks personal jurisdiction over the Copes and (ii) Mitchell Lane has not stated a claim against the Copes. Review of whether the Court has personal jurisdiction over the Copes would be more efficient in the context of their motion under Court of Chancery Rule 12(b)(2), if they choose to file one, because of their familiarity with the jurisdictional facts. As for determining whether a claim is stated against the Copes, the proposed pleading, on a less than full review, appears to state a claim, but allowing the Copes to make

⁶ Defendants have offered no cognizable grounds for denying the motion to amend as to them. Accordingly, Mitchell Lane's Motion for Leave to File Amended Complaint in that respect is granted.

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their specific arguments, if they decide to raise them under Court of Chancery Rule 12(b)(6), would provide them a direct opportunity and avoid duplication in the process of determining whether the proposed Amended Complaint states a claim as to them.

For the above reasons, the Court is satisfied that justice so requires allowing amendment of the complaint. However, with less than two weeks before the September 15 preliminary injunction hearing, the Copes should not be expected to appear and to defend against the allegations of the Amended Complaint at that hearing. Consequently, Mitchell Lane's Motion for Leave to File Amended Complaint is granted as to the Copes for the trial, scheduled for October 20, 2014, but not for the preliminary injunction hearing.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K