

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-02002-WJM

OPEN STUDIOS, INC, a Colorado, Nonprofit Corporation

Plaintiff,

v.

BOULDER METALSMITHING ASSOCIATION, a Colorado, Nonprofit Corporation
Defendant.

DECLARATION OF KIRSTIN M. JAHN

I, Kirstin M. Jahn, under penalty of perjury of the laws of the United States of America, hereby state:

1. I am the attorney for Defendant and make this Declaration in support of Defendants' Response to Open Studios' Motion to Enforce the Draft Settlement Agreement.
2. Attached as Exhibit A is a true and correct copy of an email string between Ms. Sara Bridgeforth, a legal assistant at Mr. Bernstein's office, and me dated October 14, 2016.
3. The next contact I had from Mr. Bernstein's office was an email from Mr. Bernstein reiterating the earlier email from his assistant, chastising me for refusing to conduct legal discussions with a non-lawyer, providing a general objection to posts by BOMA which preceded the confidential settlement discussions, a request that all derogatory posts be taken down and a general objection to BOMA's classification of "proposed settlement agreement" rather than "draft settlement agreement. In response, I asked Mr. Bernstein to provide more specifics with respect to the alleged derogatory posts and advised him that his objection to BOMA's characterization of the draft settlement agreement was

overreaching. See, Motion at Exhibit 5.

4. On October 21, 2016, I had a conversation with yet another attorney affiliated with Mr. Bernstein's office, Ms. Merlin. During that conversation, I once again asked that the alleged disparaging remarks be specifically identified by date and reference because there were hundreds of posts on the facebook page. At that time, Ms. Merlin stated she would get the exhibits so she could give me the specific information. She then provided me with the specific information requested which I summarized in an email to Mr. Bernstein to ensure I received all of the alleged disparaging posts which Open Studios desired to be removed. In that email, I requested that identification of any other posts be provided so that BOMA could address them. I did not receive any further instances of alleged disparagement from Mr. Bernstein or his office. Attached as Exhibit B is a true and correct copy of my October 21, 2016 email to Mr. Bernstein.
5. On or before October 22, 2016 BOMA removed the posts which Open Studios identified as disparaging.
6. On October 25, 2016, I provided Mr. Bernstein with a draft of the final settlement agreement for his "review and comments." I never received any changes to this draft from Mr. Bernstein or his office. Attached as Exhibit C is a true and correct copy of the email to Mr. Bernstein with a draft of the final settlement agreement.
7. On October 25, 2016, I received an email from Ms. Merlin acknowledging the removal of certain posts and providing further generalities without providing specific dates of posts or identifying the specific language of the alleged disparaging remarks. I responded in an email again requesting a link to the specific comments which were considered disparaging. I never received any more specific information from Open Studios. Attached as Exhibit D1 is a true and correct copy of the email string between Ms. Merlin and me.
8. On October 26, 2016, I called Ms. Merlin for a pre-scheduled conference call. She was not in Mr. Bernstein's office and I was told I could contact her by cell. However, the person who answered the phone refused to give me her cell phone. I then requested that the receptionist connect me directly to Ms. Merlin's cell phone since she did not want to give it to me. The receptionist stated that

she did not know how to do that. Then, I indicated it would be difficult for me to have a conference call with Ms. Merlin when she was not in the office and I had no way to contact her.

9. Ms. Merlin eventually called my office and we discussed the posts which were listed in my confirming email of October 21, 2016 and were taken down. Ms. Merlin started arguing that we did not take all of the posts down, that we did not indicate the litigation was settled, and made assumptions about what the draft final settlement agreement meant. I again asked her to be specific about what other posts she considered disparaging. However, Ms. Merlin refused to provide me with any more specific details, instead advising me that it was my job to search the internet for all instances of disparagement and she was not going to do that task. I stated that since we disagree on what is disparaging, it would be most efficient if she identified any further posts. She refused stating something to the effect that it was not her job to scour the internet for disparaging remarks by BOMA. I then indicated that without any specific information or dates of posts, it would be difficult for the Court to make any determination on them either. She then became very argumentative and at that time, I advised her that her comments were inappropriate and rude and I would be ending the call.
10. I then followed up with an email and once again asked her to provide the specific instances of alleged disparagement so BOMA could address them. Attached as Exhibit D2 is a true and correct copy of my email to Ms. Merlin and Mr. Bernstein.
11. On October 27, 2016, I sent an email to Mr. Bernstein's office confirming the earlier identified posts were removed. I further advised him that I disagreed with Open Studios' allegations that links to press articles were disparaging or that individual face book pages which posted any information were liable under the "draft" settlement agreement (just as Open Studios has individual members posting information as well). I then requested him to provide legal support for the allegation of disparagement as to those two items so that I could consider it and respond. No further information was provided. A true and correct copy of this email is attached as Exhibit E.

12. In addition, in the October 27, 2016 email, I restated some items in the settlement agreement as being reasonable (e.g. notice and cure provisions) and offered to consult with the court to assist in finalizing the agreement.
13. Open Studios never provided any further specific instances of disparagement, or any case law in support of their position. Nor did Open Studios provide a redlined version of the settlement agreement.
14. Since the filing of this Motion, most of the posts referenced in Open Studios' Exhibits have been temporarily taken down.

The above information is true and correct to the best of my knowledge.

Dated: November 15, 2016

s/ Kirstin M. Jahn