

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Vilana Financial Inc., a	)	No.:	06-cv-01164 (ADM/AJB)
Minnesota Corporation;)		
Vilana Realty Inc., a Minn-)		
esota Corporation; and)		
Andrew Vilenchik, a private)		
individual)		
)		
Counterclaim	)		COUNTERCLAIM DEFENDANT'S
Plaintiffs	)		MEMORANDUM OF LAW
	)		SUPPORTING MOTION TO
	)		DISMISS UNDER MSA
vs.	)		554.01 et seq. AND
	)		RULE 12(b)(6)
)		
Chris Gregerson)		
)		
Counterclaim)		
Defendant)		

BACKGROUND

The dispute between the Counterclaim Plaintiffs (hereinafter "Vilana") and the Counterclaim Defendant (hereinafter "Gregerson") began with Gregerson's discovery of his photo in Vilana's 2005 Dex phone book advertisement. Gregerson's attempts to collect the licensing fee failed, and he posted a webpage critical of Vilana in the "essays" section of his website (www.cgstock.com/essays/vilana.html).

Seven days later, Gregerson received the first of several contacts from readers of the webpage offering information to support Gregerson's claims: a Russian

immigrant pointed out the use of Gregerson's photo by Vilana in a local Russian-language newspaper, which Gregerson did not know about and Vilana never disclosed (See attached Affidavit of Counterclaim Defendant at 4).

Vilana demanded Gregerson remove the entire webpage or face a lawsuit for defamation. The Honorable Mark Wernick wrote of Vilana's demand letter:

“Vilana's bad faith in connection with the theft of Gregerson's photograph is also reflected in the October 4, 2005, letter that Vilana's lawyer wrote to Gregerson. Exhibit F. The letter demanded that Gregerson remove the *entire* essay from Gregerson's website. Vilana's lawyer surely knew that he could only ask Gregerson to remove those statements in the essay that were allegedly false....The lawyer's letter appears to be a bullying tactic designed to cause Gregerson to refrain from making statements which Vilana knew Gregerson was entitled to make.”

See Mark S. Wernick's Order of April 10th, 2006, at page 11:2. Gregerson offered to remove any statements that could be identified as false. Vilana did not respond and served Gregerson with a Complaint for defamation. Exhibit A of that Complaint was the “Zubitskiy photo agreement”, which Vilana claimed gave them the rights to Gregerson's photo which was really taken by Michael Zubitskiy. Despite Gregerson's certificate of copyright registration and other proof of authorship, Vilana still claims Michael Zubitskiy

took the photo and denies Gregerson owns the copyright (See Vilana's JOINT AND SEPARATE ANSWER AND COUNTERCLAIM at ¶ 20 and ¶ 21). Neither party can locate anyone named Michael Zubitskiy in the USA, and readers of Gregerson's webpage informed him the Zubitskiy photo agreement was forged (see Affidavit of Counterclaim Defendant at number 5). Gregerson develop evidence against Vilana based on these reader's allegations, which he utilized as follows:

1. In a motion for sanctions served on Vilana on December 22nd of 2005 (still pending);

2. In Gregerson's federal Complaint for copyright infringement now before this court;

3. In a complaint against Vilana Financial, Andrew Vilenchik, and Vladimir Kazaryan filed with the Minnesota Department of Commerce for their forgery of the "Zubitskiy Photo Agreement" (Exhibit A);

4. In a complaint with the Office of Lawyer Professional responsibility against Vilana's current counsel, Boris Parker Esq. (Exhibit B).

Gregerson's webpage continues to solicit information from readers to support his pursuit of government action against Vilana. Vilana now seeks to add six additional

causes of action against Gregerson over this webpage. Gregerson now invokes Minnesota's anti-SLAPP statute, designed to protect an individual's right to public participation, in response to Vilana's claims over this webpage. This brief will argue that Vilana's new claims fail to meet the pleading threshold, but even if they should meet it, they must be dismissed (under MSA §554.01 et seq.) unless Vilana produces clear and convincing evidence of torts they allege.

Minnesota's Anti-SLAPP Statute (MSA §554.01 et seq.)

Minnesota's Anti-SLAPP statute is explained in *Marchant Investment & Management Co., Inc. v. St. Anthony West Neighborhood Org., Inc.* 694 N.W.2d 92 (Minn.App. 2005):

"To protect citizens and organizations from lawsuits that would chill their right to publicly participate in government, Minnesota enacted an anti-SLAPP (Strategic Lawsuits Against Public Participation) statute in 1994. See 1994 Minn. Laws ch. 566 (describing act as "protecting citizens and organizations from civil lawsuit for exercising their rights of public participation in government"). Twenty-three other states have enacted similar statutes, ranging from those that only protect speech related to zoning issues and others that protect the "right to speak in any 'public forum' on 'matters of public concern.'" Margaret Graham Tebo, *Offended by a SLAPP: As Lawsuits Against Citizens Expand, Countermeasures Are Rolled Out*, A.B.A. J., Feb. 2005, at 16, 17.

"Minnesota's statute permits a party to bring

a motion to dismiss on the ground that the claim "materially relates to an act of the moving party that involves public participation." Minn. Stat. § 554.02, subd. 1 (2004). Public participation means "speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action." Minn. Stat. § 554.01, subd. 6 (2004). The district court must grant a motion to dismiss brought under the act unless the responding party demonstrates, by clear and convincing evidence, that the moving party's conduct is not immune from liability because the conduct constitutes a tort or violation of a constitutional right. Minn. Stat. §§ 554.02, subd. 2(2), (3), .03 (2004).

The anti-SLAPP statute applies the following provisions to Gregerson's current motion to dismiss:

554.02. Protection of citizens to participate in government.

Subdivision 1. Applicability. This section applies to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation.

Subd. 2. Procedure. On the filing of any motion described in subdivision 1:

(1) discovery must be suspended pending the final disposition of the motion, including any appeal; provided that the court may, on motion and after a hearing and for good cause shown, order that specified and limited discovery be conducted;

(2) the responding party has the burden of proof, of going forward with the evidence, and of persuasion on the motion;

(3) the court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and

convincing evidence that the acts of the moving party are not immunized from liability under section 554.03;

The statute places the burden on the Counterclaim Plaintiff to “produced clear and convincing evidence” that the counterclaim defendant's “speech constitutes a tort or a violation of a person's constitutional rights.” This is a much higher threshold than the normal pleading threshold.

Required Application of Minnesota's Anti-SLAPP statute (MSA §554.01 et seq.) in Federal Court

Minnesota's anti-SLAPP statute is intended to protect the constitutional right to free speech and public participation, which is addressed by §42 U.S.C. 1988(a):

“The jurisdiction in civil and criminal matters conferred on the courts...for the protection of all persons in the United States in their civil rights...as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction is held, so far as the same is not inconsistent with the Constitution and laws of the United States...”[Emphasis added.]

Section 1988 authorizes federal courts to disregard an otherwise applicable state rule of law only if the state law is inconsistent with the Constitution and laws of the United States (*Board of Regents of the University of the State of New York v. Tomanio*, 446 U.S. 478, 485, (1980)). Minnesota's anti-SLAPP law is consistent with US Law and

the US Constitution.

ANTI-SLAPP ARGUMENT

Gregerson's webpage was aimed, in part, at helping him pursue favorable government action: a favorable outcome in state and federal court, and enforcement action by the Minnesota Department of Commerce. Gregerson's claims against Vilana before these bodies include evidence developed with help from readers of Gregerson's webpage:

1. Gregerson's current federal infringement complaint incorporates evidence provided by a reader who pointed out infringement by Vilana that Gregerson didn't know about, and Vilana didn't disclose (See Affidavit of Counterclaim Defendant, attached, at number 4).

2. An anonymous caller who read Gregerson's webpage informed him the Zubitskiy Photo Agreement was fraudulently notarized, prompting Gregerson to send the document to a handwriting expert, who's opinion supported the caller's statement (Id at 5). Gregerson included this and other evidence the Zubitskiy photo agreement was forged in his complaint with the Minnesota Department of Commerce (Exhibit A, attached) and his complaint with the Office of Lawyer

Professional Responsibility (Exhibit B, attached). Gregerson's webpage continues to help his pursuit of favorable government action. It is an efficient, high-tech equivalent of canvassing door-to-door, informing neighbors about a concern or grievance and soliciting information. This grassroots networking is essential to the pursuit of favorable government action, and Minnesota's anti-SLAPP statute creates a barrier to the litigation Vilana has brought against Gregerson for this activity. Unless Vilana produces clear and convincing evidence that Gregerson has committed the torts they alleged, their claims must be dismissed under Minnesota's anti-SLAPP statute.

RULE 12 (b) (6) ARGUMENT

Vilana's counterclaims make conclusory allegations of law without identifying any specific acts by Gregerson. "Conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim" under Fed. R. Civ. P. 12(b)(6) (See *Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1049 (9th Cir. Cal. 2000))

Counterclaim one: deceptive trade practices

The claim that "Gregerson has engaged in acts of

deceptive practices and unfair competition against Counterclaimants” does not identify any acts and thus fails to inform Gregerson of the claims against him. Assuming the act is something written by Gregerson on his webpage, that webpage is not commercial in nature and thus cannot be a deceptive trade practice under MSA §325D.44(1) (“A person engages in a deceptive trade practice when, in the course of *business...*” (emphasis added)).

Counterclaim two: trademark infringement and dilution

When an action is brought against a non-commercial use of a trademark for consumer commentary, the courts have afforded full First Amendment protection and held the First Amendment bars application of the federal statute (*Bally Total Fitness Holding Corp. v. Faber*, 29 F. Supp. 1161, 1167 (C.D. Cal. 1998); *Lighthawk v. Robertson*, 812 F. Supp. 1095, 1097-1101 (W.D. Wash. 1993). Criticisms of a company's products or business practices constitute speech protected by the First Amendment. *Porous Media Corp. v. Pall Corp.*, 173 F.3d 1109, 1119-1121 (8th Cir. 1999); *U.S. Healthcare v. Blue Cross of Greater Philadelphia*, 898 F.2d 914, 927-939 (3d Cir. 1990). Vilana is using the discredited practice of bringing a trademark suit against a

person engaging in public criticism. Under this theory, critics may not utter the name of the corporation they wish to complain about.

The state statutes cited by Vilana only apply to "selling, offering for sale, or advertising of any goods or services" (See MSA §333.28). Gregerson's webpage critical of Vilana is non-commercial speech, with no products for sale, and it does not offer any product or service as if it were a "Vilana" product or service. It informs the community about Gregerson's litigation and Dept. of Commerce complaint against Vilana, and solicits information from readers that might support Gregerson's claims. There is no likelihood of confusion, as no reasonable consumer would believe that Vilana Financial was the source of the webpage criticizing Vilana. Professor Thomas McCarthy, author of a treatise on trademarks, explains:

"Use of a mark in a purely communicative, non-trademark setting should be permitted or else trademark law could be used as a tool to stifle unwelcome discussion...The Restatement takes the position that in cases where the trademark owner alleges injury to reputation from a non-trademark purely communicative use of its mark, trademark law, whether in the form of traditional infringement or dilution, should not apply..."

Source: J. Thomas McCarthy, McCarthy on Trademarks and

Unfair Competition § 31:148 (4th ed. 1999). Also note that "Vilana Financial" and "Vilana Realty" are not listed as registered marks with the U.S. Patent and Trademark Office Trademark Electronic Search System.

Counterclaim four: defamation

The Ninth Circuit has ruled that an action for defamation cannot go forward without evidence of a false statement of fact (See *Cort v. St. Paul Fire and Marine Ins. Companies, Inc.*, 311 F.3d 979, 985 (9th Cir. 2002)). The only allegedly defamatory statements Vilana cites are those made by a third party, not Gregerson. Vilana's defamation claim fails to meet the most basic pleading threshold, as nothing written by Gregerson is cited or quoted. Vilana must also overcome the issue of estoppel, as they already have a claim for defamation against Gregerson over the same webpage before this court.

Counterclaim three, five, and six: interference with contractual relationships, injunction, and unjust enrichment

These claims do not meet the pleading threshold due to failing to inform Gregerson of the claims against him: Counterclaim three accuses Gregerson of "conduct to intentionally interfere", but the conduct is not identified

and the party interfered with is only described as "third parties" and "others". The fifth counterclaim concludes Gregerson committed "infringement" and "disparagement" which Gregerson must cease, but these acts are not identified (the date, location, or what the act was is not identified). Counterclaim six, unjust enrichment, does not identify Gregerson's enrichment. These do not adequately state a claim, and nothing is offered that would, if proved, support the claim.

CONCLUSION

No words or act by Gregerson are quoted or identified specifically in the Counterclaim. It contains conclusions of law about conduct by Gregerson, which fail to adequately state a claim for which relief can be granted.

The counterclaim Plaintiffs have pursued litigation against Gregerson for a year now, claiming Gregerson's webpage is defamatory. Gregerson has produced abundant proof he created and owns the rights to the photo Vilana published, and his webpage is thus true and not defamatory. Vilana has produced nothing to support their contradictory version of events, and now seeks to further escalate this dispute by making six new claims, all which are

insufficiently pled and also barred by Minnesota's anti-SLAPP statute.

Respectfully submitted,

Dated: October 3rd, 2006

By: /s/ Chris Gregerson
Chris Gregerson, *pro se*
counterclaim defendant
150 N Green Ave.
New Richmond, WI 54017
Telephone: 612-245-4306

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Vilana Financial Inc., a	)	No.: 06-cv-01164 (ADM/AJB)
Minnesota Corporation;)	
Vilana Realty Inc., a Minn-)	
esota Corporation; and)	
Andrew Vilenchik, a private)	
individual)	
	)	AFFIDAVIT OF CHRIS
	)	GREGERSON IN SUPPORT
	)	OF COUNTERCLAIM
Counterclaim	)	DEFENDANT'S MOTION TO
Plaintiffs	)	DISMISS UNDER MSA
	)	554.01 et seq.
vs.)	
)	
Chris Gregerson)	
)	
Counterclaim)	
Defendant)	

I, Chris Gregerson, being duly sworn and upon oath,
state the following:

1. I filed a complaint with the Minnesota Department of Commerce, Market Assurance Division, in February of 2006 against Vilana Financial, Inc. and Vladimir Kazaryan, a notary public in their employ at the time. A true and correct copy of that complaint is attached.

2. I filed a complaint with the Office of Lawyer Professional Responsibility against Boris Parker, Esq. in June of 2006. A true and correct copy of that complaint is attached.

3. Both complaints include evidence developed as a result of reader feedback from a webpage I wrote about my dispute with Vilana Financial, Inc. and Andrew Vilenchik, located online at:

<http://www.cgstock.com/essays/vilana.html>

4. One week after I posted that webpage, I received a phone call from a person who said they read the webpage, knew Andrew Vilenchik, and that Andrew was using my photo in several other advertisements that I did not know about. He told me these ads were in local Russian-language publications by a company called Zerkalo, including a newspaper and business directory. After speaking with this caller, I went to the website for Zerkalo, where I found my photo was, in fact, being used in an advertisement for Vilana. This ad appears in my Complaint for copyright infringement against Vilana.

5. I received an anonymous phone call in December of 2005 from a person who claimed the Zubitskiy photo agreement was fraudulently notarized. This prompted me to send the document to a handwriting expert, who's opinion supported this allegation. That led me to have an investigator try to locate "Michael Zubitskiy",

which showed there was no such person in the USA. This evidence was incorporated into my complaint with the Minnesota Department of Commerce against Vilana, and my complaint with the Office of Lawyer Professional Responsibility against Boris Parker, Esq.

6. Another party contacted me anonymously by email in February of 2006 and said the Zubitskiy photo agreement was forged in June of 2005, and a third party informed me by email that Andrew Vilenchik originally obtained my photo by taking it from my website, and he later forged the Zubitskiy photo agreement.

7. I offered a \$500 reward on my webpage for information that would prove or disprove the existence of Michael Zubitskiy. I also offered to drop all litigation and remove my website if his existence could be proved. Nobody, including Vilana, responded to that offer. It was intended to obtain evidence that might support my claims against Vilana, and also demonstrate that Vilana cannot locate Zubitskiy, no matter what incentive is offered (because there is no Zubitskiy).

8. My purpose in writing the webpage critical of Vilana was, in part, to network with others who may

have had similar experiences and gain information that might help me pursue my claims against Vilana. The webpage has been effective in this; I was contacted by people offering me support within a week of posting it, and I was provided with evidence, information, and leads, including (but not limited to) the evidence described above. The webpage has been effective in it's aim of helping me pursue favorable government action against Vilana Financial, Andrew Vilenchik, and Vladimir Kazaryan.

Further the affiant sayeth not.

By: /s/ Chris Gregerson
Chris Gregerson

Subscribed and sworn before
me on October 3rd, 2006

/s/ Notary Public
Notary Public

EXHIBIT A

CHRIS GREGERSON'S COMPLAINT WITH THE MINNESOTA DEPARTMENT
OF COMMERCE MARKET ASSURANCE DIVISION AGAINST VILANA
FINANCIAL, INC., ANDREW VILENCHIK, AND VLADIMIR KAZARYAN

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
cell: 612-245-4306

Feb. 27th, 2006

Minnesota Department of Commerce
Attn: Market Assurance Division
85 7th Place East, Suite 500
St. Paul, MN 55101
phone 651-296-2488

Re: **Violation of Minnesota Statutes 58.12 1(b)(2)(v) and 58.12 1(b)(2)(viii)** by Vilana Financial, Inc. (mortgage originator) by committing fraud upon the court; forgery by Vladimir Kazaryan (notary public and Vilana Financial employee)

To Whom it may concern,

Vilana Financial, Inc. is a mortgage originator with Minnesota license no. 20444466. Their President is Andrew Vilenchik (sole owner and board member), and their current address is 5747 W. Broadway Ave., Crystal, MN 55428.

My name is Chris Gregerson, I'm a photographer from Minneapolis (recently moved to New Richmond, WI). Vilana Financial filed a civil suit against me for defamation on October 24th, 2005, over a webpage of mine that accused them of publishing a photo of mine without permission. Vilana sued to have the webpage removed from the Internet and seek \$100,000 in damages (Minnesota Fourth District court case no. MC 05-016185). The evidence they presented to support their claim is a sales agreement for the photo, signed by Michael Zubitskiy.

There is no such person as Michael Zubitskiy. The sales agreement was written by Andrew Vilenchik, and the signature of Michael Zubitskiy was then forged by Vilana employee Vladimir Kazaryan. There will be a hearing on sanctions for this forgery on March 14th, 2006.

Vladimir Kazaryan has a commission as a notary public in Minnesota (Commission #20302213), and he made a false notarization on the "Zubitskiy photo agreement". These allegations are supported by a report from a handwriting expert (*enclosed*) and a background check showing no such person as "Michael Zubitskiy" exists in the USA (*also enclosed*).

I believe you should review both Vilana Financial's license and Vladimir Kazaryan's commission as a notary. I can send you the court's final decision on the issue of fraud upon the court, but I'm writing you now because a witness to this forgery recently claimed his life was threatened by Andrew Vilenchik. The witness is a former Vilana employee who left because of what he described as illegal activity at Vilana. He agreed to testify to this as well, but withdrew his offer after receiving the alleged threats. I have provided details of his allegations below.

- Vilana does not disclose information to clients in accordance to the RESPA laws that govern the mortgage industry.
- Vilana is forbidden to do business with World Savings Bank and Wilmington Finance due to fraudulent activity.
- Vilana pays loan officers by 1099.
- Vilana refuses to pay vendors for services already rendered.
- Vilana accepts escrow money and deposits it into bank accounts that are not designed to handle such monies.
- Vilana discloses an origination fee initially to clients then raises it before closing.
- Vilana withholds information from mortgage lenders.

This witness has offered to provide phone numbers of past customers who have had problems with Vilana, but I have no evidence of the above allegations myself. The enclosed evidence shows Vilana forged the sales agreement they filed with the court.

Vilana Financial's Violation of Minnesota Statutes 58.12 1(b)(2)(v) and 58.12 1(b)(2)(viii)

Because Vilana Financial has committed forgery and fraud upon the court, their conduct is in violation of **58.12 1(b)(2)(v)**: "...engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates un-trustworthiness, financial irresponsibility, or incompetence;".

If the court rules in favor of my motion for sanctions due to "fraud upon the court" by Vilana Financial, Inc. they will also be in violation of **58.12 1(b)(2)(viii)**: "...been found by a court of competent jurisdiction to have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit;".

Enclosed is a "Memorandum of law supporting defendant's motion for sanctions" which lays out the evidence of fraud related to the forgery. *I hereby affirm that the foregoing statements and copies of attached documents are true and correct.*

Chris Gregerson

date

EXHIBIT B

CHRIS GREGERSON'S COMPLAINT WITH THE OFFICE OF LAWYER
PROFESSIONAL RESPONSIBILITY AGAINST BORIS PARKER, ESQ.,
COUNSEL FOR VILANA FINANCIAL, INC.

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
phone 715-246-2070

June 29th, 2006

Office of Lawyers Professional Responsibility
1500 Landmark Towers
345 St. Peter Street
St. Paul, Minnesota 55102-1218
phone (651) 296-3952

Re: Complaint against Boris Parker (#291316)
Saliterman & Siefferman
US Bank Plaza Suite 2000
220 South Sixth Street
Minneapolis, MN 55402
phone 612-339-1400

To Whom it May Concern,

This is a complaint against Minnesota attorney Boris Parker (of Saliterman & Siefferman) for several violations of the Minnesota Rules of Professional Conduct (described below).

Mr. Parker represents Vilana Financial, Inc., the Plaintiff in a defamation lawsuit filed against me in the Minnesota Fourth District state court (case MC 05-16185, the "state case"). He is also representing Vilana Financial, Inc. as the defendant in a copyright infringement case I filed (the "federal case"). I am representing myself.

I am a photographer by trade, who saw one of my photos used in a phone book ad for Vilana Financial without my consent. I wrote about their refusal to pay on my website and was sued by Vilana Financial for defamation (in state court). Shortly thereafter, I filed a copyright infringement action in federal court.

In brief, my complaints are: (1) Boris Parker would not tell me, when asked, if he represented the opposing party or not, causing me to miss a procedural deadline for serving the correct party, (2) he filed a frivolous notice of removal to federal court, (3) he threatened to depose my family members with no legal basis, (4) he threatened to write a webpage accusing my wife of being a prostitute and (5) he is failing to withdraw evidence he knows (or has reason to know) has been forged by his client. The details of each complaint follow.

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
phone 715-246-2070

I. Violation of Rule 4.3(c) (Dealing with unrepresented person) and 7.1 (communications concerning a lawyer's services)

On April 24th, I received a notice of withdrawal from Morgan Smith, Vilana Financial's previous lawyer in their state defamation case against me. On April 25th, at 4:30pm, I called Boris Parker because he is representing Vilana Financial in my federal copyright case against them. I asked if he was now representing Vilana in the state case (I needed to serve important papers the next morning in that action). Mr. Parker refused to say if he *did* or *did not* represent Vilana Financial in the state case. My exchange with him is paraphrased below.

Chris Gregerson: *This is Chris Gregerson. I'm calling to ask if you are representing Vilana Financial in the state defamation case.*

Boris Parker: *That case is over! it's being withdrawn.*

Chris Gregerson: *I just called Judge Wernick's chambers, and they haven't received a notice of withdrawal yet.*

Boris Parker: *Yes, I know -- I have it. I was supposed to file it today, but I forgot.*

Chris Gregerson: *So you **are** representing Vilana in the state case...?*

Boris Parker: (emphatically) **CHRIS, that case OVER. Forget about it.**

Mr. Parker discussed the state case with me, so he was *de facto* representing Vilana. The next day (April 26th) I served papers for Vilana Financial, Inc. on him. He filed papers on behalf of Vilana Financial, Inc. and served them on me (with Saliterman & Siefferman letterhead and his signature). However, five hours after I served him, Boris Parker called me and said he **did not** represent Vilana Financial, Inc. in this case (the state case) and I cannot serve my papers on him. When I asked him to clarify, he said "You speak English, don't you?".

Under the rules, Boris Parker has a duty to tell me if he *did* or *did not* represent Vilana Financial, Inc. Note that at the next hearing in this case (the state case), on May 26th, it was Mr. Parker representing the very party he claimed he didn't represent.

II. Violation of Rule 4.4(b) (Respect for rights of third persons)

If Boris Parker *did not* represent Vilana Financial, Inc. in the state case (as he claimed), he had a duty to inform me *promptly* when I served him with papers in that case. He did not.

I faxed an "Answer" and "Motion for Summary Judgment" to Mr. Parker's office at 9am and called twice to make sure he got it. I spoke to Boris Parker, who said he didn't have it, so I faxed the papers a second time and called twice again (timely service of these papers was important). Mr. Parker didn't tell me the papers shouldn't go to him, but instead filed opposing papers. After five hours (possibly prompted by an inquiry from the judge in the case) he called me and said he didn't represent Vilana Financial, Inc. in that action and my service on him was ineffective. Rule 4.4(b) requires *prompt* notification if you receive papers not intended for you.

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
phone 715-246-2070

III. Violation of Rule 3.1 (meritorious claims and contentions)

A. Frivolous motion to dismiss

In the federal case, Boris Parker filed a frivolous motion to dismiss, claiming his client's use of my photo in a commercial phone book advertisement is "non-commercial" fair use. This contradicts settled law and is without any legal precedent.

B. Unfounded accusation of extortion in a legal brief

In the attached memorandum of law (in support the above motion), Mr. Parker stated I am committing "unlawful extortion", have "misled the court", and brought my copyright lawsuit in bad faith. Nothing is offered to support these statements, all of which are unrelated to the subject of the memorandum of law.

C. Improper notice of removal filed in state court

Boris Parker filed a "Notice of Removal" to federal court under 28 U.S.C. §§ 1441 and 1446 in state court, and a "Plaintiff's notice of removal" in federal court. These were filed on behalf of the *Plaintiff* in the state court action. A Plaintiff has no right of removal (see attached letter to Judge Mark Wernick explaining precedent on this statute). There is no legal basis for this removal.

Threats against my family members

D. Threat to needlessly depose my family members

In my first phone calls with Boris Parker, around March 23rd, he said I should settle my federal copyright claim against his client, Vilana Financial, Inc., because "You don't want me to depose you repeatedly, or depose your family members". My family is not involved in the case; my only family locally is my 92-year-old grandmother and new immigrant wife.

E. Threat to write a webpage calling my wife a prostitute

On Monday, June 25th, I encountered Boris Parker at a hearing before the Honorable Ann Montgomery, Federal Judge, District for Minnesota (downtown Minneapolis courthouse). He was representing Vilana Financial in their motion to dismiss.

The hearing ended but before leaving the courtroom, I asked Boris Parker if he filed anything with the federal court on the removal of the state case yet. He said yes, and then became confrontational, saying "You did not object to removal, remember?" I didn't respond, but he asked again, demanding an answer. I said no, and walked to where my wife was (in the audience area of the courtroom). Boris followed behind me, saying "Get a transcript! I'm going to have to record everything you say, Mr. Gregerson. That's the way I'm going to have to deal with you."

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
phone 715-246-2070

I did not respond, but joined my wife, Arlene. As Boris walked past me, he said (in a confrontational tone) "How would you like it if I did to your wife what you're doing?!?" I asked him if that was a threat. He said "I'm saying how would you like it if I did the same thing to your wife". I asked him what he was implying. He said I called Mr. Vilenchik's girlfriend a prostitute, how would I like it if he made a webpage and wrote that about my wife. I said I did not write that, and I didn't know who did. He said "Yes, but you allowed it".

The courtroom deputy, who was seated next to the door of the courtroom, observed the above exchange, which happened at 2pm, June 26th.

IV. Violation of rule 3.3(a)(4) (offering evidence the lawyer knows to be false)

Vilana Financial's state defamation case against me is based on a sales agreement. It purports to show they did not steal my photo, but bought it legally from a man named "Michael Zubitskiy". Zubitskiy was supposedly paid in cash, they have no contact information for him, no way to locate him, and two investigators have been unable to find any trace he ever existed.

It has become increasingly clear there is no "Michael Zubitskiy", he does not exist. Boris Parker has continued to litigate on Vilana's behalf without withdrawing the fraudulent "Zubitskiy photo agreement", or offering anything that would support it.

The evidence below showing Zubitskiy is not real was submitted as part of a motion for sanctions in February (available upon request, 75 pages including exhibits). Boris Parker has the opportunity to see the "Zubitskiy photo agreement" is fraudulent.

1. Andrew Vilenchik, Vilana Financial's president, claims he paid a stranger named "Michael Zubitskiy" \$850.00 *in cash* for the rights to my photo.
2. He was given a copy of the photo on a CD-ROM, which he has lost.
3. Andrew Vilenchik says he has *no way to locate* "Michael Zubitskiy" and has not tried.
4. Andrew Vilenchik met "Michael Zubitskiy" at a gym, Lifetime Fitness; when I subpoenaed them, they had no record of any member by that name.
5. A background check showed nobody by the name "Michael Zubitskiy" *anywhere in the U.S.A.* (no credit record, address, phone number, or Minnesota driver's license).
6. Michael Zubitskiy is alleged to be a photographer and web developer, yet there is no mention of him anywhere on the web or in the phone book.
7. A handwriting expert said the signature of "Michael Zubitskiy" *appears to have been forged* by the notary public who notarized the document, Vladimir Kazaryan (an employee of Vilana Financial).

I have the *Certificate of copyright registration from the U.S. Copyright office*, and other evidence, making the claim the photo belongs to "Zubitskiy" absurd. Boris Parker has continued to represent Vilana's claim that the copyright to the photo is not mine, but belongs to the nonexistent "Michael Zubitskiy". By any reasonable standard, the "Zubitskiy photo agreement" is fraudulent, but Mr. Parker has not withdrawn it. The case appears to be a S.L.A.P.P. lawsuit to retaliate for my speaking up publicly when Vilana used my photo without permission.

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
phone 715-246-2070

Please inform me of any action you take on the above complaint. Two supporting documents are attached, and any others will be provided if requested.

Sincerely,

Chris Gregerson
150 Green Ave. N.
New Richmond, WI 54017
cell phone: 612-245-4306
email: chris@cgstock.com