



1 Defendants, who are public figures, were true, substantially true, or statements of opinion,  
2 none of the comments referenced in Defendants' cease and desist letters give rise to a  
3 cause of action for defamation.  
4

5 2. A present adjudication is necessary to guide Hayden's future actions  
6 including his right to engage in speech protected by the California Constitution.  
7

### 8 **THE PARTIES**

9 3. Plaintiff Hayden is an individual and owner and operator of Blood of Kittens  
10 Network, a blog about the miniature war-gaming community. Hayden resides in Pinole,  
11 California.  
12

13 4. Defendant Battle Foam, LLC is an Arizona corporation. Battle Foam  
14 manufactures custom-cut foam packaging for the transport of miniature war figurines.  
15

16 5. Defendant Romeo Filip is the owner and operator of Battle Foam, LLC and  
17 resides in Gilbert, Arizona.  
18

### 18 **JURISDICTION**

19 6. It is proper for Plaintiff to pursue this action as an unlimited civil action  
20 pursuant to California Civil Code §88, because an action for declaratory relief is not an  
21 action of the type identified as a limited civil action.  
22

23 7. Plaintiff is informed and believes and based thereon alleges that at all times  
24 relevant to the dispute referenced in this Complaint, Defendant Battle Foam, LLC, was and  
25 is doing business in the State of California.  
26

27 8. California is the appropriate jurisdiction because Plaintiff resides in  
28 California, because the article at issue was published from within California, and because

1 Defendants willfully transmitted a cease and desist letter to Plaintiff in California, directed  
2 at a known California individual, with the successful intent of causing an action (or  
3 reaction) in this state. Therefore, under the California Long-Arm Statute (C.C.P. § 410)  
4 and under the Due Process Clause of the United States Constitution, the California  
5 Superior Court unlimited jurisdiction is the proper jurisdiction for the resolution of this  
6 dispute.  
7

8  
9 9. Venue in the Superior Court of California Contra Costa County is proper  
10 pursuant to sections 395 and/or 395.5 of the California Code of Civil Procedure.  
11

12 **FACTS COMMON TO ALL CLAIMS**

13 10. Blood of Kittens Network is a blog about the miniature war-gaming  
14 community. The blog, owned and operated by Hayden, features news articles and  
15 commentary about the miniature war-gaming community and events.  
16

17 11. On March 7, 2013, Hayden published an opinion piece entitled “Meat for  
18 Meta: Bad Battlefoam Practices” under the pen name TastyTaste. See Exhibit A. The  
19 article consisted of entirely of Hayden’s own opinions or to the extent the article stated  
20 facts Hayden believed such facts to be true. Hayden knew such facts to be true through  
21 firsthand knowledge or reasonably believed such facts to be true because they came  
22 through reliable sources.  
23

24 12. Defendant Battle Foam manufactures packaging material for miniature war-  
25 gaming figures and sponsors war-gaming tournaments.  
26  
27  
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1           13.    On April 4, 2013, Hayden received an April 1, 2013-dated cease and desist  
2 letter from Defendants accusing him of making defamatory statements in the article. See  
3 Exhibit B.  
4

5           14.    Defendants accused Plaintiff of making the following statements about  
6 Defendant Filip: “physically and verbally threatening potential Battle Foam customers”;  
7 “lying to current and potential Battle Foam customers and business partners”; and  
8 “consistently defaulting on agreements with current and potential business partners.” See  
9 Exhibit B.  
10

11           15.    Defendants accused Plaintiff of making the following statements about  
12 Battle Foam, LLC: “lying to current and potential Battle Foam customers and business  
13 partners”; and “consistently defaulting on agreements with current and potential business  
14 partners.”  
15

16           16.    Defendants demanded that Plaintiff pay \$2,500.00 in attorney fees and either  
17 post an affidavit to his blog renouncing his earlier comments or present evidence of the  
18 truthfulness of his comments. Defendants stated that Hayden did not acquiesce to their  
19 demands by 5 p.m. on April 8, 2013, they would file suit.  
20

21           17.    Plaintiff contends that all of the statements made in the article are opinions  
22 or are truthful facts based on Plaintiff’s experiences with Defendants, as well as, the  
23 experiences of others. Both truth and substantial truth serve as affirmative defenses to a  
24 claim of defamation and statements of opinion are not defamatory. Because all of the  
25 comments are true, substantially true, or a statement of opinion, the statements Plaintiff  
26 made on his blog about Defendants cannot be defamatory.  
27  
28

1           18. Defendants are public figures well known within the miniature war-gaming  
2 community.

3  
4           19. In defamation actions, limited-purpose public figures are people who have  
5 “either voluntarily injected themselves into a particular public controversy, or who have  
6 been drawn into such controversies.” Nation-wide fame is not necessary for someone to  
7 achieve the status of a public figure; rather, for purposes of defamation, it matters if the  
8 person is a public figure within the community where he was defamed.

9  
10           20. Corporations also can be considered limited-purpose public figures when the  
11 controversy involves the product or area in which the corporation markets.

12  
13           21. In order to prove defamation, a public figure plaintiff must show that the  
14 speaker made the allegedly defamatory statements with actual malice, or with knowledge  
15 that it was false or with reckless disregard as to their falsity. Public figures who sue for  
16 defamation must establish a probability that they can produce clear and convincing  
17 evidence that the speaker made the allegedly defamatory statements with knowledge of  
18 their falsity or with reckless disregard of their truth or falsity.

19  
20  
21           22. Battle Foam has established itself as the premier packing company in this  
22 close-knit and highly competitive industry. Furthermore, Battle Foam has inserted itself  
23 into the miniature war-gaming community through sponsorship of tournaments, of which  
24 Defendant Filip is a frequent attendee. Filio operates and stars in one of the biggest  
25 podcasts for the community, 40kradio and is involved in other gaming podcasts as well.  
26 He appears on videos for the wargaming news outlet - Bestofwar.com. Both Battle Foam  
27 and Filip are clearly public figures within the community of miniature war-gaming, where  
28

1 they competitively market their product. Therefore, Defendants are public figures who  
2 must prove, by clear and convincing evidence that Plaintiff acted with actual malice in  
3 publishing his article to Blood of Kittens.  
4

5 23. The statements contained in Plaintiff's article about public figure Defendants  
6 Battle Foam and Filip were true, substantially true, or were pure opinion. Defendants  
7 cannot prove by clear and convincing evidence that Plaintiff made any of the statements  
8 with actual malice.  
9

10 **FIRST CAUSE OF ACTION**  
11 (Declaratory Judgment)

12 24. Plaintiff repeats and incorporates by this reference each and every allegation  
13 set forth in the preceding paragraphs.  
14

15 25. Battle Foam and Filip claim that Hayden's statements are defamatory and  
16 have threatened to bring a lawsuit against Hayden on this basis.  
17

18 26. An actual controversy has arisen and now exists between Plaintiff and  
19 Defendants concerning their respective rights and duties in that Plaintiff contends that his  
20 statements are not defamatory, whereas Defendants dispute these contentions and contends  
21 that the statements are defamatory.  
22

23 27. Plaintiff desires a judicial determination of his rights and duties, and a  
24 declaration as to whether his statements concerning defendants are defamatory.  
25

26 28. A judicial declaration is necessary and appropriate at this time under the  
27 circumstances in order that Plaintiff may ascertain his rights to engage in speech. Hayden's  
28 right to engage in protected speech is being harmed by the unsettled state of affairs.

