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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ATIGEO LLC, a Washington limited liability
company; and MICHAEL SANDOVAL, an
individual,

Plaintiffs,

vs.

OFFSHORE LIMITED D, a California
business organization, form unknown;
OFFSHORE LIMITED D, a California
partnership; DENNIS MONTGOMERY,
individually and as a partner of Offshore
Limited D; ISTVAN BURGYN,
individually and as a partner of Offshore
Limited D; DEMARATECH, LLC, a
California limited liability company; and
DOES 1-10, inclusive,

Defendant.

NO. 2:13-cv-01694

**DEFENDANTS DENNIS
MONTGOMERY AND ISTVAN
BURGYAN'S ANSWER TO
PLAINTIFFS' COMPLAINT**

COME NOW Defendants Dennis Montgomery and Istvan Burgyn, by and through their undersigned attorney of record, Shellie McGaughey of McGaughey Bridges Dunlap, PLLC, and in response to Plaintiffs' Complaint, answer as follows:

**DEFENDANTS DENNIS MONTGOMERY AND
ISTVAN BURGYN'S ANSWER TO PLAINTIFFS'
COMPLAINT -1-**



McGAUGHEY BRIDGES DUNLAP PLLC

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BELLEVUE, WASHINGTON 98005 - 3539
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GENERAL ALLEGATIONS

1
2 1. Admit Atigeo LLC is a Washington limited liability company with its principal
3 place of business in Bellevue, Washington.

4 2. Admit.

5 3. Answering defendants admit Dennis Montgomery is an individual. Answering
6 defendants deny that Dennis Montgomery resides in Riverside County, California.

7 4. Answering defendants admit Istvan Burgyan is an individual. Answering
8 defendants deny that Istvan Burgyan resides in Riverside County, California.

9 5. Answering defendants are without sufficient information to admit or deny
10 information alleged as to Offshore Limited D or its alleged business location. Answering
11 defendants have no personal knowledge as to a company known as Offshore Limited D and
12 deny that they are associated with Offshore Limited D.

13 6. Answering defendants deny Demaratech, LLC (“Demaratech”) is an active
14 California limited liability company. This entity dissolved several years ago and ceased doing
15 business in 2010. Defendants deny it is doing business in Riverside County, California or that
16 its principal place of business is as alleged.

17 7. Answering defendants deny.

18 8. Answering defendants deny.

19 9. Answering defendants deny.

20 10. Answering defendants deny.

JURISDICTION AND VENUE

11. Answering defendants admit jurisdiction in the Western District of Washington is proper pursuant to 28 U.S.C. § 1331, 1338, 1367, and 15 U.S.C. §§ 1116 and 1121. Admit this action arises under 15 U.S.C. § 1125(d). Defendants deny there is diversity of citizenship under 28 U.S.C. § 1332(a)(1).

12. Answering defendants admit this Court has personal jurisdiction over defendants Montgomery and Burgyan to the extent the case is now in the Western District of Washington.

13. Answering defendants admit venue is proper in the Western District of Washington as to defendants Montgomery and Burgyan. Defendants deny California residency.

PLAINTIFF AND ITS RIGHTS

14. Answering defendants deny Atigeo has engaged in interstate commerce under the ATIGEO trademark since 2007. Defendants admit they are familiar with the Atigeo business name and/or Michael Sandoval. Defendant Montgomery believes that Michael Sandoval uses this company name as an alter ego and under this closely held company fails to follow corporate formalities. Defendant Montgomery also believes Michael Sandoval uses separate entities and various companies' names including but not limited to Founders Group LLC, Founders Real Estate Group LLC, Founders Technology Group LLC, Azimyth LLC, Opspring LLC, Xpatterns LLC, Atigeo LLC, Atigeo Mobile LLC, HMJC LLC, 225 LLC, Diamond Ranch 13 and HMJZ. Answering defendants further deny the description of "Atigeo" as alleged. Based upon information and belief, answering defendants deny that "Atigeo" is a legitimate software business or markets products or services as alleged.

15. Answering defendants are without sufficient information to admit or deny allegations contained in this paragraph and therefore deny.



1 16. Answering defendants deny.

2 17. Answering defendants deny.

3 18. Answering defendants deny.

4 19. Answering defendants deny.

5 20. Answering defendants deny.

6 **ALLEGED WRONGFUL ACTS**

7
8 21. Answering defendants admit in part and deny in part. Defendants admit Dennis
9 Montgomery owns the web sites alleged as www.atigeo.co, www.gratonresortcasino.net and
10 www.theuntoldstory.net. Defendant Dennis Montgomery denies he currently operates any of
11 the alleged web sites and denies that he currently owns either www.yellowstoneclubs.com or
12 www.yellowstoneclub.net.

13 22. Answering defendants admit that defendant Dennis Montgomery made the
14 alleged statements. Istvan Burgyan denies any knowledge or involvement.

15 23. Answering defendants deny that their statements made about plaintiffs are false.
16 The dispute between Edra Blixseth and Michael Sandoval is public knowledge and has received
17 coverage from reputable media sources such as the Seattle Times. The statements were
18 likewise supported by declarations, statements made against interest, and numerous documents
19 and legal filings by and between the parties.

20 24. Answering defendants admit in part and deny in part. Defendants deny Istvan
21 Burgyan creating or using any pseudonyms, email accounts or Twitter accounts as alleged.
22 Defendant Dennis Montgomery denies using email accounts or Twitter accounts in an
23 inappropriate or illegal manner.
24
25



1 25. Answering defendants deny Istvan Burgyan ever did or had anything to do with
2 any of the actions as alleged in paragraph 25 and therefore deny all such allegations. Defendant
3 Dennis Montgomery denies all such allegations as well.

4 26. Answering defendants deny.

5 27. Answering defendants deny.

6 28. Answering defendants deny.

7 29. Answering defendants deny the entirety of this paragraph. Defendant
8 Montgomery never approached plaintiff Sandoval and/or Atigeo in the manner alleged herein.
9 Defendant Istvan Burgyan likewise denies all allegations asserted herein.

10 30. Answering defendants deny.

11 31. Answering defendants deny. Dennis Montgomery only admits he registered
12 <atigeo.co> and other related websites with the intent of alerting the public and the media to
13 plaintiffs' misuse of funds Edra Blixseth invested in Atigeo.
14

15 32. Answering defendants admit in part and deny in part. Answering defendants
16 were both aware of a company owned and operated by Michael Sandoval that was named
17 Atigeo. Defendants deny allegations to knowledge regarding trademarks or allegations of
18 Opspring LLC being a "subsidiary." Dennis Montgomery admits he was a prior employee of
19 Opspring LLC.
20

21 33. Answering defendants admit.

22 34. Answering defendants admit in part. Defendants deny knowledge as to any
23 "ATIGEO" trademark as alleged.

24 35. Answering defendants deny that they have used the domain <atigeo.co> to
25 disseminate any false or defamatory statements concerning Atigeo. Answering defendants



1 registered <atigeo.co> and other related websites with the intent of alerting the public and the
2 media to plaintiffs' misuse of funds Edra Blixseth invested in Atigeo. Further, Istvan Burgyan
3 denies any knowledge or involvement in the use of the domain name as alleged.

4 36. Answering defendants deny they have deprived Atigeo of its exclusive property
5 right in the ATIGEO trademark. When the .co top-level domain was opened up for use in the
6 United States and other countries, registered trademark owners were permitted to register .co
7 domain names prior to the general public being afforded such an opportunity. Thus, Atigeo had
8 the opportunity to register the domain <atigeo.co>, but it failed to do so. Further, defendant
9 Istvan Burgyan had no involvement in the registration and/or use of the atigeo.com domain
10 name.
11

12 37. Answering defendants deny.

13 38. Answering defendants deny.

14 39. Answering defendants deny.

15 40. Answering defendants deny.

16 41. Answering defendants deny.

17 42. Answering defendants deny.
18

19 **COUNT I**

20 **Cybersquatting (15 U.S.C. § 1125(d))**

21 43. No response is necessary.

22 44. Defendants assert no response is necessary as this is not a factual allegation but
23 an excerpt of a legal statute. This legal statute speaks for itself. To the extent such a response is
24 required, defendants admit plaintiff has correctly inserted part of the referenced statute.
25



1 45. Answering defendants admit in part and deny in part. Answering defendants
2 admit Atigeo is an LLC controlled by Sandoval. Defendants deny the balance of said
3 allegations in this paragraph.

4 46. Answering defendants deny.

5 47. Defendants admit in part. Defendants admit the allegations as to the claim the
6 two domain names are similar. The balance of the allegation is denied.

7 48. Answering defendants deny registering the <atigeo.co> domain name with a bad
8 faith intent to profit. Answering defendant Montgomery registered <atigeo.co> and other
9 related websites with the intent of alerting the public and the media to plaintiffs' misuse of
10 funds Edra Blixseth invested in Atigeo. Defendants have not profited in any way nor have they
11 ever intended to do so through the use of the <atigeo.co> domain name. Further, defendant
12 Istvan Burgyan had no involvement whatsoever in the allegations asserted herein involving any
13 references to Atigeo.

14 49. Answering defendants deny any intent to profit from the ATIGEO trademark or
15 that defendants were involved in an alleged scheme to extort plaintiffs. Answering defendant
16 Dennis Montgomery registered the <atigeo.co> domain name and other related websites solely
17 for the purpose of alerting the public and the media to plaintiffs' misuse of funds Edra Blixseth
18 invested in Atigeo. Further, defendant Istvan Burgyan had no involvement whatsoever in the
19 allegations asserted herein involving any references to Atigeo.

20 50. Answering defendant Dennis Montgomery admits to registering the <atigeo.co>
21 domain name. Defendant denies it was with the intent to divert the viewing public from
22 Atigeo's website or that there was ever intent to profit by so doing. Answering defendant
23 Montgomery registered the <atigeo.co> domain name and other related websites solely for the
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1 purpose of alerting the public and the media to plaintiffs' misuse of funds Edra Blixseth
2 invested in Atigeo. Further, defendant Istvan Burgyan had no involvement whatsoever in the
3 allegations asserted herein involving any references to Atigeo.

4 51. Answering defendants deny. Further, defendant Istvan Burgyan had no
5 involvement whatsoever in the allegations asserted herein involving any references to Atigeo.

6 52. Answering defendants deny.

7 53. Answering defendants deny.

8 54. Defendants admit in part and deny in part. Defendants knew of Atigeo's
9 ownership. Defendant Istvan Burgyan had no involvement whatsoever in the allegations
10 asserted herein involving any references to Atigeo. Further, defendants deny knowledge of the
11 ATIGEO mark as alleged.

12 55. Defendants deny. Further, defendant Istvan Burgyan had no involvement
13 whatsoever in the allegations asserted herein involving any references to Atigeo.

14 56. Defendants deny. Further, defendant Istvan Burgyan had no involvement
15 whatsoever in the allegations asserted herein involving any references to Atigeo.

16 57. Defendants deny.

17 58. Defendants deny.

18 59. Defendants deny.

19 60. Defendants deny.

20 61. Defendants deny.

21 **COUNT II**

22 **Libel**

23 62. No response is necessary.



1 63. Defendants admit in part. Defendant Dennis Montgomery admits to publishing
2 the statements referenced as (a)-(f). Defendant Montgomery denies the time frames alleged.
3 Further, defendant Istvan Burgyan had no involvement whatsoever in the allegations asserted
4 herein.

5 64. Defendants deny Dennis Montgomery's statements made about plaintiffs are
6 false. The dispute between Edra Blixseth and Michael Sandoval is public knowledge, has
7 received coverage from reputable media sources such as the Seattle Times and has been
8 referenced in numerous legal briefs, declarations, filings and communications. Further,
9 defendant Istvan Burgyan had no involvement whatsoever in the allegations asserted herein.
10

11 65. Defendants deny. Further, defendant Istvan Burgyan had no involvement
12 whatsoever in the allegations asserted herein.

13 66. Defendants deny. Further, defendant Istvan Burgyan had no involvement
14 whatsoever in the allegations asserted herein.

15 67. Answering defendants are without sufficient information to admit or deny and
16 therefore deny.

17 68. As this allegation is directed at co-defendant Offshore Limited D, no response is
18 necessary. Answering defendants possess no knowledge pertaining to Offshore Limited D nor
19 are they in any way associated with that company.
20

21 69. Defendants deny.

22 70. Defendants deny.

23 71. Defendants deny.

24 72. Defendants deny.
25



AFFIRMATIVE DEFENSES

1
2 BY WAY OF FURTHER ANSWER and without admitting any matters previously
3 denied, and as AFFIRMATIVE DEFENSES, answering Defendants allege as follows:

4 73. Defendants may have registered the <atigeo.co> domain name before plaintiffs
5 obtained trademark rights, common law trademark or registered trademark rights.

6 74. Plaintiffs do not have the trademark rights which they allege to possess.

7 75. Defendants were unaware of any third party trademark rights when they
8 registered, used, or trafficked in the domain, and the third party trademark was not a registered
9 trademark with the United States Patent and Trademark Office.

10 76. The alleged trademark is generic in that it is a dictionary word or other word
11 which describes the service or product.

12 77. The trademark is descriptive of the goods and services and is therefore
13 extremely weak.

14 78. Defendants have a legitimate business purpose for the <atigeo.co> domain
15 name which has nothing to do with the third party trademark claim.

16 79. Defendants did not register, use or traffic in the <atigeo.co> domain name with
17 a bad faith intent to profit.

18 80. Waiver – plaintiffs had an opportunity to register a .co top-level domain and
19 failed to do so.

20 81. Some or all of plaintiffs’ claims and/or remedies are barred in whole or in part
21 by the doctrine of “unclean hands.”

22 82. Defendants’ use of the <atigeo.co> domain name was fair and not an
23 infringement of plaintiffs’ trademark rights as defendants used the mark for the purpose of
24 criticism, comment and news reporting.

25 83. Defendants assert that all statements and comments by defendants about



1 plaintiffs were true and, thus, cannot be the basis for a defamation action.

2 84. The defendants' statements are not properly subject to a slander suit because they
3 contained no provably false assertions of fact.

4 85. All statements made by one or more defendants were with good motive and were
5 fair comments made as private citizens exercising their right of free speech, discussing matters
6 of public importance, as concerned citizens of the community.

7 86. The plaintiffs are libel-proof.

8 87. The Complaint fails to state a claim upon which relief can be granted and
9 should therefore be dismissed. The requisite elements for the claim are not present and/or have
10 not been properly pled.

11 88. No act or omission on the part of defendants either caused or contributed to
12 whatever injury (if any) the plaintiffs may have sustained.

13 89. Defendant Istvan Burgyan is immune from this suit pursuant to 47 U.S.C. §
14 230(c).

15 90. Plaintiffs have failed to state a claim for which relief can be granted as to Istvan
16 Burgyan.

17 91. Plaintiffs may have failed to mitigate their damages.

18 92. Defendants' actions are protected in part or in whole by their constitutional
19 rights under the First Amendment, specifically including the same protections extended to
20 individuals posting on the web and/or internet. Defendants assert their right of free speech and
21 the protections afforded that right.

22 93. All posting as alleged by Dennis Montgomery as set forth in plaintiffs'
23 complaint paragraph 63 are constitutionally protected opinions and/or involve matters of public
24 concern.

25 Defendants reserve the right to amend their Answer by way of adding affirmative



1 defenses, counterclaims, cross-claims or third-party claims as the existence of such claims may
2 be discovered in the future.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, having fully answered Plaintiffs' Complaint herein and alleged
6 affirmative defenses, Defendants request the Court dismiss Plaintiffs' Complaint with
7 prejudice and that Defendants recover their taxable costs and disbursements incurred herein,
8 including attorney fees as deemed appropriate, and for such other and further relief as the
9 Court may deem just.

10 DATED this 18th day of February, 2014

11 McGAUGHEY BRIDGES DUNLAP, PLLC

12 /s/Shellie McGaughey

13 Shellie McGaughey, WSBA #16809
14 Attorney for Defendant Burgyan
15 325 118th Avenue Southeast, Suite 209
16 Bellevue, WA 98005
17 (425) 462-4000
18 Fax: (425) 637-9638
19 E-mail: Shellie@mcbdlaw.com



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CERTIFICATE OF SERVICE

I certify that on Friday, February 18, 2014, I caused the foregoing to be served on the following by the methods indicated:

- | | | |
|-------------------------------------|-------------------------------------|---|
| Roland Tellis | <input type="checkbox"/> | Via hand delivery by Legal Messenger |
| Peter Smith | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| BARON & BUDD, P.C. | <input type="checkbox"/> | Via Overnight Delivery |
| 15910 Ventura Boulevard, Suite 1600 | <input type="checkbox"/> | Via Facsimile |
| Encino, California, 91436 | <input type="checkbox"/> | Via Email |
| | <input checked="" type="checkbox"/> | Other: <u>Electronic Pacer</u> |
| Brian C. Park | <input type="checkbox"/> | Via hand delivery by Legal Messenger |
| STOEL RIVES LLP | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| 600 University Street, Suite 3600 | <input type="checkbox"/> | Via Overnight Delivery |
| Seattle, WA 98101 | <input type="checkbox"/> | Via Facsimile |
| | <input type="checkbox"/> | Via Email |
| | <input checked="" type="checkbox"/> | Other: <u>Electronic Pacer</u> |
| Paul Brain | <input type="checkbox"/> | Via hand delivery by Legal Messenger |
| Brain Law Firm PLLC | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| 1119 Pacific Avenue, Suite 1200 | <input type="checkbox"/> | Via Overnight Delivery |
| Tacoma, WA 98402 | <input type="checkbox"/> | Via Facsimile |
| | <input type="checkbox"/> | Via Email |
| | <input checked="" type="checkbox"/> | Other: <u>Electronic Pacer</u> |

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of February, 2014.

/s/ Katie Berry
Katie Berry