

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-CV-2496 (PLF)
)	
v.)	Next scheduled court appearance:
)	None
PHILIP MORRIS USA INC., <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**DEFENDANTS’ RESPONSE TO LITTLE ROCK SUN COMMUNITY NEWSPAPER’S
EMERGENCY MOTION FOR PAYMENT & SANCTIONS**

Defendants Philip Morris USA Inc., R. J. Reynolds Tobacco Company, and Altria Group, Inc.¹ oppose the Little Rock Sun Community Newspaper’s Emergency Motion (Dkt. No. 6255; filed Apr. 4, 2018).² The Little Rock Sun, by its publisher, Dr. Julius Larry (“Dr. Larry”), asks this Court to issue an order requiring Defendants to pay \$99,400 and sanctions related to alleged non-payment for the corrective-statement spots published in the Little Rock Sun. The Motion does not address an emergency, is not properly before this Court and, in any event, is baseless. It should be denied.

¹ Post-Judgment Parties Regarding Remedies—ITG Brands, LLC; Commonwealth Brands, Inc.; and Commonwealth-Altadis, Inc.—are not signatories to this brief, as they had no obligations to publish the corrective statements in newspapers and are not implicated by the instant Motion.

² ECF notice of the filing was sent on April 16, 2018, though the filing was backdated to the Court’s approval of the filing on April 4, 2018. Defendants submit this opposition within 14 days of the ECF notice, as required under LCvR 7(b).

RELEVANT BACKGROUND

A. **Order #72-Remand Required the Corrective Statements be Published in the Little Rock Sun Newspaper**

In August 2006, this Court entered Order #1015 requiring Defendants, among other things, to publish the corrective statements in specified media channels. On remand following appeal, and after extensive briefing by the parties, the Court specified the wording of the corrective statements. *See* Order #34-Remand (Dkt. No. 5992; entered Nov. 27, 2012). The same Order directed the parties to mediate issues related to how the statements would be implemented in four media channels—newspaper, television, package inserts, and company websites. (Dkt. No. 5992-2). The mediation process culminated in an agreement, reflected in the proposed Consent Order the parties jointly submitted to the Court on January 10, 2014. (Dkt. No. 6021).

Shortly after that filing, several entities appeared as *amici*, objecting to the proposed Consent Order as written. The Little Rock Sun was one of these entities. *See* Amicus Br. of the Little Rock Sun Community Newspaper of Little Rock, Ark. (Dkt. No. 6077; filed Mar. 11, 2014). The *amici* asserted that the list of newspapers and television networks specified by the Court in Order #1015 and incorporated in the parties' proposed Consent Order should be amended to reach more African Americans. *See generally* Mem. Op. & Order #50-Remand (Dkt. No. 6094; entered June 2, 2014). The parties addressed the *amici*'s concerns by amending the list of newspapers in which the corrective statements were to be published. *See* Joint Praecipe Regarding Issues Raised at the Jan. 22, 2014 Status Conf. & Revised (Proposed) Consent Order at 4-9 (Dkt. No. 6081; filed Apr. 22, 2014). The Little Rock Sun was one of the newspapers added to the list of included publications. *Id.* at 7-8.

Further appeals, as well as additional briefing and negotiations on remand, followed with regard to the text of the corrective statements. Every implementation order, including Order #72-

Remand, the final implementation order on newspapers and television placements, included the Little Rock Sun in the list of newspapers for publication of the corrective statements. *See* Order #51-Remand at 4 (Dkt. No. 6095; entered June 2, 2014); Oder #64-Remand at 7 (Dkt. No. 6195; entered Apr. 19, 2016); Order #72-Remand at 6 (Dkt. No. 6227; entered Oct. 5, 2017). Order #72-Remand required Defendants to “purchase a full newspaper page in the first section of the Sunday edition” and a corresponding website advertisement for each of the corrective statements, in each specified newspaper, including the Little Rock Sun. Order #72-Remand set forth requirements for the text, specifications, and publication schedule of the statements, but did not address payment arrangements.

B. The Little Rock Sun Was Paid \$99,400 for Publishing the Corrective-Statements

Defendants jointly retained advertising agency MullenLowe U.S. (“MullenLowe”) to place and administer the corrective-statement spots required by Order #72-Remand. MullenLowe contracted with Mediaspace Solutions (“Mediaspace”) to negotiate the newspaper insertions.

Upon entry of Order #72-Remand, MullenLowe and Mediaspace repeatedly attempted to arrange for publication of the corrective statements in the Little Rock Sun. Neither Dr. Larry nor any other representative of the Little Rock Sun was responsive initially. When Dr. Larry finally responded, he referred Mediaspace to Dr. Casey Roberts at Centipede Group, LLC for a media kit. Specifically, from his personal yahoo.com email address, Dr. Larry wrote to Dave Shun of Mediaspace on October 13, 2017: “Dr. Casey Roberts will forward the requested information.” *See* Ex. A.

Six weeks later, Dr. Larry separately emailed DOJ attorney Daniel Crane-Hirsch: “As we discussed, Centipede Group, LLC is our Ad Buyer.... Please inform the tobacco lawyers to have

their media buyers contact Dr. Casey Roberts at Centipede Group, LLC.” *See* Ex. B.³ At Dr. Larry’s request, Mediaspace worked with Dr. Roberts to coordinate pricing and confirm specifications for the corrective-statements spots in the Little Rock Sun.⁴ Mediaspace contracted with Centipede Group through a series of insertion orders totaling \$99,400. *See* Ex. B. Dr. Roberts accepted and signed those insertion orders. *See* Ex. B. In accordance with the insertion orders, Centipede Group, LLC invoiced Mediaspace for a total of \$99,400. *See* Ex. B.

On January 23, 2018—more than six weeks before the publication of the corrective statements was complete and in response to repeated complaints to DOJ that the Little Rock Sun had not yet been paid (though no other paper had been paid yet either)—Mediaspace sent payment in full of \$99,400 to Centipede Group. *See* Ex. B. Dr. Roberts confirmed receipt of payment in a February 14, 2018 email to Mr. Crane-Hirsch. *See* Ex. B.

In response to inquiries regarding payment in this matter, Dr. Roberts provided documentation to Mediaspace showing that Centipede Group made payments to the Little Rock Sun in conjunction with the corrective-statements ads. *See* Ex. B.

C. The Corrective-Statements Appeared in the Little Rock Sun

Beginning on Sunday, November 26, 2017, Defendants published the corrective statements in all of the specified newspapers and on their websites. Those publications concluded, in accord with Order #72-Remand, in early-March 2018. Dr. Larry has provided

³ Exhibit B is a March 9, 2018, letter from Jeffrey A. Mandell, counsel for R. J. Reynolds Tobacco Company, to Dr. Larry, reporting that, at Dr. Larry’s request, Defendants had investigated his concerns and determined that payment was made for publication of the corrective statements in the Little Rock Sun. The letter includes several enclosures, including the email message quoted here, that document facts referenced in the letter.

⁴ Dr. Roberts told Mediaspace that the Little Rock Sun would charge \$99,400 to publish the corrective statements. This price was substantially higher than that charged by 36 of the other 45 newspapers named in Order #72-Remand, even though the vast majority of the newspapers named were, unlike the Little Rock Sun, major metropolitan dailies or national newspapers. The Baltimore Sun—the dominant daily paper in a major market with an extensive history and an established readership—charged a total of \$65,960.65 for the five print insertions and the coordinating website ads. Other papers that charged less than the Little Rock Sun include the Boston Globe, the Dallas Morning News, the Detroit Free Press, the San Francisco Chronicle, and the Miami Herald.

Defendants with physical copies of the five issues of the Little Rock Sun featuring corrective-statement spots that met all specifications of Order #72-Remand.

ARGUMENT

I. The Motion Should Be Denied Because This Matter Is Not Properly Before The Court.

For several reasons, the Motion is fatally flawed. First, the Little Rock Sun, though a prior *amicus*, is not a party and cannot seek relief. Nor is the Little Rock Sun's payment request properly brought in the United States's ongoing action against Defendants. The Little Rock Sun has no viable argument to intervene in this case, particularly at this late stage. *See* Fed. R. Civ. P. 24(b)(1); *In re Idaho Conservation League*, 811 F.3d 502, 515 (D.C. Cir. 2016) (intervention is inappropriate where the proposed intervenor fails to show a claim or defense that shares with the main action a common question of law or fact). Second, as a limited liability company, *see* Ex. C, the Little Rock Sun "may appear in federal court only through a licensed attorney." *Lattanzio v. COMTA*, 481 F.3d 137, 140 (2d Cir. 2007). Dr. Larry, who signed the Motion, is not a licensed attorney.⁵ Third, a motion is insufficient to commence the Little Rock Sun's purported claim for damages. *See* Fed. R. Civ. P. 3 & 4.

Any of these issues on its own, and certainly all of them together, demonstrate that this matter is not properly before the Court.

II. The Motion Should Be Denied Because It Is Baseless.

The Little Rock Sun was already paid \$99,400 to publish the corrective statements. Those funds were paid to Centipede Group, which Mullen contacted at Dr. Larry's instructions. Accordingly, there is no basis to provide Dr. Larry any relief.

⁵ Dr. Larry was a probationary member of the Texas Bar between May 1992 and 1995. He was never fully admitted to the Bar, and, according to news reports about his felony theft trial, his probationary license was not renewed when he failed to show that required conditions had been met. *See* Ex. D.

The Motion now asserts that the Little Rock Sun has no relationship with Centipede Group or Dr. Roberts. *See* Mot. ¶¶ 3, 6. Dr. Larry’s own affidavit, filed in conjunction with the Motion, makes clear that this is not the case. *See* Larry Aff. ¶¶ 4, 7-8. Further, from the personal email address he continues to use, Dr. Larry provided both Mediaspace and Mr. Crane-Hirsh with contact information for Dr. Roberts and Centipede Group and instructed that arrangements should be made through Dr. Roberts. Ultimately, Defendants are not privy to the details of the arrangement between the Little Rock Sun and Centipede Group or of the relationship between Dr. Larry and Dr. Roberts. Whatever those details, the corrective statements have run in the Little Rock Sun in accord with Order #72-Remand, and the Little Rock Sun was paid in full.

The Little Rock Sun’s Motion also seeks sanctions for Defendants “chicanery and fraud.” Mot. at 5. The allegations in the Motion are meritless, and there is no basis for sanctions. As the Motion details, *see* ¶6, Dr. Larry contacted Defendants, who promptly looked into his claim and sent a letter explaining why they considered it baseless. *See* Ex. B. There is nothing sanctionable here.

CONCLUSION

For the reasons set forth above, the Little Rock Sun Community Newspaper’s Emergency Motion for Payment Due and Owing by Tobacco Defendants for Court-Ordered Corrective Statements Tobacco Advertising Campaign in Newspapers and Motion for Sanctions should be denied.

April 30, 2018

Respectfully submitted,

/s/ Jeffrey A. Mandell

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