

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	Δ COURT USE ONLYΔ
CANDY A. CAMPBELL,  Plaintiff,  v.  BJORN K. BORGEN,  Defendant.	Case Number 09 CV 0591  Courtroom 3
Attorneys for Defendant:  G.W. MERRICK & ASSOCIATES, LLC Glenn W. Merrick, No. 10042 Joseph T. Bernstein, No. 37753 Suite 912, 5445 DTC Parkway Greenwood Village, Colorado 80111 (303) 831-9400 (303) 771-5803 <i>fax</i> gwm@gwmerrick.com jtb@gwmerrick.com	
<p align="center"><b>DEFENDANT’S RESPONSES TO “CAMPBELL’S FIRST SET OF DISCOVERY”</b></p>	

Defendant/Counterclaim-Plaintiff, Bjorn K. Borgen (“Borgen”), through his undersigned counsel, G.W. MERRICK & ASSOCIATES, LLC, hereby submits the following objections, answers and responses to “Campbell’s First Set of Discovery”:

**GENERAL OBJECTIONS**

1. Borgen objects to the discovery requests to the extent they seek information not reasonably calculated to lead to the discovery of admissible evidence.
  
2. Borgen objects to the discovery requests to the extent they are overly broad and unduly burdensome.

3. Borgen objects to the discovery requests to the extent they seek information that is not relevant.

4. The responses provided herein are made to the best of Borgen's present knowledge and recollection. Borgen reserves the right to modify, amend and supplement these responses at a later date in light of new discovered information or newly recollected facts.

### **RESPONSES TO INTERROGATORIES**

1. Identify any complaints or charges of sexual harassment, sexual battery or sexual assault, either of a civil or criminal nature, which have been made against you or any employee of yours; include the name and address of the complainant, the date of each complaint or charge, the case or docket number, and its final disposition (or current status if still pending).

#### Response

Borgen objects to this Interrogatory because it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Whether any such charges have ever been made against Borgen or any of his employees has no bearing on the facts, matters and allegations at issue in this case. Subject to the foregoing objections, and with the exception of the above-captioned case, no complaints of sexual harassment, sexual battery or sexual assault have ever been made against Borgen. To the best of Borgen's knowledge, no such complaints have ever been made against any of Borgen's employees.

2. State your defenses to the claims set forth in this lawsuit and all facts that support or may tend to support each of the defenses.

a. Identify all persons who have knowledge of facts which support or may tend to support your defense(s) and provide a summary of the facts or information in each such person's possession which supports or may tend to support your defense(s).

#### Response

In approximately late 2005 and early 2006, Plaintiff contacted Borgen and requested that Borgen lend money to Plaintiff for her business operations. In April 2006, Borgen caused \$200,000 to be loaned from Borgen Media, LLC, a limited liability company under his control, to Siegel Media, LLC, a limited liability company under Plaintiff's control. The loan was required to be repaid by Siegel Media, LLC in April 2007.

When time came for repayment of the loan, Siegel Media, LLC repaid none of the amounts that had been loaned. Accordingly, Borgen Media, LLC commenced litigation against Siegel Media, LLC to enforce the documents evidencing the loan. In retaliation, Siegel Media, LLC, under the exclusive control of Plaintiff, untruthfully alleged that Borgen had engaged in sexually

offensive contact with Plaintiff. Summary judgment with respect to the foregoing matters was granted in favor of Borgen Media, LLC by the Denver District Court.

Thereafter, Plaintiff initiated the above-captioned litigation against Borgen, again untruthfully alleging that Borgen had engaged in conduct which caused emotional distress to Plaintiff. Plaintiff's claim is wholly groundless and without merit because Borgen did not engage in the conduct alleged by Plaintiff, did not act in a way offensive to Plaintiff, and did not request or imply any request of sexual contact with Plaintiff. Plaintiff's claim and the entire above-captioned litigation are groundless, retaliatory, and filed in bad faith in an effort to harass, coerce and extort money from Borgen. Plaintiff's claim is unsupported by any evidence other than her own untruthful allegations.

Moreover, even if the alleged acts did occur (which they did not), those acts do not give rise to any claim for relief. The alleged conduct, even if it occurred, was lawful and not outrageous. Furthermore, Plaintiff has not sustained any damages or suffered from any recoverable emotional distress as a result of the alleged conduct. For all of the foregoing reasons, Plaintiff's claim is wholly without merit.

Persons with knowledge of the foregoing facts include Borgen and Plaintiff.

3. Identify all investments and/or loans made by Borgen or by any person at his direction to entities in which Borgen has a controlling interest, majority interest or minority interest or simple short term loans from 2000 to 2009 by stating the name, address and legal form under which the business was or is conducted.

- a. Identify the primary recipient of each loan and/or investment, and specify any female owner, adviser, agent or employee that would benefit directly by the investment/loan.
- b. Describe the loan/investment type, terms and conditions of each and describe the due diligence undertaken by Borgen in connection with the loan and/or investment and the business or investment rationale behind each investment and/or loan made by Borgen, or any person at his direction to entities in which Borgen has a controlling interest.

#### Response

Borgen objects to this Interrogatory because it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Any investments or loans made by Borgen, or by any entity in which Borgen has any interest, have no bearing on whether any of the facts alleged in the pleadings are true. Plaintiff's claims respecting the loans from Borgen Media, LLC to Siegel Media, LLC have been dismissed with prejudice, and those loans – or any other loans or investments made by Borgen – are not at issue in this case. The requested information is irrelevant.

4. Identify any female who has ever been a recipient of a loan or investment of any kind made by Borgen or by any person at his direction to any entity owned or managed by Borgen with whom Borgen has ever engaged in sexual relations, including touch of a sexual nature, kissing or sexual intercourse, either during or before or after his investment and/or loan. For each person identified, include the name of the individual, company, date(s) of investment/loan period, and state whether the sexual relations occurred before, during or after the period of investor/lender relations.

Response

See Response to Interrogatory No. 3. Subject to the foregoing objections, Borgen has not loaned money to, or invested in, any female with whom he has engaged in any of the described acts.

5. Identify each person with whom you spoke about plaintiff's allegations of sexual harassment, untoward behavior or inappropriate conduct against you, other than your attorneys.

Response

Subject to the foregoing objections, Borgen spoke with Katherine Borgen respecting Plaintiff's allegations.

6. Identify each person whom you contend is a witness that your sexual contact and/or untoward conduct with plaintiff was consensual on plaintiff's part.

Response

Subject to the foregoing objections, the "sexual contact and/or untoward conduct" alleged by Plaintiff did not occur and Plaintiff's allegations that it did occur are not true. Accordingly, there are no witnesses respecting any such acts or allegations. Moreover, Borgen objects to this Interrogatory to the extent the phrase "untoward conduct" is vague and ambiguous. Borgen cannot determine the meaning of that phrase.

7. Identify each person whom you contend is a witness that your sexual contact and/or untoward conduct with plaintiff was not offensive to plaintiff.

Response

See Response to Interrogatory No. 6.

8. If you have ever been a plaintiff or defendant in any lawsuit other than this action, please state the title, docket number, and jurisdiction in which each lawsuit was filed, as well as the date each lawsuit was filed.

Response

Borgen objects to this Interrogatory to the extent it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible information. Whether Borgen has been a party to any other litigation has not bearing on the facts and matters alleged in this case. Notwithstanding the foregoing objection, Borgen was a Third-Party Defendant in litigation styled *Borgen Media, LLC v. Siegel Media, LLC*, Denver County District Court, State of Colorado, Case No. 07-CV-5335, filed May 30, 2007.

9. If you are now or have ever been a party or involved in any other legal action or claim including but limited to a mediation, arbitration, small claims, and insurance claims, identify the individual or entity before which the action or claim pended or is pending, the date the action or claim was initiated, whether you initiated the action or claim and provide any identifying numbers associated with the action or claim.

Response

See Response to Interrogatory No. 8.

10. Identify each and every person whom you expect to call as an expert witness in the trial of this case and state specifically the subject matter upon which each expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify, and set forth a summary of the grounds of each and every opinion entertained by or formed by each and every expert witness.

Response

Borgen objects to this Interrogatory to the extent it is premature. Borgen does not presently know whether he will call an expert witness at trial.

11. Identify any person who did not witness the incidents made the basis of this suit but who has knowledge of the claim and who you plan to call as a witness. State the nature of the facts known by each such person and how they have obtained such knowledge.

Response

Borgen objects to this Interrogatory to the extent it is premature. Borgen does not presently know who he will call as a witness at trial. Notwithstanding that objection, Borgen presently intends to call himself as a witness at trial to testify on the matters set forth in the above Response to Interrogatory No. 2.

12. Identify any written or recorded statements or transcripts of oral statements of any person relevant to this action which you or your attorney possess or believe to exist, set forth the date on which any such statements were given, identify each individual present, identify each document recording or relating to such statements and identify the individuals or entities in possession of such documents.

Response

Subject to the foregoing objections, the transcripts of the depositions of Candy Campbell are responsive to this Interrogatory. Plaintiff was deposed on February 22, 2008, March 26, 2008, and December 7, 2009. Present at those depositions were Plaintiff and Glenn W. Merrick, counsel for Borgen, as well as Court reporters. Documents relating to those depositions are in the possession of Borgen's counsel, who have provided copies of those documents to Plaintiff.

13. Identify each person, excluding your attorneys, to whom you have made any statement or with whom you have had any discussion regarding any aspect of this action, state the date and describe the substance of the statement or discussion.

Response

See Response to Interrogatory No. 5.

14. Please provide the benchmark criteria used by Borgen to determine the viability of the investment/loan opportunity with the plaintiff before, during and after the initial investment including the nature and circumstances under which advances to the investment/loan was either granted or denied and basis for the same.

Response

Borgen objects to this Interrogatory because the phrase "benchmark criteria", and the term "viability", are vague and ambiguous. Borgen cannot determine what is meant by those terms. Borgen further objects to this Interrogatory because it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Any criteria or standards used by Borgen to evaluate potential investments and loans have no bearing on the facts and matters at issue in the above-captioned case. Plaintiff's claims respecting the loans from Borgen Media, LLC to Siegel Media, LLC have been dismissed with prejudice, and those loans – or any other loans or investments made by Borgen – are not at issue in this case. The requested information is irrelevant.

15. Please describe in detail all acts, steps and action that Borgen undertook to invest and/or lend funds to the plaintiff and what criteria was utilized to determine the amounts and release dates of funds to the plaintiff including benchmarks and required documents.

Response

See Response to Interrogatory No. 14.

16. Please provide a detailed description or statement on the number of investment/loans that are reviewed, solicited and/or evaluated by Borgen on average by month and year.

Response

See Response to Interrogatory No. 14.

17. Describe in detail every determination or formal which Borgen or any representative of Borgen made about plaintiff's business performance, regardless of whether the determination was communicated to anyone, irrespective of whether the determination was a formal one.

Response

Borgen objects to this Interrogatory because the term "formal" is vague and ambiguous. Borgen cannot determine what is meant by that term. Subject to the foregoing objection, Borgen incorporates his Response to Interrogatory No. 3.

18. State the name of every natural person who has knowledge of any negative facts and/or deficiencies in plaintiff's business performance during the period of January 2006 through April 2007.

Response

See Response to Interrogatory No. 3.

19. State every reason for Borgen's termination of the investment and/or loan agreement(s) to plaintiff in complete detail.

- a. For each reason given in response to Interrogatory 19, state in complete detail all facts upon which Borgen based his contention that the reason was an actual reason for the termination/alteration of the investment and/or loan agreement(s) with the plaintiff.
- b. State the name of each natural person who made the final decision to terminate/alter Borgen's investment and/or loan agreement(s) with the plaintiff.
- c. State the name of each natural person who participated in making the decision to terminate/alter Borgen's investment and/or loan agreement(s) with the plaintiff.
- d. State the name of each natural person who provided any information which was considered in reaching the decision to terminate/alter Borgen's investment and/or loan agreement(s) with the plaintiff.

Response

See Response to Interrogatory No. 3.

20. Describe in detail including name, address and company, every personal introduction or business opportunity offered to plaintiff by Borgen from January 2006 to April 2008.

Response

Borgen objects to this Interrogatory because it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. To the extent Borgen introduced Plaintiff to any person, or informed Plaintiff of any business opportunities, those acts have no bearing on any of the facts or matters at issue in the above-captioned case.

21. Identify by name, address and telephone number the individual who was introduced by Borgen on May 26, 2006 at Strings Restaurant where Borgen was accompanied by said female guest at a private dinner with the plaintiff and Governor Bill Ritter.

Response

See Response to Interrogatory No. 20.

22. Describe in detail the investment and/or lending arrangement by Borgen to the plaintiff as it was originally intended and provide the expectations by Borgen of the plaintiff for said investment and/or lending arrangement.

Response

See Response to Interrogatory No. 3.

23. Describe in detail the formation of Borgen Media, LLC and its purpose including the date of formation, correspondence, documents and draft memorandums leading up to the formation and any involvement this organization would have with the plaintiff.

Response

See Response to Interrogatory No. 3. Subject to the foregoing objections, Borgen has already responded to this Interrogatory pursuant to C.R.C.P. 33(d).

24. Provide a statement of Borgen's estimated net worth from January 2006 to December 2007.

Response

Borgen objects to this Interrogatory because it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Borgen's "net worth" has no bearing on any of the facts or matters at issue in the above-captioned case.



## RESPONSES TO REQUESTS FOR THE PRODUCTION OF DOCUMENTS

1. All writings making reference to the decision to invest and or lend any amount of funds to the plaintiff or the plaintiff's company.
  - a. Provide the original business proposal submitted by plaintiff to Borgen and further forwarded to Jeffrey Brandel of Davis Graham and Stubbs in April 2006.

### Response

Borgen objects to this request because it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's claims respecting the loans from Borgen Media, LLC to Siegel Media, LLC have been dismissed with prejudice, and those loans – and any other loans or investments made by Borgen – are not at issue in this case. The requested documents are irrelevant. Moreover, all documents responsive to this request were already produced by Borgen in the prior litigation between Borgen Media, LLC and Siegel Media, LLC.

2. Provide all telephone records of Borgen from the telephone numbers 011-47-91324880, 303-394-7929, 303-394-7901 and 303-641-0135 referencing all calls made to 303-485-8911, 720-233-5426 and any known numbers Borgen associated with the plaintiff from dates of December 1, 2005 to September 30, 2007.
  - a. Provide complete telephone records from the above referenced numbers for Borgen on the dates of May 18, 2006, May 26, 2006 and September 15, 2006.

### Response

Subject to the foregoing objections, Borgen is not presently in possession of any documents responsive to this request. Borgen will undertake a reasonable inquiry of third-party telephone companies to determine whether there exist any documents responsive to this request. To the extent such documents are received from third-parties and are not shielded from discovery by an applicable privilege, such documents will be produced.

3. All documents reviewed, consulted, mentioned, alluded to, described, referred to or relied upon in Borgen's responses to the foregoing interrogatories.

### Response

Subject to the foregoing objections, all documents responsive to this request have already been produced to Plaintiff in the prior litigation between Borgen Media, LLC and Siegel Media, LLC.

4. All documents reflecting or relating to any communication between Borgen and the plaintiff.

Response

See Response to Document Request No. 3.

5. All documents reflecting or relating to any communication between Borgen and any third party that references the plaintiff in any way.

Response

Borgen objects to this request to the extent it seeks information that is shielded from discovery by the attorney-client privilege and/or the attorney work product doctrine. Moreover, any documents responsive to this request that are not shielded from discovery have already been produced to Plaintiff in the prior litigation between Borgen Media, LLC and Siegel Media, LLC.

6. All documents reviewed, consulted or referred to by any person that Borgen questioned, interviewed or discussed in connection with the claims asserted in the captioned litigation.

Response

See Response to Document Request No. 5.

7. All documents that Borgen may seek to introduce at trial in the captioned litigation.

Response

Borgen objects to this request to the extent it is premature. Borgen has not yet determine which documents, if any, will be introduced at trial in this case.

8. Please provide any and all materials you have that pertain to the investment/loan opportunity of the plaintiff, the correspondence, presentations, evaluations, notes, communications, advisor communications prior, during and after the initial investment.

Response

See Response to Document Request No. 1.

9. Provide all documents which were utilized or considered in making the decision to terminate/alter Borgen's investment and/or loan agreement with the plaintiff.

Response

See Response to Document Request No. 1.

10. Provide all documents relating to any communication between Borgen and Jan Helen that reference the plaintiff in any way.

Response

Subject to the foregoing objection, Borgen does not have any documents in his possession, custody or control responsive to this request.

11. Provide all documents relating to any communication between Borgen and Brad Quayle that reference the plaintiff in any way.

Response

Subject to the foregoing objection, Borgen does not have any documents in his possession, custody or control responsive to this request.

12. For any funds released by Borgen to plaintiff, identify all documents, requests for reports, communications and benchmarks involved with the release of funds or loan agreements associated with the investment/loan opportunity negotiated by Borgen with the plaintiff.

Response

See Response to Document Request No. 1.

Dated: January 15, 2010.

G.W. MERRICK & ASSOCIATES, LLC



By: /s/ Glenn W. Merrick

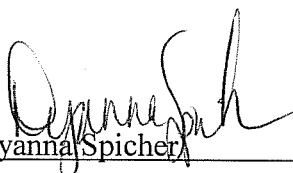
Glenn W. Merrick, No. 10042

Attorneys for Bjorn K. Borgen

**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 15, 2010, the foregoing DEFENDANT'S RESPONSES TO "CAMPBELL'S FIRST SET OF DISCOVERY" was served upon Plaintiff by placing the same in the custody of the U.S. Postal Service, postage prepaid, addressed as follows:

Candy Campbell  
1245 Eudora  
Denver, Colorado 80220

  
/s/ Dyanna Spicher

**In accordance with C.R.C.P. 121 '1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.**