

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

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MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	18-15189		
District Court/Agency Case Number(s):	3:17-cv-04002-LB		
District Court/Agency Location:	San Francisco		
Case Name:	Open Source Security, Inc. et al.	v.	Bruce Perens
If District Court, docket entry number(s) of order(s) appealed from:	ECF Nos. 53 in view of 58.		
Name of party/parties submitting this form:	Open Source Security, Inc. and Bradley Spengler		

Please briefly describe the dispute that gave rise to this lawsuit.

Defendant is a renowned open source expert, who educates both attorneys and engineers with open source related issues, and has written numerous books on the matter. Defendant made provably false and defamatory statements, specifically that Plaintiffs were in violation of an open source license -- The Gnu Public License (GPL) and tarnished the reputation of a small business on his well publicized web blog.

Briefly describe the result below and the main issues on appeal.

Please see attached document.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Motion for attorneys' fees by Defendant pursuant to California's anti-SLAPP statute.
Motion for sanctions by Defendant pursuant to 28 U.S.C. §1927 against the undersigned.

Provide any other thoughts you would like to bring to the attention of the mediator.

We sincerely, in good faith, believe the district court should not have granted defendant's anti-SLAPP motion. Defendant's statements harmed and tarnished Plaintiffs' business and the district court's ruling has made Plaintiffs liable to Defendant's attorneys' fee by statute. We wish there was another alternative, but unfortunately there is none.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses
☒ is attached (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and
☒ service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

RESULT & ISSUES AT APPEAL

Here, the district court applied *Coastal Abstract Service v. First American Title*, 173 F. 3d 725 (9th Cir. 1999), and granted Defendant's 12(b)(6) motion based on California's anti-SLAPP statute. The court held that (i) the issue of whether the GPL was violated by Plaintiffs was a disputed legal issue, and (ii) Defendant was a non-lawyer programmer, and thus a lay person.

Issues:

1. Did the court correctly hold that Plaintiffs alleged violation of the GPL was a disputed legal issue, especially when it is well settled in American Jurisprudence that any party may refuse to indulge in future business dealings with another party, if one chooses so?¹; and
2. Did the court correctly hold Defendant, a well-known and respectable expert in open source matters, to be a lay-person, pursuant to the intention of this Court in *Coastal Abstract*?

¹ *United States v. Trans-Missouri Freight Association*, 166 U.S. 290, 320-21 (1897) (“[A] trader or manufacturer ...[that] carries on an entirely private business, and can sell to whom he pleases; ... he may cease to do any business whenever his choice lies in that direction... .”); *Monsanto Co. V. Spray-Rite Service Corp.* 465 U.S. 752, 761 (1984) (“A manufacturer of course generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently.”)

REPRESENTATION STATEMENT

The undersigned represents Plaintiffs-Appellants Open Source Security Inc. and Bradley Spengler. Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiffs-Appellants submit this Representation Statement. The following list identifies all parties to the action, as known at this time, and it identifies their respective counsel by name, firm, address, telephone number, and e-mail, where appropriate.

PARTIES	COUNSEL OF RECORD
<u>PLAINTIFFS-APPALLANTS</u> OPEN SOURCE SECURITY INC. and BRADLEY SPENGLER	CHHABRA LAW FIRM, PC ROHIT CHHABRA (SBN 278798) 257 Castro Street Suite 104 Mountain View, CA 94041 Telephone: (650) 564-7929 Email: rohit@thelawfirm.io
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Respectfully Submitted,

s/Rohit Chhabra
Rohit Chhabra

9th Circuit Case Number(s) 18-15189

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Feb 9, 2018 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/Rohit Chhabra

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)