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Tuesday, March 14, 2017

## Richart Ruddle Settles anti-SLAPP Claims, Makes Restitution; but the Guilty Companies Remain Unpunished

by Paul Alan Levy

Over the past few months, I have [reported](#), to some extent [jointly with Eugene Volokh](#), on a purportedly pro se lawsuit filed in the United States District Court for the District of Rhode Island. Brought against a fictional defendant and submitted with a forged proposed consent order, the proceeding resulted in the issuance of a consent order

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calling for web pages on the [Get Out of Debt Guy](#) web site to be removed from the search engine databases at Google and other search engines. The blogger victimized by this scam has now entered into a [non-confidential settlement agreement](#) with Richard Ruddle, the online operative who was most directly responsible for committing this fraud on the court. Ruddle agreed to pay \$71,000 make the blogger whole for his losses as well as paying counsel fees for Public Citizen and the various local counsel the blogger had to employ; Ruddle has also agreed to take actions, at his own expense, to get several court orders that he obtained fraudulently on behalf of two debt relief company customers, Rescue One Financial LLC and Financial Rescue LLC, lifted. Ruddle and Myvesta Foundation, which hosts the blog, have agreed to a [proposed order](#) under which the federal court would retain jurisdiction if necessary to enforce the order. Ruddle is in the final stages of plea bargaining with the United States Attorney for the District of Rhode Island; we understand that his obligations will extend to getting phony consent orders lifted in two dozen other cases besides those involving Myvesta.

The one part of the fraud that remains unremedied is that

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the real culprits in this scheme – the debt relief companies as well as Bradley Smith, in whose name some of the fraudulent cases were filed - remain unpunished. My investigation of this scheme, which was reinforced by my ability to issue third-party subpoenas, persuaded me that the customers were equally guilty of the fraud. In the remainder of this blog post I explain how the settlement with Ruddle came to be concluded without the opportunity to force the companies as well as Smith himself to take public responsibility for the frauds that they hired Ruddle to commit. I will also suggest some ways in which this gap might be filled.

### How the Culprits in the Fraud Were Identified

I initially assumed (and I told Chief Judge Smith at the [hearing](#) on our motion for leave to intervene that I would need a fair amount of time for discovery to track down those responsible for the filing of the phony pro se lawsuit and consent order (which I correctly assumed would be Richard Ruddle given [his contract with Rescue One Financial](#)). I assumed that he would be a slippery character, skilled at concealing his tracks. But as I

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reported last fall, pinning the immediate responsibility on Ruddle turned out to be ridiculously easy — the filing fee was paid by a check from a California-based process service company, and that company readily provided both check with which it had been compensated — written on the bank account identified in the contract with Rescue One Financial — and the individual who communicated with the process server about getting the papers filed was an official of yet another Ruddle company.

Shortly after I [posted](#) about having identified Ruddle as having been directly responsible for the submission of the fraudulent papers to the Rhode Island court, I heard from Joel Hirschhorn, who was representing Ruddle in connection with the criminal investigation being conducted by the United States Attorney's Office in Rhode Island (pursuant to Chief Judge Smith's request). He outlined a very attractive possible resolution to Myvesta's claims against Ruddle, under which Ruddle would take full responsibility from the fake lawsuits he had filed to suppress public access to Myvesta's criticisms, make full disclosure of his misconduct, make Myvesta whole for the damage caused by his actions, and undertake, at his own expense, to get the wrongfully-obtained orders vacated.

CATEGORIES

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(The advantage from the perspective of Ruddle's criminal exposure was that he could show that he had made restitution to the victims of his fraud). This seemed to me to be a sensible solution, but after the initial contact, I could not get Hirschhorn to respond to my inquiries.

At the same time, I had been in touch with another Florida lawyer, Robby Birnbaum, who had been representing Bradley Smith and Rescue One Financial. It was Birnbaum who had confirmed to me that Bradley Smith had not signed the "pro se" papers filed on his behalf in Rhode Island. Birnbaum highlighted the fact that it was a different Rescue One executive who had signed the black hat SEO contract with Ruddle, and he portrayed Smith as being out of the loop in the relations. One of the other fake cases that Ruddle had caused to be filed on behalf of Bradley Smith was in state court in Baltimore. In that case, Ruddle had hired a young Baltimore lawyer named Bennett Wills to file the lawsuit; Birnbaum kept me apprised of the efforts he was making to obtain the case file from Wills to determine whether Wills had communicated with Smith and obtained his approval to sue on his behalf. Wills (who had moved his practice to Nashville at this point) hired a lawyer to fend off



Birnbaum's inquiries. After getting the file, Birnbaum trumpeted to me the conclusion he drew from reviewing the file which, he said, confirmed what he had previously told me about Smith's lack of involvement in the fraud. But despite his previous commitment to share the file with me to establish his client's innocence, Birnbaum ignored my repeated inquiries about getting the file. I had taken Birnbaum at his word and assumed the worst about Wills; now I was beginning to question those assumptions.

That is where the matter stood on January 31 when Chief Judge Smith issued his [order](#) vacating the fraudulent consent order and dismissing the action on the most obvious ground – lack of diversity jurisdiction. The judge set a thirty-day deadline for the parties to brief the issue of awarding attorney fees under Rhode Island's anti-SLAPP statute, and requested briefing on two other subjects: the identification of the parties responsible for making the fraudulent filing in his court, and his possible power to impose sanctions under the federal courts' inherent power. To address those issues, we issued subpoenas under Rule 45 of the Federal Rules of Civil Procedure compelling production of documents from Ruddle, from Rescue One Financial as well as from Financial Rescue

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LLC, and from the two young lawyers whom Ruddle had recruited to file fake lawsuits in state courts in Pinellas County Florida as well as Baltimore. I recruited several lawyers around the country at whose offices the production of documents was to be made, and who would be available as local counsel in the event the subpoena recipients filed motions to quash the subpoenas.

### **How Discovery – and the Customers’ Anxiousness to Avoid Discovery – Produced a Settlement**

Service of the subpoenas brought the matter to a head. Hirschhorn reached out to me quickly to complete negotiation of the settlement framework he had proposed in the fall. Smith and Rescue One hired a new lawyer, [Michael Mallow](#), to respond to the subpoenas. He assured me that his client stood ready to produce the documents responsive to the subpoena documents, which were on a thumb drive with fifty documents, which he had reviewed quickly; he said that I would get them done the following week, so could he please have a short extension of time so that he could finish having the documents reviewed to identify potentially privileged matter. But he also said that he had in mind to turn everything over to me, including the



privileged material, in support of his broader point: he argued that although his clients had retained Ruddle to file lawsuits on their behalf for the purpose of getting pages delisted from search engines, they had no idea that he was making up the names of alleged defendants and filing forged signatures in court. This, he argued, was a criminal act and interrupted the chain of proximate causation, so that Rescue One and Smith could not be held liable under the anti-SLAPP law for what Ruddle had done on their behalf in Rhode Island.

To show me an example of the sort of “legitimate” service that his clients had hired Ruddle to provide, Mallow pointed me to a [state-court delisting lawsuit](#) filed by lawyers for Smith and Rescue One in Broward County, Florida, with full support from the company and Smith. But looking at that lawsuit, I was not at all persuaded that his clients were as innocent of fraudulent intent as they claimed. This opinion was confirmed by the disclosures I was getting from Joel Hirschhorn, who responded to the subpoenas by reaching out to discuss finalization of the restitutionary settlement framework he had proposed the previous fall. Ruddle’s information made clear that Bradley Smith was far more closely involved in Ruddle’s

contacts with Rescue One than I had previously been led to believe. I was thoroughly persuaded, at this point, that we had solid claims that the customers could be held legally responsible for the frauds that they had hired Ruddle to commit.

Meanwhile Hirschhorn and I discussed the sums that would have to be paid to make Myvesta whole— not just covering its attorney fees but also the lost advertising revenues. We negotiated a partial payment of the attorney fees accrued to date, leaving it open to Myvesta to seek the remainder of the fee award against the guilty customers. We agreed that Myvesta would need to develop an analysis of the lost advertising revenues so that we could discuss the appropriate restitution to be paid in that regard. But I stressed to Hirschhorn that Myvesta's agreement to this possible settlement was conditioned both on the lifting of the fraudulently obtained consent orders, and on Ruddle's continued disclosures of the details about his relationships with his customers so that we could pursue the issue of their liability under the Rhode Island anti-SLAPP statute.

Apparently, Hirschhorn was sharing some of the details of our negotiations, because when Rescue One lawyer

Michael Mallow learned that I was still pursuing his client's liability for an anti-SLAPP violation, he hit the roof. He demanded that I call him and, when I did, he began yelling into the telephone that it was my ethical responsibility to reach a complete settlement with Ruddle so that his client would not have to produce any documents. He brought Hirschhorn into the call and demanded that I give Hirschhorn a settlement number that included claims against his clients as well as Ruddle. When I explained that I did not have any basis to set a proposed compensatory damages figure because I had not completed a sufficient analysis to specify a number that I felt I could defend in litigation, Mallow said that this didn't matter and that I should just make up a number so that there could be a settlement. Hirschhorn indicated that he would take a specific number with that disclaimer; when I articulated a number that was considerably higher than what Hirschhorn said he could get from his client, Mallow told me that it was possible that his own client might contribute to the settlement, but "if that happens you will never know." That is, the deal would be structured to give his client deniability of any responsibility for the fraud.

In the end, we made the deal with Ruddle, even though it

meant giving up civil claims against the guilty companies and giving up the right to make them produce documents – to the very end, Ruddle insisted in these conditions to protect his customers, for reasons that have never been explained. Mallow's boorishness made it very tempting to refuse to release his client from, for example, a claim for punitive damages under the anti-SLAPP statute, but I concluded that the settlement for compensatory damages only was in Myvesta's best interests. A major consideration was the difficulty of linking a particular amount of lost advertising to the removal of four articles on the Myvesta web site, and the cost of hiring an expert witness to establish the causal link between losses of advertising and the search engine removals, made it sensible to agree to have Ruddle agree to a specific sum that included compensatory damages for Myvesta. An additional consideration militated in favor of settlement: one of the oddities of the case, which [Steve Rhode had publicly acknowledged](#) at the outset, was that although the case was filed in the name of Bradley Smith, whose company was admittedly a Ruddle customer, the specific web pages identified for search engine delisting in the phony consent order were about Financial Rescue, also a Ruddle customer. Which one should be held civilly liable

to Myvesta? Or would the liability be joint and several with Ruddle? Should the customers be left to point their fingers at each other?

## **The Final Settlement**

The deal has now been signed, the \$71,000 settlement sum has been paid in full, and the settlement agreement filed with the court along with a proposed order under which the Judge Smith would retain jurisdiction to enforce Ruddle's obligation to move to get the fraudulent state court orders lifted, as well as to ensure that the former customers (that is to say, Smith, Rescue One Financial, and Financial Rescue) cooperate in Ruddle's efforts in that regard. Their cooperation will likely be needed because they, not Ruddle, were the plaintiffs in the state-court litigation and hence the motions to lift the orders will have to be made in the names of those parties companies. It appears at the moment that the threat of being dragged back into the Rhode Island anti-SLAPP litigation has been sufficient to induce the companies and Smith to allow counsel retained by Ruddle to proceed in their names to get the fraudulent order lifted.

## What Remains to Be Done

The most frustrating part of the settlement is that the companies that hired Ruddle to defraud the courts have thus far escaped any publicly imposed remedy for their actions. They have not had to pay any of Ruddle's restitution (Hirschhorn made a point of telling me that just before he transmitted the payment), and Myvesta's acceptance of Ruddle's terms for his settlement means that it cannot seek to have them held liable to it. And even if Ruddle is put out of business by the government's prosecution, there are a number of other online operations that offer similar services. Until companies know that they risk being held liable, or held publicly responsible for hiring scammers like Ruddle to suppress online criticism, there will continue to be a market for such scams. Just as municipal authorities seeking to suppress prostitution will sometimes make an effort to hold the johns responsible, so would pursuit of the customers in this case help suppress the court-scamming business.

We have urged the United States Attorney's office to consider whether to prosecute the companies as well as Ruddle. Lest this article unnecessarily impede such a



prosecution, I have withheld a number of the factual details that support my conclusions that Bradley Smith likely knew full well what was being done in his name, and that Rescue One, at least, could be held legally liable for the frauds perpetrated in its name. In the event that the government chooses not to prosecute, it also remains open to Chief Judge Smith to initiate proceedings to impose sanctions under the court's inherent power: the standard for civil liability is considerably lower than for criminal guilt. Whether it is possible to hold the customers publicly responsible for the frauds remains to be seen.

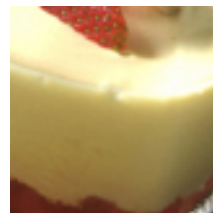
## Acknowledgments

It would not have been possible to bring this matter to a successful conclusion without the pro bono assistance of lawyers around the country who agreed to be our local counsel, Most notably, this includes Jeff Levy of Levy and Blackman, who served as our local counsel in Rhode Island. But several lawyers agreed to be our local counsel in the event there was motion practice in connection with our Rule 45 subpoenas: [Mark Goldowitz](#) in the Bay Area, [Thor Urness](#) in Nashville, [Marc Randazza](#) who still maintains his old Miami office, and [Tracy Pratt](#) in Pinellas

County. I am lucky to be part of national network of lawyers who stand up for First Amendment rights. Of these, only Thor Urness needed to help us file something – lawyer [Bennett Wills](#) came out swinging, [claiming](#) that I had served subpoenas on him without good reason and threatening, in the course of [Rule 45 objections](#), to sue for abuse of process; but when [I pointed out](#) that a responsive filing would require us to provide a detailed explanation to the judges before whom he practices about the fraudulent litigation that he had been recruited to file as part of a criminal scheme, he dropped his motion.

My final acknowledgment is to my friend and colleague [Eugene Volokh](#) at UCLA law school, without whose painstaking research about fake litigation around the country much of this litigation would not have been possible.

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Posted by [Paul Levy](#) on Tuesday, March 14, 2017 at 03:07 PM | [Permalink](#)

## Comments

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Mr. Levy, or anyone else who cares to comment,

Could you explain the benefit to Ruddle in settling this case (and accepting responsibility for several more phony judgments)? I realize there was unlikely to be much doubt as to Ruddle's culpability in this instance and probably the others named in the Proposed Order, however; it seems to me the bigger problem for him at the moment is the criminal investigation(s) I would imagine have commenced by now. I would assume US Attorneys don't care too much whether he's resolved his civil liabilities to the private victims or not-- that doesn't do much to address the fraud on the court he perpetuated.

I'm left to wonder what all Ruddle gained by resolving this case and more or less confessing