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GRUPO CULTURAL AFROREGGAE

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11 GRUPO CULTURAL AFROREGGAE, a)
non-governmental organization,)

12 Plaintiff,)

13 v.)

14 GOOGLE INC., a Delaware corporation,)
15 GOOGLE BRASIL INTERNET LTDA, a)
Brazilian limited liability company, and)
16 DOES 1-20,)

17 Defendants.)

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20 GOOGLE INC., a Delaware corporation,)
21 GOOGLE BRASIL INTERNET LTDA, a)
Brazilian limited liability company, and)
22 DOES 1-20,)

23 Cross-Complainants,)

24 v.)

25 GRUPO CULTURAL AFROREGGAE, a)
non-governmental organization,)

26 Cross-Defendant)
27)
28)

Case No. 16CV300259

**NOTICE OF ENTRY OF ORDER RE
MOTION TO STRIKE**

Complaint Filed: September 23, 2016
FAC Filed: February 6, 2017
Cross-Complaint Filed: April 7, 2017

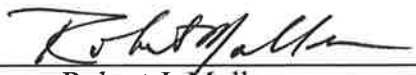
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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 06, 2017, the Superior Court of California, County of Santa Clara, issued an order regarding Defendant's Motion to Strike. Attached hereto as Exhibit "A" is a copy of the Court's signed Order.

Dated: June 14, 2017

CYPRESS LLP

By: 
Robert J. Muller
Jared L. Watkins
Attorneys for Plaintiff Grupo Cultural AfroReggae

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EXHIBIT A

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FILED
JUN 06 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY Shantel Hernandez DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

GRUPO CULTURAL AFROREGGAE,

Plaintiff,

v.

GOOGLE INC., et al.,

Defendants.

Case No. 16-CV-300259

ORDER RE: MOTION TO STRIKE

The motion to strike by defendants Google Inc. and Google Brasil Internet LTDA. came on for hearing before the Honorable William Elfving on June 6, 2017, at 9:00 a.m. in Department 3. The matter having been submitted, the Court orders as follows:

This action arises from a joint venture dispute involving plaintiff Grupo Cultural Afroreggae (“Plaintiff”) and defendants Google, Inc. (“Google”) and Google Brasil Internet LTDA. (“Google Brasil”) (collectively, “Defendants”).

According to the allegations of the first amended complaint (“FAC”), Plaintiff, a non-profit organization that promotes justice and inclusion in the favelas of Brazil through art, African-Brazilian culture, and education,¹ and one of its founders, Jose Pereira de Oliveira Junior (“Jose Junior”), began collaborating with J. Walter Thompson Brazil (“JWT”) on a campaign

¹ Favelas are slums in the urban areas of Brazil. (See e.g., <https://en.wikipedia.org/wiki/Favela>, accessed May 26, 2017.)

1 called “Ta No Mapa,” or translated in English, “Be on the Map.” (FAC, ¶¶ 2-3, 16, 28.) Ta No
2 Mapa sought to map the roads, business, and other points of interest in the favelas of Brazil to
3 tell the stories of the people who lived there and dispel harmful stereotypes. (*Id.* at ¶¶ 3, 30.)

4 Google was asked to participate at the outset of the project but initially declined. (*Id.* at ¶
5 31.) It later stated it would put the project in its pipeline but did not commit to participating.
6 (*Ibid.*) In the meantime, Plaintiff moved forward with the project without Google and used
7 Maplink’s mapping technology and software to map their first favela. (*Id.* at ¶ 32.) Production
8 commenced in September 2013. (*Ibid.*) Due to the efforts of Plaintiff, Ta No Mapa launched with
9 great success. (*Id.* at ¶ 34.) The project received immediate coverage from media and won
10 multiple international awards. (*Ibid.*) Subsequently, Google decided to participate in the project.
11 (*Id.* at ¶ 35.)

12 Initially, Google provided money and equipment to map another favela, completed in the
13 latter part of 2014. (*Id.* at ¶ 36.) Ta No Mapa progressively grew in scope, and over the next year
14 and a half, Plaintiff and Google mapped 25 favelas in Rio de Janeiro. (*Ibid.*) Plaintiff led strategy
15 and planned the mapping for each favela while Google provided funding and mapping
16 equipment. (*Ibid.*) Jose Junior and Plaintiff’s relationships with favela residents enabled the
17 partners to obtain local participation and support necessary to implement Ta No Mapa in each
18 community. (*Ibid.*)

19 A website for Ta No Mapa was also designed and launched. (*Id.* at ¶ 33.) The website
20 includes the digital maps of the favelas, photographs of businesses and residents, a video about
21 the project, and a social media feed. (*Ibid.*) When Google joined the project, Maplink’s logo was
22 removed from the Ta No Mapa website and replaced with Google’s logo at its request. (*Id.* at ¶
23 37.) The logos of partners Google and Plaintiff appear at the bottom of the homepage on the
24 same level, in roughly equal size. (*Ibid.*) As the favelas were mapped, the data was published on
25 the website and through Google Maps. (*Id.* at ¶ 38.)

26 In 2015, Plaintiff, in partnership with Google, created a series of three videos, featuring
27 stories about the favela residents, for use in connection with the project. (*Id.* at ¶ 39.) They
28 planned to publish the videos through Youtube and link them to the Ta No Mapa website. (*Ibid.*)

1 Subsequently, on November 11, 2015, Jose Junior wrote to Susana Ayarza (“Ayarza”) and Luiz
2 Guilherme Brandao (“Brandao”), Google Brasil employees, and reminded them it was important
3 to maximize their partnership because Plaintiff passed up on an opportunity to work with
4 Facebook. (*Id.* at ¶ 40.) Plaintiff also asked Google to further commit to the project and use their
5 latest technology, Google Street View and 360 Virtual Reality, to keep the project relevant.
6 (*Ibid.*) Google agreed. (*Ibid.*)

7 From November 2015 to August 2016, Plaintiff and Google met and conversed numerous
8 times to implement the next stage of Ta No Mapa. (*Id.* at ¶ 41.) The partners wanted to expand
9 the scope of the project with an emphasis on sharing stories from the communities and
10 highlighting business and point of interest through the use of videos. (*Ibid.*) Plaintiff also
11 recommended they map favelas adjacent to the sites for the upcoming Olympics Games in Rio
12 de Janeiro. (*Ibid.*)

13 At a March 2016 meeting at Google’s office in Sao Paulo, Google’s representative
14 suggested that the new videos feature some of Brazil’s famous cultural figures. (*Id.* at ¶ 42.) Jose
15 Junior rejected the idea and instead suggested that the videos feature “ambassadors” from the
16 favelas. (*Ibid.*) Jose Junior and others associated with Plaintiff made other recommendations for
17 the content of the videos and the plans to implement filming. (*Ibid.*) In an email dated March 28,
18 2016, Google named the new stage of the project “Ta No Mapa 2.0.” (*Id.* at ¶ 43.) Subsequently,
19 in May 2016, Ayarza reported that she traveled to California to more fully present information to
20 Google, Inc. about the expansion and development of the Ta No Mapa project. (*Id.* at ¶ 44.) She
21 also stated that Google wanted to continue moving forward with the project with Plaintiff. (*Ibid.*)

22 Throughout early to mid-2016, Plaintiff and Google worked together to produce a series
23 of videos that Plaintiff believed were going to be used in Ta No Mapa 2.0. (*Id.* at ¶ 45.) One of
24 these videos features Jose Junior describing how Plaintiff and Google are partners in mapping
25 the favelas and making its people and culture known to the world. (*Ibid.*) While Plaintiff offered
26 the use of its video production staff and facility, Ayarza declined because Google’s funding and
27 special equipment were necessary for 360 Virtual Reality filming. (*Ibid.*) Plaintiff still
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1 participated in the filming, both at the filming sites and by coordinating operations from its office
2 in Rio de Janeiro. (*Ibid.*)

3 At a subsequent meeting, Google representatives told Plaintiff that Ta No Mapa 2.0
4 would formally be named “Alem do Mapa,” or “Beyond the Map” when translated in English.
5 (*Id.* at ¶ 46.) Plaintiff’s understanding was that the new name would not affect the nature of the
6 project or the nature of the relationship between it and Google. (*Ibid.*) In late May to early June
7 2016, Jose Junior received verbal assurances from Ayarza that Plaintiff would receive a
8 “partnership” credit on the project. (*Ibid.*) Google thereafter promised it would send Plaintiff
9 documentation to confirm its partnership credit. (*Ibid.*) Throughout the formulation of Alem do
10 Mapa, the partners focused on taking advantage of the media spotlight provided by the 2016
11 Summer Olympic Games in Rio de Janeiro (the “Rio Olympics”). (*Id.* at ¶ 47.)

12 In early July, Google requested Plaintiff’s help in preparing content for Alem do Mapa
13 and marketing to promote the launch. (*Id.* at ¶ 48.) Google asked Plaintiff to provide content,
14 such as photographs from the favelas and portions of videos previously prepared by Plaintiff and
15 Google in 2015. (*Ibid.*) Google used this material when it launched Alem do Mapa. (*Ibid.*)
16 Google also asked Plaintiff to implement their joint plan to distribute 5,000 3-D cardboard
17 glasses for use in the marketing campaign around the launch of Alem do Mapa. (*Id.* at ¶ 49.)

18 Only July 29, 2016, days before the Rio Olympics, Google held an event to launch Alem
19 do Mapa and invited Plaintiff to attend. (*Id.* at ¶ 50.) At the conclusion of the event, Google
20 announced the release of Alem do Mapa on its Arts and Culture page. (*Ibid.*) However, the
21 project only credited Google and did not mention Plaintiff. (*Ibid.*) Plaintiff believed this was
22 oversight and trusted Google to make it right. (*Id.* at ¶ 51.) In fact, on August 1, 2016, Brandao
23 sent a message to Plaintiff thanking them for their help and partnership in the final stretch of the
24 launch. (*Id.* at ¶ 52.) Subsequently, on August 2, when Plaintiff complained that Alem do Mapa
25 did not acknowledge it as a partner, Google took the position the project belonged solely to it.
26 (*Id.* at ¶ 53.) It belatedly offered to give Plaintiff some credit, but only in the form of a “made
27 with the help of” credit on the website. (*Ibid.*) Google also demanded that Plaintiff agree to
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1 license the use of its name and brand for that credit and sign a written agreement to license its
2 brand. (*Ibid.*) Plaintiff refused. (*Ibid.*)

3 Google has since published Alem do Mapa on its Arts and culture webpage, featured the
4 video of Jose Junior describing Plaintiff's partnership with Google, published marketing material
5 for the initiative in magazines, and distributed promotional cardboard 3-D glasses, all without
6 crediting Plaintiff. (*Id.* at ¶ 54.) Plaintiff also believes Google directed web searches for Ta No
7 Mapa to Alem do Mapa, and diverted visits away from Plaintiff's own website, even knowing
8 that the Ta No Mapa website contained a link to Plaintiff's website which encouraged and
9 allowed visitors to donate to it. (*Id.* at ¶ 55.) Google did so intentionally or with conscious
10 disregard of its fiduciary duties to Plaintiff. (*Ibid.*) As such, Google has disregarded the promises
11 it made and the duties it owed to Plaintiff when it finally launched Alem do Mapa on its own
12 website for its sole benefit and profit, thereby depriving Plaintiff of the good will, visibility, and
13 other benefits as its partner in the project. (*Id.* at ¶ 56.)

14 Plaintiff asserts the following causes of action against Defendants: (1) Breach of Joint
15 Venture/Partnership Agreement; (2) Breach of Implied Joint Venture/Partnership Agreement; (3)
16 Unfair Competition in Violation of Business and Professional Code section 17200; (4) Breach of
17 Fiduciary Duty; and (5) Quantum Meruit.

18 Defendants move to strike Plaintiff's prayer for exemplary and/or punitive damages,
19 located at page 17, paragraph 3 of the FAC. Plaintiff opposes the motion.

20 On a motion to strike a pleading under Code of Civil Procedure section 435, a court may
21 strike out any improper matter inserted in any pleading, including improper damages. (Code Civ.
22 Proc., § 436, subd. (a); see *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164.) In ruling
23 on a motion to strike, the allegations of the challenged pleading are assumed to be true. (*Clauson*
24 *v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 ["[J]udges read allegations of a pleading
25 subject to a motion to strike as a whole, all parts in their context, and assume their
26 truth".]) Specific factual allegations are required to support a punitive damage claim. (*Brousseau*
27 *v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) However, the complaint is read as a whole so even
28 conclusory allegations may suffice when read in context with facts alleged as to defendant's

1 wrongful conduct. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7.) A motion to strike
2 a claim for punitive damages is appropriate where the claim sued upon will not support an award
3 of such damages as a matter of law. (See *Commodore Home Systems, Inc. v. Superior Court*
4 (1982) 32 Cal.3d 211, 214-215; Civil Code § 3294(a).)

5 “In order to state a prima facie claim for punitive damages, a complaint must set forth
6 the elements as stated in the general punitive damage statute, Civil Code section 3294. These
7 statutory elements include allegations that the defendant has been guilty of oppression, fraud, or
8 malice. ‘Malice’ is defined in the statute as conduct ‘intended by the defendant to cause injury to
9 the plaintiff or despicable conduct which is carried on by the defendant with a willful and
10 conscious disregard of the rights or safety of others.’ ‘Oppression’ means despicable conduct that
11 subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.”
12 (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 [internal
13 citations and quotation marks omitted].) Finally, “fraud” is defined as “an intentional
14 misrepresentation, deceit, or concealment of a material fact known to the defendant with the
15 intention on the part of the defendant of thereby depriving a person or property or legal rights or
16 otherwise causing injury.” (Civ. Code, § 3294, subd. (c)(3).)

17 Defendants argue that Plaintiff’s factual allegations are not specific enough to support a
18 claim for punitive damages. In opposition, Plaintiff argues it sufficiently pleads facts to support a
19 claim for punitive damages based on fraud, malice, and oppression.

20 Plaintiff alleges Defendants are “liable for punitive damages because, through fraud,
21 oppression or malice, [they] deprived [it] of its partnership credit in Alem do Mapa.” (FAC, ¶
22 79.) It pleads Defendants were aware it passed up an opportunity to partner with Facebook and
23 that Google Brasil’s employees, Ayarza and Brandao, continually reassured it that it would be
24 given partnership credit. (*Id.* at ¶¶ 46, 52, 80.) Plaintiff further alleges that despite this
25 knowledge, Defendants failed to disclose they never intended to give it partnership credit and/or
26 acted with a conscious disregard to its right to such credit. (*Id.* at ¶ 80.) Plaintiff states that as a
27 result it was, at the very least, injured by virtue of losing publicity, goodwill, and potential
28 financial opportunities. (*Ibid.*) Plaintiff also pleads that Defendants knowingly, or with conscious


1 disregard to its rights, caused web searches for Ta No Map to be directed to Alem do Mapa's
2 webpage to further their own interests. (*Id.* at ¶ 81.) It states Defendants did so knowing it would
3 be injured because it is an NGO depending on publicity, goodwill, and donations for funding.
4 (*Id.* at ¶¶ 55, 81) Lastly, Plaintiff alleges it was further damaged by Defendants' refusal to give it
5 partnership credit even after complaining to them. (*Id.* at ¶ 82.)

6 Defendants are correct the factual bases of Plaintiff's request for punitive damages are
7 similar to those alleged in the original complaint. That being said, Plaintiff's request for punitive
8 damages is now based on a theory of fraud and the FAC includes additional specific allegations
9 to support that theory. In particular, it added that Defendants are guilty of fraud because (1) they
10 intentionally misrepresented that they would give it partnership credit in exchange for its
11 cooperation with the project, and (2) they concealed their intention to not give it partnership
12 credit. As a result, Plaintiff alleges it sustained damages including loss of a partnership credit,
13 publicity, goodwill, donations, and potential financial opportunities. This is sufficient to support
14 a claim for punitive damages based on fraud.

15 Because Plaintiff sufficiently pleads facts showing fraud as the basis for its request for
16 punitive damages, it is unnecessary to consider whether it also sufficiently pleads facts to support
17 a claim for punitive damages based on malice or oppression.

18 As such, the motion to strike Plaintiff's prayer for exemplary or punitive damages is
19 DENIED.

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26 Date: 6/6/17


27 William Elfving
28 Judge of the Superior Court



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION**

June 06, 2017

**Robert James Muller
11111 Santa Monica Blvd
Ste 500
Los Angeles CA 90025**

RE: **Grupo Cultural Afroreggae vs Google, Inc. et al**
Case Number: **16CV300259**

PROOF OF SERVICE

Order Re: Motion to Strike was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on June 06, 2017. CLERK OF THE COURT, by Shantel Hernandez, Deputy.

cc: Benjamin Bing-Ho Au 217 Leidesdorff Street SAN FRANCISCO CA 94111



**Superior Court of California
County of Santa Clara**

Downtown Superior Court
191 North First Street
San Jose, California 95113

RETURN SERVICE REQUESTED



**Robert James Muller
11111 Santa Monica Blvd
Ste 500
Los Angeles CA 90025**

900253339 0015



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a
5 party to the action. My business address is 11111 Santa Monica Blvd., Suite 500, Los Angeles, CA 90025.

6 On June 14, 2017, I served the foregoing documents as described as:

7 **NOTICE OF ENTRY OF ORDER RE MOTION TO STRIKE**

8 on all other parties and/or their attorney(s) of record to this action by placing a true copy thereof in a sealed
9 envelope addressed as follows:

10 ****** SEE ATTACHED SERVICE LIST ******

11 **(BY UNITED STATES MAIL)** I am readily familiar with the business practice for collection and
12 processing of correspondence for mailing with the United States Postal Service. This
13 correspondence shall be deposited with the United States Postal Service this same day in the
14 ordinary course of business at our Firm's office address in Los Angeles, California. Service made
15 pursuant to this paragraph, upon motion of a party served shall be presumed invalid if the postal
16 cancellation date of postage meter date on the envelope is more than one day after the date of deposit
17 for mailing contained in this affidavit.

18 **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express or
19 Overnite Express, an express service carrier which provides overnight delivery, as follows. I placed
20 true copies of the foregoing document in sealed envelopes or packages designated by the express
21 service carrier, addressed to each interested party as set forth above, with fees for overnight delivery
22 paid or provided for.

23 **(BY EMAIL OR ELECTRONIC TRANSMISSION)** I caused the documents to be sent on the
24 date shown below to the email address(es) of the person(s) listed on the Service List. I did not
25 receive within a reasonable time after the transmission any electronic message or other indication
26 that the transmission was unsuccessful.

27 **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand on the date shown
28 below to the person(s) at the address listed here: _____. For a party represented by an
attorney, delivery was made to the attorney or to the attorney's office by leaving the document(s) in
an envelope or package clearly labeled to identify the attorney being served with a receptionist or an
individual in charge of the office.

Executed on June 14, 2017, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct.


Christina Llosa

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SERVICE LIST

***Grupo Cultural Afroreggae. v. Google Inc., and Google Brasil Internet LTDA.
County of Santa Clara, Case No.: 16CV300259***

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