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CEASE AND DESIST LETTER **(A Privileged Communication [Civil Code § 47(b)])**

July 30, 2009

Via Certified Mail

Roger E. Rustad, Jr.
24430 Madeira Way
Laguna Niguel, CA 92677

David Kaiser
34 Michigan St.
Redlands, CA 92373

RE: SocalLinux.Org Forum Defamation

Dear Messrs. Rustad and Kaiser:

Please be advised that this office represents Mr. Dan Tentler of AtenLabs. Kindly direct any and all future communications concerning this matter to our attention. Further, if you are represented by counsel then please direct this correspondence to the same for their review and consideration.

Background. As you are aware, Mr. Tentler makes his living as a network systems security specialist. (Mr. Tentler's Profile, Training, and Experience are available for your perusal at <http://www.linkedin.com/in/vissago>) In particular, Mr. Tentler does presentations, similar to the one he did for SocalLinux.Org, to companies such as Qualcomm. (Qualcomm presentation video links: Part 1: <http://vimeo.com/2847947>; Part 2: <http://vimeo.com/2879833>)

In or about December 2008, Mr. Tentler attended a SocalLinux.Org meeting at a coffee shop. Mr. Tentler expressly mentioned that he was going to do a Man in the Middle ("MITM") attack and those around him at the time did not object and in some cases grinned with acknowledgement. In fact, Mr. Kaiser made comments **during** the MITM attack pointing out how it could be thwarted. Significantly, Mr. Rustad showed up an hour late to the meeting and therefore was not even there when Mr. Tentler announced what he was doing and consequently had no factual basis to assail Mr. Tentler's activities. Apparently, Mr. Tentler during his exhibition was able to capture a password of one of the participants. I am informed that the MITM application that Mr. Tentler was running during his demonstration is commonly available software called "Ettercap." His demonstration prompted harsh criticisms by the two of you which for the reasons set forth below are tortious in nature.

Libel. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or

other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. (Civil Code § 45) These acts by you have also placed Mr. Tentler in a false light. (5 Witkin, *Summary of California Law* (9th Ed.), Torts, § 673, pp. 987-988) The defamatory character of language is measured according to the sense and meaning which such language may fairly be presumed to have conveyed to those to whom it was published. (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 447)

Insinuating that Mr. Tentler did his demonstration for your group—as opposed to the many other groups he has done nearly the same demonstration for (see video links above)—with malevolent intent, that he had “secretly” committed misconduct against members of your group, and further continuously labeling him as a “script kiddie” and that his acts were “tantamount to pick pocketing,” “sophomoric,” that he set out to “steal people’s passwords,” and imputing to Mr. Tentler and implying other acts of dishonesty (regardless of whether they are couched in terms of an opinion or not) are derogatory and false statements of fact. With regard to your branding Mr. Tentler a “script kiddie,” that term is commonly understood in the computer world as:

*“One who relies on premade exploit programs and files (‘script’) to conduct his hacking, and refuses to bother to learn how they work. The script kiddie flies in the face of all that the hacker subculture stands for—the pursuit of knowledge, respect for skills, and motivation to self-teach are just three of the hacker ideals that the script kiddie ignores. **While anyone can be a script kiddie, generally they are teenagers who want the power of the hacker without the discipline or training involved.** ...”* (See www.urbandictionary.com/define.php?term=script+kiddie [emphasis added])

Given that the members of the audience on the forum in question “work at places like Apple, Google, Microsoft, ESRI, etc.” they would have understood your referencing Mr. Tentler in that manner as disparaging. You basically said over and over again that Mr. Tentler was a hacker wannabe and, in view of Mr. Tentler’s resume, background and expertise, he is not a “script kiddie” by definition. These statements have a harmful affect on Mr. Tentler’s business and occupation and since the statements are in written form they are libelous.

While it was somewhat polite of you to at least “cc” Mr. Tentler with some of the comments made, it does not lessen the defamatory character or quality of what was said. Indeed, Mr. Rustad equated Mr. Tentler’s conduct to theft. What is more, this was purely a private matter between private individuals and not a matter of public concern by any stretch of the imagination such that Mr. Tentler’s interest in not being libeled takes precedence over your expression of sentiments. (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1131) Also, means of communication where access is selective are not public forums. (*Id.* at 1130)

Additionally, the comments made by you were malicious for the following reasons: The

tenor of the statements made concerning Mr. Tentler are evidence in this instance of malice toward Mr. Tentler. (*Brewer v. Second Baptist Church of Los Angeles* (1948) 32 Cal.2d 791, 799) Further, you blocked Mr. Tentler from posting his responsive comments on your forum. And, the posts are available to all on the internet and accessible by a Google search. With regard to the public availability of the postings, such circumstances will defeat any claim you may otherwise make that your statements were subject to the conditional ("common interest") privilege. Abuse of the conditional privilege by ***excessive publication of the matter beyond the interested group, lack of belief or of reasonable grounds for belief in the truth, or by the inclusion of immaterial matters which have no bearing upon the interest sought to be protected*** will result in the loss of any such privilege. (*Institute of Athletic Motivation v. University of Illinois* (1980) 114 Cal. App. 3d 1, 12; *Deaile v. General Telephone Co. of California* (1974) 40 Cal. App. 3d 841, 847)

Here, the fact that your rants are available to, and accessible by, the general public by doing a simple Google search amounts to excessive publication and the gratuitous slights about Mr. Tentler included in Mr. Kaiser's posting were irrelevant to the technical topic you were then discussing. And, Mr. Rustad was not even present at the outset of the display furnishing no reasonable grounds for you to make any such statements. Although in a libel action such as this no special damages need be proved for recovery, your postings have already adversely affected Mr. Tentler's business. One prospective client has already accessed your group's postings and questioned Mr. Tentler about it which almost resulted in a loss of their business. Others are sure to follow as they scrutinize Mr. Tentler's background before employing him to do their information security.

Please be further advised that your refusal to remove the postings (or at least make the postings private) will be additional evidence of malice and will be construed accordingly unless you take steps to rectify the situation outlined below.

As a result, we hereby demand that you either remove the forum posts referencing or advertizing to Mr. Tentler or, at a bear minimum, make them private so that Google (or any other search engine) is no longer able to index them.

To the extent that a demand for a retraction is required prior to the initiation of legal action this correspondence constitutes a demand for such a retraction. By statute, you have three weeks from the date of this demand to publish such a retraction.

In sum, Mr. Tentler is seriously and in good faith contemplating litigation over this matter

Cease and Desist Letter Re: Socal Linux.Org Forum Defamation

July 30, 2009

Page 4

and we will allow you **fourteen (14) days from the date of this communication to remove or make private the subject postings** or legal action will be imminent. If you have any questions regarding the foregoing please feel free to contact this office.

Sincerely,

Ariel J. Sabban, Esq.

cc: Mr. Dan Tentler