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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF ARIZONA**

16 XCENTRIC VENTURES, LLC, an Arizona
 17 corporation, d/b/a “RIPOFFREPORT.COM”;
 18 ED MAGEDSON, an individual

Case No: 2:07-cv-00954-NVW

19 Plaintiffs,

**MEMORANDUM OF LAW
 ADDRESSING SERVICE OF
 ORDER TO SHOW CAUSE**

20 v.

21 WILLIAM “BILL” STANLEY, an
 22 individual; WILLIAM “BILL” STANLEY
 23 d/b/a DEFAMATION ACTION.COM;
 24 WILLIAM “BILL” STANLEY d/b/a
 25 COMPLAINTREMOVER.COM; WILLIAM
 26 “BILL” STANLEY aka JIM RICKSON;
 27 WILLIAM “BILL” STANLEY aka MATT
 28 JOHNSON; ROBERT RUSSO, an
 individual; ROBERT RUSSO d/b/a
 COMPLAINTREMOVER.COM; ROBERT
 RUSSO d/b/a DEFENDMYNAME.COM;
 ROBERT RUSSO d/b/a QED MEDIA
 GROUP, L.L.C.; QED MEDIA GROUP,
 L.L.C.; QED MEDIA GROUP, L.L.C. d/b/a
 DEFENDMYNAME.COM; QED MEDIA
 GROUP, L.L.C. d/b/a
 COMPLAINTREMOVER.COM;
 DEFAMATION ACTION LEAGUE, an
 unincorporated association; and INTERNET
 DEFAMATION LEAGUE, an
 unincorporated association;

Defendants.

JABURG & WILK, P.C.
 ATTORNEYS AT LAW
 3200 NORTH CENTRAL AVENUE
 SUITE 2000
 PHOENIX, ARIZONA 85012

1 ROBERT RUSSO, an individual; QED
2 MEDIA GROUP, L.L.C., a Maine limited
liability corporation,

3 Counterclaimants,

4 v.

5 ED MAGEDSON, an individual,

6 Counterdefendant.
7

8 Plaintiffs Xcentric Ventures, LLC (“Xcentric”) and Ed Magedson (“Magedson”)
9 (collectively, “Plaintiffs”) submit their Memorandum of Law addressing what is a
10 sufficient form of service of the order to show cause upon an addressee of the preliminary
11 injunction who has not been serviced with process in this case.

12 Plaintiffs have also filed a separate Motion for Alternative Service on Stanley
13 which addresses service of the summons and complaint. Plaintiffs incorporate by
14 reference the factual recitations in that motion which set forth the efforts that have been
15 made to serve Stanley with process.

16 In light of the inability to personally serve Stanley, Plaintiffs propose to serve the
17 Order to Show Cause by email to geographicalseo@gmail.com and
18 defamationaction@gmail.com which are known addresses at which Stanley receives and
19 responds to communications.

20 Service of the Order to Show Cause by email is sufficient service because the
21 Ninth Circuit has recognized that service by email can be a reliable and acceptable form
22 of service and because the rules and case law require only actual notice of a Preliminary
23 Injunction and not personal service of the injunction for a finding of contempt. Indeed,
24 the Ninth Circuit has recognized that a person need not even be named as a party to a
25 lawsuit in order to be held in contempt of court for failure to comply with an injunction.

26 **A. Email is a Reliable Means of Service**

27 Recognizing that, in today’s technological world, handing papers to a party is not
28 the only reliable way to inform the party of proceedings, the Ninth Circuit concluded that

1 service by e-mail can be allowed under certain conditions. *Rio Properties, Inc. v. Rio*
2 *Intern. Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002).

3 The court in *Rio Properties* found that “when faced with an international e-
4 business scofflaw, playing hide-and-seek with the federal court, email may be the only
5 means of effecting service of process.” *Id.* at 1018. (emphasis added) The Ninth Circuit
6 acknowledged that:

7
8 [c]onsidering the facts presented by this case, we conclude not only
9 that service of process by email was proper-that is, reasonably calculated to
10 apprise [defendant] of the pendency of the action and afford it an
11 opportunity to respond - but in this case, it was the method of service most
12 likely to reach [defendant].”

13 *Id.* at 1017. In *Rio Properties*, the defendant resided outside of the United States
14 and service was effected under Fed.R.Civ.P. 4(f) allowing for service upon individuals in
15 a foreign country by any means not prohibited by international agreement as may be
16 directed by the court. There is no similar provision for serving process on individuals
17 within the United States, and, thus, Plaintiffs have not sought to serve process on Stanley
18 by email. However, the Ninth’s Circuit’s recognition of email as a reliable method that
19 may be the method most likely to reach defendant is persuasive on the reliability of
20 providing actual notice of the Order to Show Cause via email.

21 **B. Only Actual Notice Is Required For A Finding Of Contempt**

22 Fed.R.Civ.P. 65 provides that “[n]o preliminary injunction shall be issued without
23 notice to the adverse party and that an injunction “is binding only upon the parties to the
24 action, their officers, agents, servants, employees, and attorneys, and upon those persons
25 in active concert or participation with them who receive actual notice of the order by
26 personal service or otherwise.”

27 “In civil contempt proceedings, formal or personal service is not required.”
28 *United States v. Baker*, 641 F.2d 1311, 1316 (9th Cir. 1981). Knowledge or notice of the
court order in question and a willful disobedience of that order are the essential elements
of contempt. *United States of America v. Rylander*, 714 F.2d 996 (9th Cir. 1983).

1 (rejecting the defendant's assertion that he could not be held in contempt because he was
2 not personally served with the order).

3 Indeed, the Ninth Circuit has affirmed findings of contempt against persons who
4 were non-parties to the action underlying the injunction. *Portland Feminist Women's*
5 *Health Center v. Advocates for Life, Inc.*, 877 F.2d 787 (9th Cir. 1989). The Court in
6 *Portland Feminist* held that the District Court did not err in finding non parties to the case
7 in contempt because the injunction was binding on persons who received actual notice of
8 the injunction order and acted in concert or participated with the parties named in the
9 injunction.

10 **C. Conclusion**

11 There can be no question that only actual notice is required to bind someone to an
12 injunction. It follows that only actual notice is required to conduct the contempt hearing
13 and to find a violator in contempt. Accordingly, serving the Order to Show Cause to
14 Stanley by email is sufficient and appropriate notice even though Stanley has not yet been
15 served with process in this case.

16 DATED this 28th day of September, 2007

17
18 **JABURG & WILK, P.C.**

19
20 s/ Maria Crimi Speth
21 Maria Crimi Speth
22 Attorneys for Plaintiffs

23 **Certificate of Service**

24 I hereby certify that on September 28, 2007, I electronically transmitted the
25 attached document to the Clerk's Office using the CM/ECF System for filing, and for
26 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

27 Teresa Kay Anderson
28 Snell & Wilmer LLP
One Arizona Center
400 E Van Buren
Phoenix, AZ 85004

1 Michael Kent Dana
2 Snell & Wilmer LLP
3 400 E Van Buren
4 Phoenix, AZ 85004-0001

5 Attorneys for Defendants Robert Russo,
6 QED Media Group, LLC and Internet
7 Defamation League

8 With a COPY of the foregoing emailed this 28th day of September, 2007, to:

9 William "Bill" Stanley
10 defamationaction@gmail.com
11 geographicalseo@gmail.com

12 With a COPY of the foregoing hand delivered the 28th day of September, 2007, to:

13 Honorable Neil V Wake
14 United States District Court
15 District of Arizona

16 s/Maria Crimi Speth

17 JABURG & WILK, P.C.
18 ATTORNEYS AT LAW
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21 PHOENIX, ARIZONA 85012