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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

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12 MICHAEL M. EDELSTEIN,) Case No. CV 10-01847 DMG (SHx)
13)
14 Plaintiff,) **ORDER RE PLAINTIFF'S *EX PARTE***
15 v.) **APPLICATION FOR TEMPORARY**
16) **RESTRAINING ORDER AND**
17) **PRELIMINARY INJUNCTION**
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19 This matter is before the Court on Plaintiff's *Ex Parte* Application for a temporary
20 restraining order and a preliminary injunction, which was filed on May 24, 2010.¹ The
21 Court held a telephonic hearing on May 28, 2010. Having duly considered the respective
22 positions of the parties, as presented in their briefs and during the hearing, the Court
23 hereby DENIES Plaintiff's *Ex Parte* Application.

24 In an order dated March 10, 2010 (the "March 10 Order"), the Hon. Audrey B.
25 Collins denied Plaintiff's Application for Leave to File Action without Prepayment of
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27 ¹ On March 22, 2010, Plaintiff filed a complaint in this Court alleging violations of 17 U.S.C. §
28 106A and 17 U.S.C. § 1202. On May 24, 2010, Plaintiff filed the *Ex Parte* Application. Defendant filed
an opposition on May 25, 2010.

1 Full Filing Fee (“IFP Request”) in Case No. CV 10-1648. In the March 10 Order, Judge
2 Collins explained that Plaintiff’s IFP Request was denied because Plaintiff failed to state
3 a claim against Defendant. Plaintiff subsequently re-filed this action. This Court finds
4 that Plaintiff’s complaint continues to suffer from the same defects identified in Judge
5 Collins’ March 10 Order.²

6 Plaintiffs seeking a preliminary injunction in a case involving the public interest
7 must show that (1) they are likely to succeed on the merits; (2) they are likely to suffer
8 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
9 their favor; and (4) an injunction is in the public interest. *Dominguez v. Schwarzenegger*,
10 596 F.3d 1087, 1092 (9th Cir. 2010), *petition for cert. filed*, 78 USLW 3581 (Mar. 24,
11 2010); *see also Winter v. Natural Res. Def. Council, Inc.*, __ U.S. __, 129 S.Ct. 365, 374,
12 172 L.Ed.2d 249 (2008). As Plaintiff fails to state a claim for relief against Defendant,
13 Plaintiff is unable to demonstrate likelihood of success on the merits. He therefore does
14 not make the requisite showing for either a temporary restraining order or a preliminary
15 injunction.

16 Furthermore, in the *Ex Parte* Application, Plaintiff seeks removal of Plaintiff’s
17 copyrighted image and name from “Google Inc., www.google.com (search engines);
18 www.blogspot.com websites, posting or maintaining on the Internet and World Wide
19 Web, any web page, directly or indirectly, that includes in its file name, URLs, Metags
20 [sic] or text, all Internet search engines, registers or other persons, wherever located, in
21 concert with them associated links at michaeledelsteinslandercampaigns.blogspot.com.”

23 ² In the March 10 Order, the Court found that “[o]nly the author of a work of visual art has the
24 rights conferred by [17 U.S.C. § 106A(a)], whether or not the author is the copyright owner,” and that
25 Plaintiff failed to allege that he is the “author” of a work of visual art. March 10 Order at p. 2 (citing 17
26 U.S.C. § 106A(b)). The March 10 Order further explained that 17 U.S.C. § 1202 prohibits any person,
27 knowingly and with intent to induce, enable, facilitate or conceal infringement, from providing false
28 copyright management information or distributing or importing for distribution false copyright
management information. Plaintiff’s complaint, however, failed to specify the “copyright management
information” at issue or the conduct of Defendant that constituted a violation of 17 U.S.C. § 1202
relative to such copyright management information.


1 (*Ex Parte* Application at p. 2.) It appears from the complaint and the *Ex Parte*
2 Application that at the crux of Plaintiff's allegations are the "libelous postings to injure,
3 annoy, hinder and harass plaintiff" (Compl. ¶ 6.) Plaintiff's complaint, however,
4 does not allege a cause of action for libel against the perpetrator of the offending postings
5 on the website, but rather, seeks relief only against Google under the Copyright Act.

6 Plaintiff seeks relief in the *Ex Parte* Application that is broader than that requested
7 in his complaint, *i.e.*, the complaint seeks only removal of Plaintiff's copyrighted image.
8 The grounds for Plaintiff's request for relief in the *Ex Parte* Application are also outside
9 of what is included in his complaint, *i.e.*, Cal. Civ. Code § 980, Cal. Civ. Proc. Code §
10 527.6, 15 U.S.C. § 1125, and 47 U.S.C. § 223 are not alleged in the complaint. In
11 addition to the defects in the complaint previously identified by Judge Collins, the Court
12 cannot consider claims for relief that extend beyond the scope of Plaintiff's complaint.

13 In light of the foregoing, the Court DENIES Plaintiff's *Ex Parte* Application for a
14 temporary restraining order and a preliminary injunction.

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16 IT IS SO ORDERED.

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18 DATED: May 28, 2010

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22 DOLLY M. GEE
23 UNITED STATES DISTRICT JUDGE
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