

1 **MOTN**
 2 JONATHAN B. GOLDSMITH, ESQ.
 3 Nevada Bar No. 11805
 4 9029 South Pecos Road, #2800
 5 Henderson, Nevada 89074
 6 702.386.8637 (phone)
 7 702.385.3025 (fax)

8 In Proper Person

9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF NEVADA

11 JONATHAN B. GOLDSMITH, ESQ., an
 12 Individual

CASE NO. 2-10-cv-01845-RLH-PAL

13 Plaintiff,

14 vs.

15 JORDAN R. COOPER, an Individual;
 16 CHERYL COOPER DRISCOLL, an
 17 Individual; FACEBOOK, INC.; a Foreign
 18 Corporation; DOES 1 through 5 and ROE
 19 CORPORATIONS 1 through 5, inclusive,

20 Defendants.

21 **MOTION FOR PRELIMINARY INJUNCTION**

22 COMES NOW, Plaintiff, JONATHAN B. GOLDSMITH, ESQ. (hereinafter "Plaintiff"), in
 23 Proper Person, and moves the Court pursuant to FRCP 65 for a Preliminary Injunction to prevent
 24 Defendant JORDAN R. COOPER (hereinafter "Cooper"), Defendant CHERYL COOPER DRISCOLL
 25 (hereinafter "Cooper Driscoll"), and Defendant FACEBOOK, INC. (hereinafter "Facebook") from
 26 further using Plaintiff's name and likeness to publish discriminatory, slanderous, misleading and false
 27 information about Plaintiff. Plaintiff further moves the Court for a Preliminary Injunction to prevent
 28 Defendant Cooper and Cooper Driscoll from further stalking and harassing Plaintiff in contravention
 with Federal law.

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1 This Motion is based on FRCP 65, the Points and Authorities attached hereto, the exhibits and
2 affidavits attached hereto, the pleadings on file herein and on any oral argument which may be allowed
3 at the time of the hearing on this matter.

4 **NOTICE OF MOTION**

- 5 TO: JORDAN R. COOPER;
6 TO: CHERYL COOPER DRISCOLL;
7 TO: FACEBOOK, INC.; and
8 TO: Defendants' Counsel of Record;

9 PLEASE TAKE NOTICE that Plaintiff's Motion for Temporary Restraining Order will come
10 on for hearing before the above-entitled court on the _____ day of _____, 2010 at the
11 hour of _____ o'clock ____ .m.

12 DATED this 3rd day of November, 2010.

13
14 /s/ Jonathan B. Goldsmith, Esq.
15 JONATHAN B. GOLDSMITH, ESQ.
16 Nevada Bar No. 11805
17 9029 South Pecos Road, #2800
18 Henderson, Nevada 89074
19 702.386.8637 (phone)
20 702.385.3025 (fax)

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1 I. FACTS

2 Plaintiff filed a Complaint against Defendants with the Eighth Judicial District Court on or
3 around October 5, 2010 alleging, among other things, several causes of action that rise to defamation
4 of character including: slander, slander per se, libel, libel per se, false light defamation, and invasion of
5 privacy, as well as intentional interference with business relations, intentional infliction of emotional
6 distress, stalking and allege several violations of Federal wiretapping laws. Plaintiff filed his First
7 Amended Complaint for Damages and Injunctive Relief on or around October 27, 2010. *See* Exhibit
8 1, pp.1-15.

9 Plaintiff is counsel of record in a domestic case in the Eighth Judicial District Court whereby
10 Defendant Cooper is an opposing party. Plaintiff has had no contact with Defendant Cooper or any
11 Defendant except through his counsel of record in the aforementioned case. Nevertheless, Defendants
12 have consistently and continually committed defamation and privacy violations in addition to several
13 other purposeful tortious acts against Plaintiff through the use of the world wide web and by other
14 means.

15 Specifically, on or around October 1, 2010 at around 3:30 p.m., Defendant Cooper, by means of
16 Defendant Facebook's internet social networking website, published defamatory and demeaning
17 statements specifically directed at Plaintiff which stated: "im on to you jonathan golddick(smith) ha
18 faggot" and further stated "he looks like a pediphile (sic)." *See* Exhibit 2, pp. 1-2. Further, Defendants
19 published the statement of a Facebook user identified as "Ziles Thomas" which stated: "ha I want to se
20 (sic) what that douche bag looks like." *See* Exhibit 2, pp. 1-2.

21 Moreover, and in response to "Ziles Thomas" statement published by Defendants, on or around
22 October 2, 2010 at around 6:10 p.m., Defendant Cooper Driscoll, by means of illegal and tortious
23 invasion of privacy, stole a private photograph depicting the likeness of Plaintiff, and, by means of
24 Defendant Facebook's internet social networking website, published the stolen picture on Defendant
25 Cooper's internet page, which is managed and maintained by Defendant Facebook. *See* Exhibit 2, pp.
26 1. Defendants Cooper and Cooper Driscoll made disparaging remarks about the stolen photograph, and
27 Defendant Cooper Driscoll acknowledged that Defendants had committed unlawful and tortious
28 behavior by posting the following statement: "delete that picture already." *See* Exhibit 2, pp. 1.

1 Defendant Cooper has engaged in a pattern of stalking against Plaintiff. In around August 2010,
2 Plaintiff observed Defendant's yellow Ford Mustang with black stripes, with the license plate "Sage 3",
3 parked outside of Plaintiff's law office located at 1212 South Casino Center Boulevard in Las Vegas,
4 Nevada. After being aware of Cooper's stalking, Plaintiff observed Cooper's yellow mustang driving
5 by Plaintiff's office several times in around August 2010.

6 Additionally, after Plaintiff moved offices to 9029 South Pecos Road, #2800, Henderson, Nevada
7 89074, Defendant Cooper has driven by and appeared several times at Plaintiff's new office located in
8 Henderson, Nevada while driving a new model red Ford Mustang bearing the licence plate "Sage 3."
9 The pattern of stalking occurred at Plaintiff's Henderson office approximately 10 times in September
10 and October 2010. Several times, between September 28, 2010 and October 7, 2010, at around 5:00-
11 6:00 p.m., Plaintiff observed Defendant Cooper in front of Plaintiff's office heading north to south. On
12 another occasion, on or around October 8, 2010, at approximately 5:30 p.m., Plaintiff observed
13 Defendant Cooper pass up and back by Plaintiff's office three times heading north to south, south to
14 north, and north to south respectively driving a red Ford Mustang bearing the license plate "Sage 3."

15 Defendant Cooper Driscoll has also engaged in a pattern of stalking against Plaintiff.
16 Specifically, Defendant Cooper Driscoll created a false profile on Defendant Facebook's website using
17 a false name and false picture, in order to gain access to Plaintiff's personal and private information. See
18 Exhibit 3, pp. 1.

19 On or around October 21, 2010, Defendant Facebook removed the present case to Federal Court,
20 thereby barring Plaintiff's Motion for a Preliminary Injunction on an Order Shortening Time, which was
21 scheduled for October 25, 2010, from being heard. As a result, Plaintiff continues to suffer irreparable
22 harm. Plaintiff filed an Ex Parte Motion for a Temporary Restraining Order and Application for a
23 Preliminary Injunction on an Order Shortening Time on or around October 25, 2010.

24 On or around November 1, 2010, the Court denied Plaintiff's Ex Parte Motion for a Temporary
25 Restraining Order and Application for a Preliminary Injunction on an Order Shortening Time on the
26 basis that Plaintiff has had ample time of which to put Defendant's on notice of Plaintiff's motion.
27 Therefore, the Court found that Plaintiff did not meet his burden filing the Motion under ex parte seal.
28 As a result, Plaintiff now files his Motion without ex parte seal, giving due notice to Defendants.

1 **II. LEGAL ARGUMENTS**

2 **A. LEGAL STANDARD FOR PRELIMINARY INJUNCTION**

3 A preliminary injunction is available if an applicant can show a likelihood of success on the
4 merits, a likelihood that the non-moving party's conduct, if allowed to continue, will cause irreparable
5 harm for which a compensatory damage is an inadequate remedy, the balance of equities tips in their
6 favor and that the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 129 S.
7 Ct. 365, 374 (2008).

8 **B. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS**

9 **1. Defendants Statements Constitute Slander and Libel Per Se**

10 As explained above, Defendants published statements about Plaintiff, including that Plaintiff is
11 a “faggot” and a “pedophile” which constitute slander and libel per se. On that cause of action alone,
12 Plaintiff is extremely likely to succeed on the merits. These statements impute the violation of a crime
13 on behalf of Plaintiff as well as impede Plaintiff’s business. Therefore, Plaintiff is highly likely to
14 succeed on the merits against Defendants.

15 **2. Defendants Actions Constitute Invasion of Privacy**

16 As discussed, Defendant Cooper Driscoll caused to be published a personal and private
17 photograph depicting the name, image and likeness of Plaintiff along with disparaging statements
18 coinciding with the stolen picture. Plaintiff is highly likely to succeed on the merits against Defendants
19 for invasion of privacy, slander and libel per se, as well as all other alleged torts.

20 **3. Defendant Facebook Facilitated and Published all Alleged Statements**

21 With regard to all allegations related to torts committed against Plaintiff over the internet,
22 Defendant Facebook facilitated, published or neglected to mitigate the defamatory and harassing
23 statements and comments published by Defendant Cooper and Defendant Cooper Driscoll. In addition,
24 Facebook failed to mitigate a serious privacy concern that was used by Defendants to commit
25 wiretapping violations. As discussed, Plaintiff is likely to succeed on the merits against the other
26 Defendants, and, therefore, Plaintiff is likely to succeed on the merits against Defendant Facebook given
27 that all alleged statements were published and maintained on internet servers owned and controlled by
28 Defendant Facebook in contravention with Federal law.

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AFFIDAVIT OF JONATHAN B. GOLDSMITH, ESQ.

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss:

JONATHAN B. GOLDSMITH, ESQ., having been first duly sworn, deposes and says:

1. I filed a Complaint against Defendants with the Court on or around October 5, 2010 alleging, among other things, several causes of action that rise to defamation of character including: slander, slander per se, libel, libel per se, false light defamation, and invasion of privacy, as well as intentional interference with business relations, intentional infliction of emotional distress, stalking and alleged several violations of Federal wiretapping laws.
2. I am the counsel of record in a domestic case in the Eighth Judicial District Court whereby Defendant Cooper is an opposing party.
3. I have made no contact with Defendant Cooper or any Defendant except through his counsel of record in the aforementioned case.
4. Nevertheless, Defendants have consistently and continually committed defamation and privacy violations in addition to several other purposeful tortious acts against me through the use of the world wide web and by other means.
5. On or around October 1, 2010 at around 3:30 p.m., Defendant Cooper, by means of Defendant Facebook’s internet social networking website, published defamatory and demeaning statements specifically directed at me which stated: “im on to you jonathan goldnick(smith) ha faggot” and further stated “he looks like a pediphile (sic).”
6. Defendants published the statement of a Facebook user identified as “Ziles Thomas” which stated: “ha I want to se (sic) what that douche bag looks like.

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- 7. On or around October 2, 2010 at around 6:10 p.m., Defendant Cooper Driscoll, by means of illegal and tortious invasion of privacy, stole a private photograph depicting the likeness of me, and, by means of Defendant Facebook’s internet social networking website, published the stolen picture on Defendant Cooper’s internet page, which is managed and maintained by Defendant Facebook.
- 8. Defendants Cooper and Cooper Driscoll made disparaging remarks about the stolen photograph, and Defendant Cooper Driscoll acknowledged that Defendants had committed unlawful and tortious behavior by posting the following statement: “delete that picture already.”
- 9. Defendant Cooper has engaged in a pattern of stalking against me.
- 10. In around August, 2010, I observed Defendant’s distinct yellow mustang with black stripes, with the license plate “Sage 3”, parked outside of Plaintiff’s law office located at 1212 South Casino Center Boulevard in Las Vegas, Nevada.
- 11. Additionally, after I moved offices, Defendant Cooper has driven by and appeared several times at my new office located in Henderson, Nevada.
- 12. The pattern of stalking occurred at my Henderson office approximately 10 times in September and October 2010.
- 13. Several times, between September 28, 2010 and October 7, 2010, at around 5:00-6:00 p.m., I observed Defendant Cooper in front of my office heading north to south.
- 14. On another occasion, on or around October 8, 2010, at approximately 5:30 p.m., Plaintiff observed Defendant Cooper pass up and back by Plaintiff’s office three times heading north to south, south to north, and north to south respectively driving a red Ford Mustang bearing the license plate “Sage 3.”

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15. Defendant Cooper Driscoll has also engaged in a pattern of stalking against me.

16. Defendant Cooper Driscoll created a false profile on Defendant Facebook's website using a false name and false picture, in order to gain access to my personal and private information.

Further affiant sayeth naught.

Executed on: 11/3/10

/s/ Jonathan B. Goldsmith, Esq.
JONATHAN B. GOLDSMITH, ESQ.