

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

5 In Proper Person

6 UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

8 JONATHAN B. GOLDSMITH, ESQ., an
 Individual

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

9 Plaintiff,

10 vs.

11 JORDAN R. COOPER, an Individual;
 12 CHERYL COOPER DRISCOLL, an
 Individual; FACEBOOK, INC.; a Foreign
 13 Corporation; DOES 1 through 5 and ROE
 CORPORATIONS 1 through 5, inclusive,

14 Defendants.

15 **EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION**
 16 **FOR AN HEARING ON PRELIMINARY INJUNCTION ON AN**
 17 **ORDER SHORTENING TIME**

18 COMES NOW, Plaintiff, JONATHAN B. GOLDSMITH, ESQ. (hereinafter "Plaintiff"), in
 19 Proper Person, and moves the Court pursuant to FRCP 65(b) for a Temporary Restraining Order to
 20 prevent Defendant JORDAN R. COOPER (hereinafter "Cooper"), Defendant CHERYL COOPER
 21 DRISCOLL (hereinafter "Cooper Driscoll"), and Defendant FACEBOOK, INC. (hereinafter
 22 "Facebook") from further using Plaintiff's name and likeness to publish discriminatory, slanderous,
 23 misleading and false information about Plaintiff. Plaintiff further moves the Court for a Temporary
 24 Restraining Order to prevent 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 DATED this 25 day of October, 2010.

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/s/ Jonathan B. Goldsmith
JONATHAN B. GOLDSMITH, ESQ.
Nevada Bar No. 11805
9029 South Pecos Road, #2800
Henderson, Nevada 89074
702.386.8637 (phone)
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NOTICE OF MOTION

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12 TO: JORDAN R. COOPER;

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14 TO: CHERYL COOPER DRISCOLL;

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16 TO: FACEBOOK, INC.; and

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18 TO: Defendant's Counsel of Record;

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

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DATED this 25 day of October, 2010.

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/s/ Jonathan B. Goldsmith, Esq.
JONATHAN B. GOLDSMITH, ESQ.
Nevada Bar No. 11805
9029 South Pecos Road, #2800
Henderson, Nevada 89074
702.386.8637 (phone)
702.385.3025 (fax)

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1 **POINTS AND AUTHORITIES**

2 **I. FACTS**

3 Plaintiff filed a Complaint against Defendants with the Court on or around October 5, 2010
4 alleging, among other things, several causes of action that rise to defamation of character including:
5 slander, slander per se, libel, libel per se, false light defamation, and invasion of privacy, as well as
6 intentional interference with business relations, intentional infliction of emotional distress, stalking and
7 allege several violations of Federal wiretapping laws. *See* Exhibit 1, pp.1-12.

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

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

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

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1 Defendant Cooper has engaged in a pattern of stalking against Plaintiff. Most notably, in around
2 August, 2010, Plaintiff observed Defendant's yellow Ford mustang with black stripes, with the license
3 plate "Sage 3", parked outside of Plaintiff's law office located at 1212 South Casino Center Boulevard
4 in Las Vegas, Nevada. Additionally, after Plaintiff moved offices, Defendant Cooper has driven by and
5 appeared several times at Plaintiff's new office located in Henderson, Nevada while driving a red Ford
6 Mustang.

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

11 On or around October 21, 2010, Defendant Facebook removed the present case to Federal Court,
12 thereby barring Plaintiff's Motion for a Preliminary Injunction on an Order Shortening Time, which was
13 scheduled for October 25, 2010, from being heard. As a result, Plaintiff continues to suffer irreparable
14 harm.

15 **II. LEGAL ARGUMENTS**

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

17 A preliminary injunction is available if an applicant can show a likelihood of success on the
18 merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will
19 cause irreparable harm for which a compensatory damage is an inadequate remedy. FRCP 65(b).

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

21 **1. Defendant Cooper's Statements Constitute Slander and Libel Per Se**

22 As explained above, Defendant Cooper published statements about Plaintiff, including that
23 Plaintiff is a "faggot" and a "pedophile" which constitute slander and libel per se. On that cause of
24 action alone, Plaintiff is extremely likely to succeed on the merits. These statements impute the violation
25 of a crime on behalf of Plaintiff as well as impede Plaintiff's business. Additionally, Defendant
26 Cooper's action constitute several other torts and crimes including libel, false light defamation, and
27 invasion of privacy, intentional interference with business relations, intentional infliction of emotional
28 distress, negligent infliction of emotional distress, harassment, stalking and several violations of Federal

1 wiretapping laws. Plaintiff has personally witnessed several occasions of Defendant's stalking at
2 multiple locations including two of Plaintiff's law offices. Therefore, Plaintiff is highly likely to succeed
3 on the merits against Defendant Cooper.

4 **2. Defendant Cooper Driscoll's Actions Constitute Invasion of Privacy**

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

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

10 With regard to all allegations related to torts committed against Plaintiff over the internet,
11 Defendant Facebook facilitated, published or neglected to mitigate the defamatory and harassing
12 statements and comments published by Defendant Cooper and Defendant Cooper Driscoll. As
13 discussed, Plaintiff is likely to succeed on the merits against the other Defendants, and, therefore,
14 Plaintiff is likely to succeed on the merits against Defendant Facebook given that all alleged statements
15 were published and maintained on internet servers owned and controlled by Defendant Facebook in
16 contravention with Nevada and Federal law.

17 **C. PLAINTIFF IS BEING IRREPARABLY DAMAGED BY DEFENDANTS' ACTIONS**

18 Defendants have, and upon information and belief, will continue to use Defendant Facebook's
19 internet site to publish false and defamatory statements about Plaintiff. Plaintiff, who is an attorney in
20 the State of Nevada runs an operates a law firm in the State. Much of Plaintiff's business is dependant
21 on the public's view of Plaintiff's moral character, reliability and reputation. Defendants' actions have
22 already, and will likely continue to demean and diminish Plaintiff's reputation in the legal community
23 as well as with Plaintiff's personal social community. Without the issuance of an injunction, Defendants
24 will continue to have free reign to defame and diminish Plaintiff's reputation. Especially with the
25 institution of the present lawsuit, Plaintiff will continue to be irreparably harmed both personally and
26 professionally. Therefore, the issuance of an injunction is proper.

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CONCLUSION

Based on the above Points and Authorities and the attached exhibits Plaintiff has shown that it is entitled to a preliminary injunction preventing Defendants from further using Plaintiff's name and likeness to publish discriminatory, slanderous, misleading and false information about Plaintiff and preventing Defendants from further stalking and harassing Plaintiff in contravention with Nevada and Federal law.

DATED this 25 day of October, 2010.

/s/ Jonathan B. Goldsmith
JONATHAN B. GOLDSMITH, ESQ.
Nevada Bar No. 11805
9029 South Pecos Road, #2800
Henderson, Nevada 89074
702.386.8637 (phone)
702.385.3025 (fax)

ORDER

IT IS HEREBY ORDERED Plaintiff's Ex Parte Motion for a Preliminary Injunction is GRANTED.

Dated this _____ day of _____, 2010.

U.S. District Court Judge

Submitted by:

/s/ Jonathan B. Goldsmith, Esq.

Jonathan B. Goldsmith, Esq.

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APPLICATION FOR AN ORDER SHORTENING TIME AND ORDER

COMES NOW, Plaintiff JONATHAN B. GOLDSMITH, ESQ. (“Plaintiff”), in Proper Person, and hereby submits his Application for an Order Shortening Time to shorten the date of the hearing set for Plaintiff’s Motion for a Temporary Restraining Order, which is currently set for the ____ day of _____, 2010.

This Application is based on, among other things, all relevant statutory and case law, the Declaration of Jonathan B. Goldsmith in support of Order Shortening Time, the papers and pleadings on file herein, and any argument of counsel entertained by the parties at the hearing of this motion.

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

1 through the use of the world wide web and by other means.

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3 5. On or around October 1, 2010 at around 3:30 p.m., Defendant Cooper, by means of
4 Defendant Facebook's internet social networking website, published defamatory and
5 demeaning statements specifically directed at me which stated: "im on to you
6 jonathan golddick(smith) ha faggot" and further stated "he looks like a pediphile
7 (sic)."

8
9 6. Defendants published the statement of a Facebook user identified as "Ziles Thomas"
10 which stated: "ha I want to se (sic) what that douche bag looks like.

11
12 7. On or around October 2, 2010 at around 6:10 p.m., Defendant Cooper Driscoll, by
13 means of illegal and torious invasion of privacy, stole a private photograph depicting
14 the likeness of me, and, by means of Defendant Facebook's internet social networking
15 website, published the stolen picture on Defendant Cooper's internet page, which is
16 managed and maintained by Defendant Facebook.

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18 8. Defendants Cooper and Cooper Driscoll made disparaging remarks about the stolen
19 photograph, and Defendant Cooper Driscoll acknowledged that Defendants had
20 committed unlawful and tortious behavior by posting the following statement: "delete
21 that picture already."

22 9. Defendant Cooper has engaged in a pattern of stalking against me.

23
24 10. In around August, 2010, I observed Defendant's distinct yellow mustang with black
25 stripes, with the license plate "Sage 3", parked outside of Plaintiff's law office located
26 at 1212 South Casino Center Boulevard in Las Vegas, Nevada.

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28 11. Additionally, after I moved offices, Defendant Cooper has driven by and appeared
several times at my new office located in Henderson, Nevada.

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

13. 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.

14. It is necessary that a temporary injunction be issued and the matter set on a shortened time to prevent the continuance of serious and irreparable harm to Plaintiff.

15. I will serve the counsel of all parties by facsimile and by U.S. Mail within one judicial day of the signing of the Order, or by any other means as directed by the Court.

Further affiant sayeth naught.

Executed on: 10/25/10

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

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ORDER SHORTENING TIME

It is hereby ORDERED, ADJUDGED AND DECREED that the parties in this action are to appear on the _____ day of _____, 2010, at _____ (a.m. / p.m.), in the United States District Court, District of Nevada, located at the Foley Federal Building, on Plaintiff's Motion.

It is further ORDERED, ADJUDGED AND DECREED that any party may file pleadings and affidavits on their behalf, and may appear personally or through an attorney, and present testimony at the time of the hearing;

It is further ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a true and correct copy of this Motion to all parties of record, as soon as possible upon receipt of this Order within one business day of the Order being signed and filed.

Dated this _____ day of _____, 2010.

U.S. DISTRICT COURT JUDGE