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FILED
Superior Court of California
County of Riverside

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By Fax

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF RIVERSIDE**

11 JOHN HERRIOT, an Individual,

12
13 Plaintiff,

14 vs.

15
16 DEAN MCADAMS, an Individual;
17 and DOES 1-20, inclusive.

18
19 Defendants.

) CASE NO.: PSC1606342

) Assigned for all purposes to:

) Dept.: PS2

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PLAINTIFFS' *EX PARTE* APPLICATION
) FOR AN ORDER TO SHOW CAUSE WHY
) A TEMPORARY RESTRAINING ORDER
) SHOULD NOT ISSUE ENJOINING
) DEFENDANT DEAN MCDAMS

) Hearing Date: December 15, 2016

) Hearing Time: 8:30 a.m.

) Department: PS2

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 FACTUAL BACKGROUND

4 On November 10, 2016, Defendant DEAN MCADAMS (hereinafter "Defendant
5 McAdams") begin a full attack on Plaintiff's character exposing his picture and descriptions
6 obtained from Megan's list and his association with the CMEN Club ("Club") of which Plaintiff is
7 the coordinator. The reason for that this attack as Defendant McAdams has clearly stated because
8 he was not allowed to attend the Club's September 2015 and 2016 events due to a restraining
9 order in effect against him as obtained by member Charles Kenyon. Defendant McAdams stated
10 that, "if he cannot attend, then no one can," and that "his mission is to destroy the club by the end
11 of 2016."

12 Defendant McAdams texted, emailed, and posted on Facebook Plaintiff's picture and
13 Plaintiff's Megan's website listing. Defendant McAdams stated that Plaintiff's "blood" was on his
14 computer as he posted these postings and then begin to post many other postings, many of them
15 absolutely completely false. Defendant McAdams also threatened to stand at the gate of the Club
16 in Malibu in September 2017 and distribute personal and private information about Plaintiff to all
17 arrivals at the location.

18 Because Defendant McAdams' attacks were so widespread and so malicious, Plaintiff did
19 not feel that contacting him directly to reason was a wise idea. Plaintiff first contacted a lawyer.
20 There did not seem to be any possibility of reasoning with someone who would send hundreds of
21 damaging texts, Facebook posts, and emails on the first day. The damage was done immediately.
22 Plaintiff felt this would have to be done legally being so malicious from the beginning.

23 Defendant McAdams has continued to post items about Plaintiff on this website
24 legalnoodle.com including Plaintiff's business email homerun444@aol.com. Plaintiff fear he may
25 try to contact my customers and try to ruin my business.

26 Plaintiff contacted the law firm of Parker Stanbury, LLP, Los Angeles to get Defendant
27 McAdams to cease and desist from making the postings. Defendant McAdams received the letter
28 and defied the warnings and continued to post on his website and even posted the letter (mocking

1 the letter).

2 Defendant McAdams' postings basically alienated Plaintiff from hundreds of members of
3 the Club of Plaintiff's situation in the early 1980s. The postings had alienated Plaintiff from many
4 members and some men denounce the Club because of Plaintiff's involvement. Defendant
5 McAdams has carefully worded his postings such that readers and viewers would interpret the
6 postings such that CMEN Club currently is a cover for pedophiles which is a lie, falsehood and
7 untrue. The CMEN Club is a gay club that has been or may be tarnished or destroyed. The Club is
8 limited to men over 21 and very few men are under 40.

9 Plaintiff believes that the postings has not yet affected his profit making business. That it
10 is only a matter of time when Defendant Adams attacks Plaintiff's business as soon as he figures
11 out how to destroy it. Plaintiff is of the information and belief and has no doubt that Defendant
12 McAdams is researching how to get to Plaintiff's customers.

13 Plaintiff's doctor has prescribed medication for him to cope with all the stress of his life
14 being destroyed and the Club Plaintiff had led for 18 years being destroyed by this evil defendant
15 on a mission of hate and vengeance.

16 Plaintiff fears that Defendant McAdams may try to physically attack him at some point in
17 addition to continuing to destroy everything in Plaintiff's life. Defendant McAdams is extremely
18 unstable and is on a mission of destruction with no legitimate or *bona fide* actual goals other than
19 to destroy Plaintiff.

20 21 II

22 A TEMPORARY RESTRAINING ORDER ("TRO") MAY ISSUE WHERE GREAT AND 23 IRREPARABLE INJURY WILL RESULT TO THE APPLICANT UNLESS THE 24 OFFENDING CONDUCT IS IMMEDIATELY RESTRAINED

25 A TRO may issue when "[i]t appears from the facts shown by affidavit or by the verified
26 complaint that great or irreparable injury will result to the applicant before the matter can be heard
27 on notice..." (*Code Civ. Proc.* § 527(c)(1)). The Court should grant the TRO where the
28 likelihood is that the plaintiff will prevail on the merits at trial, and where the interim harm to the

1 plaintiff without the TRO outweighs the likely harm to the defendant if the order is issued.
2 *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251 (2d Dist. 2002).

3 The granting of denial of a temporary restraining order is discretionary with the trial judge
4 and amounts to a mere preliminary or interlocutory order to keep the subject of the litigation in
5 status quo pending the determination of the action on its merits. *Gray v. Bybee*, 60 Cal. App. 2d
6 264, 571, 141 P. 2d 32 (3d Dist. 1943).

7 As stated in the Declaration of Plaintiff John Herriot and the Declaration of Alvin B.
8 Sherron if Defendant is not immediately restrained and enjoined from engaging in the aforesaid
9 conduct of posting online. Plaintiff will suffer great and immediate irreparable harm. On the other
10 hand Defendant is not likely to suffer at all if temporary restraining order is granted. As further
11 stated in the Declaration of Alvin B. Sherron there is a high likelihood that Plaintiff will prevail on
12 the merits at trial.

13 **III**
14 **LEGAL ARGUMENTS AND AUTHORITIES**

15 **I. DEFENDANT IS VIOLATING PLAINTIFF'S RIGHT OF PRIVACY:**

16 **A. Punishment for Violation of An Offender's Privacy**

17 A key final provision for confidentiality in most sex offender registry laws is punishment
18 for violation of that confidentiality. All citizens who access the registry in California are required
19 to sign a statement saying that they understand the proper, intended uses for the information they
20 are to receive. Should they violate any of the rules contained in that statement or in California
21 Assembly Bill 1562, they are subject to the following penalties:

22 Reproduction, distribution, or use of any of information obtained from the registry without
23 permission is a misdemeanor, punishable by both six months jail time and up to \$1000 in fines.
24 The use of registry information to commit a misdemeanor is itself a misdemeanor, and adds a fine
25 of between \$500 and \$1000 to the sentence of the guilty party.

26 Commission of a felony using registry information is itself a felony, punishable by an
27 additional 5 years added to the prison term to which the felon is sentenced.

28 ///

1 **B. DEFENDANT'S POSTINGS CONSTITUTE PUBLIC DISCLOSURE OF**
2 **PRIVATE FACTS:**

3 The elements of tort of Public Disclosure of Private Facts are: (1). public disclosure of a
4 (2). private fact, (3). that would be offensive and objectionable to a reasonable person, and 4. that
5 is not a legitimate public concern or interest. *See Catsouras v Department of Cal. Highway Patrol*
6 (2010) 181 CA4th 856, 874, 104 CR3d 352.

7 To ascertain what line would divide what is a legitimate public interest or concern and
8 what is not, courts have stated that "the publicity ceases to be the giving of information to which
9 the public is entitled, and becomes a morbid and sensational prying into private lives for its own
10 sake, with which a reasonable member of the public, with decent standards, would say that he had
11 no concern." *Virgil v. Time, Inc.* (9th Cir 1975) 527 F2d 1122, 1129. In other words, morbid and
12 sensational eavesdropping or gossip serves no legitimate public interest and is not deserving of
13 protection. *Catsouras*, 181 CA4th at 874.

14 Importantly, this is also difficult to ascertain what facts are private whose disclosure is
15 deemed actionable under this tort. However, the following factors might be helpful in such
16 determination: (1) Whether the fact is newsworthy; and (2) Whether the fact is widely known.

17 The case of *Catsouras v. Department of Cal. Highway Patrol* (2010) 181 CA4th 856, 104
18 CR3d 352, involved a public disclosure of private facts over the Internet. A young woman was
19 decapitated in an automobile accident investigated by two officers of the California Highway
20 Patrol. During the course of the investigation, the officers took photographs of the victim, and
21 later disseminated these photographs to friends and to members of the public, on Halloween, for
22 "shock value." The court found that the foreseeable impact of the death images on the decedent's
23 relatives satisfied the requirements of (181 CA4th at 870): (1) The dissemination of private facts;
24 (2) A disclosure that would be offensive to reasonable persons; and (3) The absence of a
25 legitimate public concern.

26 The elements of intrusion into private matters are (*Miller v National Broadcasting Co.*
27 (1986) 187 CA3d 1463, 232 CR 668), a television camera crew, without permission, entered the
28 home of a man who had suffered a heart attack, to film a story about the work of paramedics who

1 administer lifesaving techniques. The man later died. The television station used portions of the
2 film in the nightly news and in advertising a "mini-documentary" about the paramedics' work. The
3 court held that "reasonable people" could regard the camera crew's intrusion into plaintiff's
4 husband's bedroom "at a time of vulnerability and confusion occasioned by his seizure as 'highly
5 offensive' conduct," thus establishing an essential element of invasion of privacy by

6 In *Sanders v. American Broadcasting Cos.* (1999) 20 C4th 907, 85 CR2d 909, Plaintiff
7 prevailed at trial on a claim for invasion of privacy by intrusion, after a reporter, posing as a
8 coworker, covertly videotaped and recorded plaintiff's workplace conversations. On appeal, the
9 court reversed the judgment for plaintiff, holding that because coworkers could overhear the
10 workplace conversations, plaintiff had no reasonable expectation in their privacy. The supreme
11 court reversed, finding a valid claim for intrusion and holding that a plaintiff need not expect
12 complete privacy for plaintiff to state a cause of action.

13 The postings constitute defamation (libel) as they accuse Plaintiff and the Club of criminal
14 acts. Plaintiff and the Club are not a cover for pedophiles.

15 The postings constitute an invasion of the right of privacy of Plaintiff. Defendant McAdam
16 is using the sexual offender registry for no legitimate purpose and is committing a criminal act in
17 doing so.

18 The postings will cause irreparable harm to plaintiff, his business and his organization that
19 he is an instrumental part of. Plaintiff believes Defendant McAdams will continue with the illegal
20 criminal postings and severely damage and destroy his business.

21 For above reasons, a Temporary Restraining Order should immediately be issued to
22 prevent further harm to Plaintiff as alleged and as set forth in the attached Declarations of John
23 Herriot and Alvin B. Sherron, counsel for Plaintiff.

24 **IV**

25 **AN ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**
26 **SHOULD ALSO ISSUE**

27 When a preliminary injunction is sought along with a TRO, the party must request an order
28 to show cause (OSC) regarding the preliminary injunction. *Cal. Rules of Court*, rule 3.1150(a).

1 Plaintiff as the moving party has provided a file-stamped copy of the complaint to the judge who
2 will hear the application.

3 Plaintiff has filed her complaint prior to the *ex parte* hearing and will bring a file-stamped
4 copy of the complaint to the hearing.

5 Plaintiff requests a full hearing on a Preliminary Injunction for the sake reasons and under
6 the same authorities as set forth in support of the TRO, and requests that an Order to Show
7 Cause be issued along with the TRO to afford Defendant Dean McAdams the opportunity to
8 show why he should not be restrained and enjoined in the same manner for the remainder of this
9 litigation.

10 A Preliminary Injunction is proper in the following circumstances:

11 "(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded,
12 and such relief, or any part thereof, consists in restraining the commission or continuance of the
13 act complained of, either for a limited period or perpetually.

14 (2) When it appears by the complaint or affidavits that the commission or continuance of
15 some act during the litigation would produce waste, or great or irreparable injury, to a party to
16 the action.

17 (3) When it appears, during the litigation, that a party to the action is doing, or threatens,
18 or is about to do, or is procuring or suffering to be done, some act in violation of the rights of
19 another party to the action respecting the subject of the action, and tending to render the
20 judgment ineffectual.

21 (4) When pecuniary compensation would not afford adequate relief.

22 (5) Where it would be extremely difficult to ascertain the amount of compensation which
23 would afford adequate relief.

24 (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

25 (7) Where the obligation arises from a trust."

26 ***Code Civ. Proc. § 526(a).***

27 As with a Temporary Restraining Order, when granting a preliminary injunction the Court
28 weighs two interrelated factors; the likelihood the moving party will prevail on the merits, and the

1 relative interim harm to the parties from the issuance or nonissuance of the injunction. *Whyte v.*
2 *Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1449 (4th Dist. 2002). As shown in the Declaration(s)
3 submitted herewith, and as will be shown at the hearing on a preliminary injunction, sufficient
4 grounds exist for both the TRO and a preliminary injunction.

5 V.

6 **EX PARTE RELIEF IS PERMITTED UNDER THESE CIRCUMSTANCES AND**
7 **PLAINTIFF HAS COMPLIED WITH CALIFORNIA RULES OF COURT**

8 **A. Showing Required For *Ex Parte* Relief:**

9 "An applicant for an *ex parte* application must make an affirmative factual showing in a
10 declaration containing competent testimony based on personal knowledge of irreparable harm,
11 immediate danger, or any other statutory basis for granting relief *ex parte*." *Cal. Rules of Court*,
12 rule 3.1202(c).

13 As shown by the attached Declarations of John Herriot and Alvin B. Sherron there is an
14 imminent and present danger of irreparable harm/immediate danger or other statutory basis for
15 granting relief *ex parte*, in that specify actions to be restrained, and the reason the actions would
16 hurt your position. Even as critical are the numerous serious violations of California law brought
17 about by the postings by Defendant as set forth in the Declarations of John Herriot and Alvin B.
18 Sherron.

19 **B. Document and Notice Requirements For *Ex Parte* Application For TRO and OSC:**

20 An *ex parte* application must be accompanied by a declaration showing that no later than
21 10:00 a.m. the court day before the *ex parte* appearance, the applicant informed the opposing
22 party when and where the application would be made; or was unable to do so despite a good-faith
23 effort; or should not be required to inform the opposing party. *Cal. Rules of Court*, rule 3.1201.
24 Plaintiff has specified the nature of the relief to be requested and the date, time, and place for the
25 presentation of the application; and attempt to determine whether the opposing party will appear
26 to oppose the application. *Cal. Rules of Court*, rule 3.1204(a).

27 As stated in the Declaration of Carina Corpuz, Administrative Assistant to Alvin B.
28 Sherron, Notice upon *Ex Parte* Application, Re: Advance Notification in Support of Temporary

1 Restraining Order and Order to Show Cause Re Preliminary Injunction, submitted herewith,
2 Plaintiff duly advised the opposing party/opposing party's counsel at time on date, by means of
3 means of notice of the date, time, place and nature of this Ex Parte Application. Counsel for/The
4 defendant has asserted that he/she will/will not oppose the instant Application.

5 **VI.**

6 **CONCLUSION**

7 For all of the foregoing reasons and supporting facts and authorities, Plaintiff John
8 Herriot, respectfully requests that the Court issue a Temporary Restraining Order, and set an
9 Order to Show Cause hearing for Preliminary Injunction.

10
11 Dated: December 14, 2016

12 Respectfully submitted,

13 LAW OFFICES OF ALVIN B. SHERRON

14
15 By: 
16 Alvin B. Sherron, Attorney for Plaintiff
17 JOHN HERRIOT