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7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10	MARC J. RANDAZZA, an individual,	)	Case No.
11	JENNIFER RANDAZZA, an individual, and	)	
12	NATALIA RANDAZZA, a minor,	)	<b>EX PARTE MOTION FOR</b>
13	Plaintiffs,	)	<b>TEMPORARY RESTRAINING ORDER</b>
14	vs.	)	<b>AND MOTION PRELIMINARY</b>
15	CRYSTAL COX, an individual, and ELIOT	)	<b>INJUNCTION</b>
16	BERNSTEIN, an individual,	)	
17	Defendants.	)	

18  
19 Plaintiffs Marc J. Randazza, "Randazza," Jennifer Randazza, "Jennifer Randazza," and  
20 Natalia Randazza, "Natalia Randazza," a minor, through counsel, hereby move this Court for: (1)  
21 an *ex parte* temporary restraining order requiring Defendants to immediately cease and desist all  
22 use of Plaintiffs' names, trademarks, and domain names and requiring any relevant domain name  
23 registrar to transfer the following domain names to Plaintiffs and place such Infringing Domain  
24 Names ("Infringing Domain Names") on hold:

- 25 a. <marcrandazza.com>
- 26 b. <marcrandazza.me>
- 27 c. <marcjrandazza.com>
- 28 d. <fuckmarcrandazza.com>

- 1 e. <marcjohnrandazza.com>
- 2 f. <marcrandazzasucks.com>
- 3 g. <marcrandazzaisalyingasshole.com>
- 4 h. <marcrandazza.biz>
- 5 i. <marcrandazza.info>
- 6 j. <marcrandazza.mobi>
- 7 k. <marcrandazzaparody.com>
- 8 l. <exposemarcrandazza.com>
- 9 m. <randazzalegalgroupsucks.com>
- 10 n. <trollmarcrandazza.com>
- 11 o. <hypocritemarcrandazza.com>
- 12 p. <crystalcoymarcrandazza.com>
- 13 q. <marcjohnrandazza.blogspot.com>
- 14 r. <randazzalegalgroup.blogspot.com>
- 15 s. <marcrandazzaviolatedmylegalrights.blogspot.com>
- 16 t. <markrandazza.blogspot.com>
- 17 u. <marcrandazza.blogspot.com>
- 18 v. <jenniferrandazza.blogspot.com>
- 19 w. <marcrandazzafreespeech.blogspot.com>
- 20 x. <marcrandazzaegomaniac.blogspot.com>
- 21 y. <marcjrandaZZa-lawyer.blogspot.com>
- 22 z. <marc-randazza.blogspot.com>
- 23 aa. <marcrandazzawomensrights.blogspot.com>
- 24 bb. <marcrandazza-asshole.blogspot.com>
- 25 cc. <marcrandazzatips.blogspot.com>
- 26 dd. <marcrandazzaabovethelaw.blogspot.com>
- 27 ee. <marcrandazzaliedaboutcrystalcox.blogspot.com>
- 28 ff. <janellerandazza.blogspot.com>;

1 (2) a preliminary injunction requiring Defendant and the domain name registrar to transfer the  
2 Infringing Domain Names to Plaintiff for the pendency of this litigation; and  
3 (3) a preliminary TRO restraining Defendants from further registration of any “Randazza” domain  
4 names. At the conclusion of this litigation, Plaintiffs will request that the Infringing Domain  
5 Names be transferred to Plaintiffs permanently.

6 This Motion is made pursuant to Rule 65 of the Federal Rules of Civil Procedure and is  
7 based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file  
8 herein, and any oral argument that this Court may allow.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION AND STATEMENT OF GOOD CAUSE IN COMPLIANCE**  
11 **WITH LR 7-5**

12 This Motion is brought under Plaintiffs’ claims for violation of the Anti-cybersquatting  
13 Consumer Protection Act (the “ACPA”) (15 U.S.C. § 1125(d)), violation of individual cyberpiracy  
14 protections (15 U.S.C. § 8131), right of publicity under the laws of the State of Nevada, as well as  
15 the common law claims of intrusion upon seclusion and publicity, and civil conspiracy. Plaintiffs’  
16 Motion arises from Defendants’ use of Plaintiffs’ personal names and Defendants’ registration and  
17 use of the Infringing Domain Names.  
18

19 Defendants registered and used Infringing Domain Names and Plaintiffs’ personal names in  
20 bad faith. Plaintiff Marc Randazza’s personal name serves as a common law mark. Defendants are  
21 attempting to use Plaintiff Randazza’s personal name and the names of his family members in an  
22 attempt to extort money from Plaintiffs. Furthermore, Defendants have made a commercial use of  
23 Plaintiff Randazza’s name through the use of pay-per-click advertising. Plaintiffs seek a temporary  
24 restraining order and a preliminary injunction requiring the transfer of the Infringing Domain  
25 Names to Plaintiffs and enjoining Defendants from further similar actions.  
26

27 Plaintiffs seek this temporary restraining order *ex parte* to avoid the irreparable injury that  
28 will result if Defendants receive advance notice of Plaintiffs’ request. Defendant Crystal Cox has a

1 history of “cyberflying” domains once she is aware of pending action against her. (See Exhibit 1).  
2 Permitting Defendants to transfer any of the Infringing Domain Names to other registrants or  
3 registrars might deprive this Court of jurisdiction and would force Plaintiffs to file additional  
4 litigation to obtain the requested relief. An *ex parte* order will prevent Defendants from transferring  
5 the Infringing Domain Names to other registrars and/or registrants during the pendency of this  
6 action.  
7

8 Plaintiffs request that this Court issue a temporary restraining order directing Defendants  
9 and the domain name registrar to transfer the Infringing Domain Names to Plaintiffs. This will  
10 prevent Defendants’ stated intent to permit further migration of the Infringing Domain Names.

## 11 **II. STATEMENT OF RELEVANT FACTS**

### 12 **A. Introduction and nature of action.**

13  
14 Since January 16, 2012, Defendant Crystal Cox has targeted Plaintiff Marc Randazza, his  
15 wife, Plaintiff Jennifer Randazza, and his daughter, Plaintiff Natalia Randazza, in an online  
16 harassment campaign.<sup>1</sup> To date, Ms. Cox has obsessively registered dozens of domain names  
17 containing Plaintiff Randazza’s name in an effort to extort and harass Plaintiffs and capitalize upon  
18 and damage the goodwill that Plaintiff Randazza has in his name. However, Ms. Cox’s harassment  
19 has not stopped with Plaintiff Randazza. She has even involved Jennifer Randazza and Natalia  
20 Randazza, Plaintiff Randazza’s three-year-old daughter, in her harassment and extortion campaign.  
21 Not only has she involved the three Plaintiffs, but Cox has most recently included Plaintiff Marc  
22 Randazza’s sister in her latest attacks. (See Exhibit 2). Defendant Bernstein, on information and  
23 belief, is a knowing and willful participant and co-conspirator in Cox’s activities.<sup>2</sup>

24 Plaintiffs are not the only victims of the Cox-Bernstein scheme. Ms. Cox has targeted  
25 several dozen other victims, registering their full names and accusing them of any manner of insane

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26  
27 <sup>1</sup> On November 19, 2012, Cox made it clear that the campaign would now expand to Marc Randazza’s sister.

28 <sup>2</sup> In fact, when Plaintiff asked him about his involvement and gave him an opportunity to explain, he requested that he be named in this action.

1 wrongdoings. Just as she has done with Plaintiff Randazza, Cox then offers her “reputation  
2 services” to the people whose names she has registered. See *Obsidian Finance Group, LLC v. Cox*,  
3 2012 WL 1065484 (D. Ore 2012) (“[D]efendant offered ‘PR,’ ‘search engine management,’ and  
4 online reputation repair services to Obsidian Finance, for a price of \$2,500 per month ... The  
5 suggestion was that defendant offered to repair the very damage she caused for a small but tasteful  
6 monthly fee”). If they refuse, she continues her campaign to ruin their reputation online, not only  
7 by posting insane and defamatory rants about them online, but by then repeating the defamatory  
8 rants on site after site, interlinking all of them in order to artificially inflate the Google rankings on  
9 each site.

10 While Plaintiffs are not the sole victims, they still have important rights that Defendants are  
11 violating. Plaintiff Randazza uses his name in connection with the offering of legal services.  
12 Through Marc J. Randazza PA, d/b/a Randazza Legal Group, Plaintiff Randazza is a nationally  
13 recognized attorney, and continues to use his name to offer his business services. If Defendants are  
14 not enjoined, Plaintiff Randazza will suffer irreparable damage to his business and personal name.  
15 His innocent family members will suffer from even further damage. Therefore, Plaintiff Randazza  
16 filed the instant action against Defendants and now requests a temporary restraining order and  
17 preliminary injunction against them.

### 19 **B. Plaintiffs**

20 Plaintiff Randazza is an individual, an attorney, a legal author, and a resident of Las Vegas,  
21 Clark County, Nevada. Plaintiff is the owner and managing partner of Marc J. Randazza PA, d/b/a  
22 Randazza Legal Group (“RLG”), a nationally recognized First Amendment and Intellectual  
23 Property law firm with offices located in Nevada, Florida, and Arizona. Since 2008, RLG has been  
24 doing business using Marc Randazza’s personal name as a source identifier for its services.

25 In addition to owning and operating his own law firm, Plaintiff regularly appears in all  
26 forms of news media as an author legal commentator. He has appeared in New York City  
27 Magazine, New York Times, Boston Globe, Los Angeles Times, Fox News, and CNN, among  
28 others. (See Exhibit 3; Decl. of Marc J. Randazza at ¶5). He also regularly publishes under his

1 byline at his blog, The Legal Satyricon, which is one of the most well-known law blogs in the  
2 country. (See **Exhibit 4; Decl. of Randazza at ¶4**). Plaintiff regularly speaks on panels about the  
3 First Amendment and intellectual property at conferences nationwide. (See **Exhibit 5; Decl. of**  
4 **Randazza at ¶6**).

5 In 2011, XBiz World Magazine named Randazza one of the adult entertainment industry's  
6 Top 50 newsmakers and commented on his work in high-profile cases. (See **Exhibit 6; Decl. of**  
7 **Randazza at ¶5**). In Nevada, Plaintiff's name has appeared in high profile Las Vegas media,  
8 including the Las Vegas Review-Journal, the Las Vegas Sun, VegasInc, Las Vegas CityLife, and  
9 Las Vegas Weekly. (See **Exhibit 3; Decl. of Randazza at ¶5**).

10 Plaintiff Jennifer Randazza is the wife of Plaintiff Marc Randazza. Plaintiff Natalia  
11 Randazza is their three-year-old daughter. Both Jennifer and Natalia Randazza are private people  
12 who were only targeted because of their relationship to Plaintiff Randazza.

### 13 **C. Defendants and the Infringing Domain Names.**

14 Defendant Crystal Cox registered the following Infringing Domain Names, some of which  
15 were listed under proxy, Defendant Eliot Bernstein:

- 16 a. <marcrandazza.me>
- 17 b. <marcrandazza.com>
- 18 c. <marcjranda.com>
- 19 d. <fuckmarcrandazza.com>
- 20 e. <marcjohnrandazza.com>
- 21 f. <marcrandazzasucks.com>
- 22 g. <marcrandazzaisalyingasshole.com>
- 23 h. <marcrandazza.biz>
- 24 i. <marcrandazza.info>
- 25 j. <marcrandazza.mobi>
- 26 k. <marcrandazzaparody.com>
- 27 l. <exposemarcrandazza.com>
- 28 m. <randazzalegalgroupsucks.com>

- 1 n. <trollmarcrandazza.com>
- 2 o. <hypocritemarcrandazza.com>
- 3 p. <crystalcoymarcrandazza.com>
- 4 q. <marcjohnrandazza.blogspot.com>
- 5 r. <randazzalegalgroup.blogspot.com>
- 6 s. <marcrandazzaviolatedmylegalrights.blogspot.com>
- 7 t. <markrandazza.blogspot.com>
- 8 u. <marcrandazza.blogspot.com>
- 9 v. <jenniferrandazza.blogspot.com>
- 10 w. <marcrandazzafreespeech.blogspot.com>
- 11 x. <marcrandazzaegomaniac.blogspot.com>
- 12 y. <marcjrandaZZa-lawyer.blogspot.com>
- 13 z. <marc-randazza.blogspot.com>
- 14 aa. <marcrandazzawomensrights.blogspot.com>
- 15 bb. <marcrandazza-asshole.blogspot.com>
- 16 cc. <marcrandazzatips.blogspot.com>
- 17 dd. <marcrandazzaabovethelaw.blogspot.com>
- 18 ee. <marcrandazzaliedaboutcrystalcox.blogspot.com>
- 19 ff. <janellerandazza.blogspot.com>;

20 **(See Exhibit 7, Decl. of Laura Tucker)**. These Defendants registered the Infringing Domain  
21 Names with the intent to capitalize on the use of Plaintiff Randazza’s personal name and extort  
22 money from Plaintiffs. In fact, the profit in this endeavor flows directly from the extortion scheme.

23 Between December 10, 2011 and September 20, 2012, Defendant Cox registered the  
24 Infringing Domain Names through registrar Godaddy.com. Cox registered some of the Infringing  
25 Domain Names through Defendant Bernstein as a proxy, who, on information and belief, is a  
26

27  
28

1 knowing and voluntary participant in Cox's enterprise.<sup>3</sup> The Defendants registered the Infringing  
2 Domain Names with the intent to capitalize on Plaintiff Randazza's personal name, of which  
3 Plaintiff Randazza has legitimate common law trademark rights.

4 On December 10, 2011, <marcrandazza.com> was registered to Crystal Cox in the  
5 publically available Whois information. (See **Exhibit 7**). On January 16, 2012, Cox sent an email  
6 to Plaintiff stating that she had purchased his personal name as a domain name. (See **Exhibit 8**).  
7 She then asked Plaintiff to purchase her "reputation management services" in an attempt o extort  
8 money from Plaintiff. (See **Exhibit 8**). See *Obsidian Finance Group, LLC v. Cox*, 2012 WL  
9 1065484 (D. Ore 2012).

10  
11 Defendant Cox continued to register several dozen more domain names and registered  
12 dozens of Blogger accounts throughout the next several months, all of which contain Plaintiff's  
13 personal name, the name of his law firm, Randazza Legal Group, or his family members' names.  
14 (See **Exhibit 9**). Five of the Infringing Domain Names are registered to Defendant Bernstein,  
15 although the content is the same as the content found on all of the other sites, which are authored  
16 by Defendant Cox. Defendant Bernstein has been informed of the potential filing of this lawsuit  
17 through a cease and desist letter (See **Exhibit 10**). He was additionally given the opportunity to  
18 explain his involvement, but his only response was to say "please include me" in the instant suit.  
19 Bernstein is a knowing and willing participant in Cox's infringing and harassing behavior.

20  
21  
22 **C. Defendants' use of the Infringing Domain Names.**

23 Defendant Crystal Cox uses the Infringing Domain Names to harass, intimidate, and extort  
24 Plaintiffs. Ms. Cox has no legitimate reason to own 32 (and likely more) domain names, all of  
25 which incorporate Plaintiff Randazza's name and the names of his family members. Currently, the  
26

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27 <sup>3</sup> Bernstein acts as Cox's proxy because Cox is currently under a \$2.5 million defamation judgment obtained by one of  
28 her earlier victims.



1 websites contain material she uses in her extortion scheme against Plaintiff Randazza, as well as  
2 pay-per-click advertisements for questionable “supplements.” (See **Exhibit 11**). The Infringing  
3 Domain Names seem to flip flop between this content and serving as GoDaddy park pages  
4 containing pay-per-click advertisements. Furthermore, Defendant Cox claims to be “very good” at  
5 getting her websites to appear at the top of search results. See *Obsidian Finance Group, LLC v.*  
6 *Cox*, 2012 WL 1065484 (D. Ore 2012).<sup>4</sup>  
7

8 Defendant Cox admits that she originally registered the Infringing Domain Names in an  
9 attempt to harass and extort Plaintiff Randazza. Specifically, Cox said she hoped to intimidate  
10 Plaintiff Randazza to keep him from giving a deposition testimony for *Obsidian Finance Group,*  
11 *LLC v. Cox* (See **Exhibit 12**). In addition, Cox has asked Plaintiff Randazza to pay her to maintain  
12 his online reputation, which she herself has sought to destroy through search engine optimization  
13 and link spamming techniques.<sup>5</sup> On or about September 19, 2012, in a bold move, Defendant Cox  
14 advertised on her blog that the Infringing Domain Name <marcrandazza.me> was for sale for \$5  
15 million. (See **Exhibit 13**). The post contained a link to the park page of the site, and Defendant  
16 Cox is the author of the post and the registrant of <marcrandazza.me>.<sup>6</sup>  
17

18 Defendant Cox will not stop until she is satisfied that she has successfully intimidated  
19 Plaintiff or until he pays the requested ransom. She has stated that she will continue to register  
20 “hundreds more monthly, eternally,” until she can be stopped. (See **Exhibit 14**). Plaintiff already  
21 has suffered economic loss, and will continue to do so until the Infringing Domain Names are  
22

23 \_\_\_\_\_  
24 <sup>4</sup> Of course, this “very good” technique is simple. Google considers pages to have importance based on how many  
25 other sites link to them. Organically and honestly, this results in the best content rising to the top of the rankings. Cox  
26 simply eliminates the third parties, linking hundreds of her own sites to one another, creating a closed extortion  
27 machine.

28 <sup>5</sup> Link spamming refers to the practice often used by those attempting to manipulate search engine results in which the  
content of the website links to other pages for a reason other than that of merit. Defendant Cox links to her other  
websites in her blog posts, which causes her websites to appear higher in search engine results.

<sup>6</sup> Even at the date of this filing, Cox has placed no content on that particular site, registering it solely to try and sell it to  
the Plaintiffs. See **Exhibit 15**.

1 rightfully transferred to him. Thus, the instant Motion is necessary to both stop Defendants'  
2 intellectual property infringement and help restore Plaintiffs' rights.

### 3 **III. LEGAL ARGUMENT**

4 Plaintiff Marc Randazza is entitled to an *ex parte* temporary restraining order and a  
5 preliminary injunction directing the domain name registrar to transfer and place the Infringing  
6 Domain Names on hold pending trial. Mr. Randazza is also entitled to a preliminary injunction  
7 transferring the Infringing Domain Names and enjoining Defendant from further registration of  
8 domain names containing his personal name, of which he is entitled to a common law mark, or use  
9 of the Infringing Domain Names during the pendency of the litigation.  
10

11 In order to obtain a temporary restraining order or preliminary injunction, Plaintiff  
12 Randazza must show that: (1) he will suffer irreparable harm if injunctive relief is not granted; (2)  
13 he is likely to succeed on the merits; (3) the balance of equities tips in favor of the moving party;  
14 and (4) granting the injunction is in the public interest. *See Stanley v. University of Southern*  
15 *California*, 13 F.3d 1313, 1319 (9th Cir. 1994). Alternatively, the party seeking an injunction must  
16 also show that 1) the party is likely to suffer irreparable harm absent the issuance of an injunction  
17 and 2) the existence of serious questions going to the merits and that the balance of hardships tips  
18 sharply in his favor. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.  
19 2011). A "serious question" is one for which the moving party has a "fair chance" of success on  
20 the merits. *See Stanley*, 13 F.3d at 1319. In the instant case, Plaintiff is entitled to a temporary  
21 restraining order and preliminary injunction under either test.  
22  
23

#### 24 **A. Plaintiffs will suffer irreparable injury if the Court does not grant preliminary** 25 **injunctive relief.**

26 A party seeking injunctive relief under Fed. R. Civ. P. 65 must demonstrate irreparable  
27 harm, meaning that "money damages alone will not suffice to restore the moving party to its  
28 rightful position." *Clark Pacific v. Krump Constr., Inc.*, 942 F.Supp. 1324, 1346 (D. Nev. 1996).

1 A court may issue a preliminary injunction where the plaintiff shows “serious questions going to  
2 the merits,” and a “balance of hardships that tips sharply toward the issuance of a preliminary  
3 injunction,” so long as the plaintiff can also show irreparable harm if the court does not issue the  
4 injunction. *Alliance*, 632 F.3d 1127, 1135 (9th Cir. 2011).

5  
6 Generally, in cases involving intellectual property infringement, where a likelihood of  
7 success on the merits is demonstrated, a preliminary injunction **must issue**. See *Candence Design*  
8 *Sys. Inc. v. Avant! Corp*, 125 F.3d 824, 827 (9th Cir. 1997). Any other elemental analysis is  
9 unnecessary. See *id.* Therefore, upon a showing of success on the merits of 1) violation of  
10 individual cyberpiracy protections pursuant to 15 U.S.C. §8131; 2) cybersquatting pursuant to 15  
11 U.S.C. §1125(d); 3) right of publicity pursuant to Nev. R. Stat. 597.810; 4) common law right of  
12 publicity; and 5) common law right of intrusion upon seclusion (“Relevant Claims”), Plaintiff  
13 Randazza will have met his burden in establishing irreparable harm and will be entitled to  
14 injunctive relief.  
15

16 If the injunction does not issue, Defendants will be able to continue to register countless  
17 domain names using the “Randazza” name, and Plaintiffs’ business reputation will continue to  
18 suffer from Defendants’ actions.

19 **B. Plaintiffs are highly likely to succeed on the merits.**

20 Plaintiffs’ success on the merits is probable with respect to each of the claims that they  
21 assert against Defendants. However, Plaintiff Randazza is only required to demonstrate a  
22 probability of success on the merits on any one of its claims to be entitled to the requested relief.  
23

24 1. Plaintiff Randazza is likely to succeed on the merits of his claim under the  
25 ACPA.

26 Plaintiff Randazza is likely to succeed on the merits of his claim under the ACPA. That Act  
27 provides, in pertinent part:  
28

1 [A] person shall be liable in a civil action by the owner of a mark . . . if, without  
2 regard to the goods or services of the parties, that person –

3 (i) has a **bad faith intent** to profit from that mark . . .; and

4 (ii) registers, traffics in, or uses a domain name that –

5 (I) in the case of a mark that is **distinctive** at the time of the registration  
6 of the domain name, is **identical or confusingly similar** to that  
7 mark; [or]

8 (II) in the case of a famous mark that is **famous** at the time of registration  
9 of the domain name, is **identical or confusingly similar** to that  
10 mark...

11 15 U.S.C. § 1125(d)(1)(A) (emphasis added). Thus, Defendants are liable under the ACPA if they  
12 had a bad faith intent to profit from registering, trafficking in, or using as a domain name a mark  
13 that is either identical or confusingly similar to a distinctive mark, such as Plaintiff’s personal  
14 name.

15 Courts consider several factors in assessing whether a defendant has the requisite “bad faith  
16 intent” to profit from a mark, as defined by the ACPA, including but not limited to:

17 (I) the trademark or other intellectual property rights of the person,  
18 if any, in the domain name;

19 (II) the extent to which the domain name consists of the legal name  
20 of the person or a name that is otherwise commonly used to  
21 identify that person;

22 (III) the person’s prior use, if any, of the domain name in connection  
23 with the bona fide offering of any goods or services;

24 (IV) the person’s bona fide noncommercial or fair use of the mark in  
25 a site accessible under the domain name;

26 (V) the person’s intent to divert consumers from the mark owner’s  
27 online location to a site assessable under the domain name that  
28 could harm the goodwill represented by the mark, either for  
commercial gain with the intent to tarnish or disparage the mark,  
by creating a likelihood of confusion as to the source,  
sponsorship, affiliation or endorsement of the site;

(VI) the person’s offer to transfer, sell or otherwise assign the domain  
name to the mark owner or any third party for financial gain  
without having used, or having an intent to use, the domain

- 1 name in the bona fide offering of any goods or services, or the  
2 person's prior conduct indicating a pattern of such conduct;
- 3 (VII) the person's provision of material and misleading false contact  
4 information when applying for the registration of the domain  
5 name, the person's intentional failure to maintain accurate  
6 contact information, or the person's prior conduct indicating a  
7 pattern of such conduct;
- 8 (VIII) the person's registration or acquisition of multiple domain  
9 names which the person knows are identical or confusingly  
10 similar to marks of others that are distinctive at the time of  
11 registration of such domain names, without regard to the goods  
12 or services of the parties; and
- 13 (IX) the extent to which the mark incorporated in the person's  
14 domain name registration is or is not distinctive and famous. . . .

15 15 U.S.C. § 1125 (d)(1)(B). A court is "**not limited to considering just the listed factors** when  
16 making [its] determination of whether the statutory criterion has been met. The factors are, instead,  
17 expressly described as indicia that 'may' be considered along with other factors." *Sporty's Farm*  
18 *L.L.C. v. Sportsman's Mkt., Inc.*, 202 F.3d 489, 498 (2d Cir. 2000) (emphasis added).

19 In applying these factors, it is abundantly clear that Plaintiff Randazza will be capable of  
20 demonstrating Defendants' bad faith intent: (1) Defendants have no trademark rights to MARC  
21 RANDAZZA or in the Infringing Domain Names; (2) the Infringing Domain Names contain the  
22 legal name of Plaintiff, under which he also provides legal services; (3) Defendants have never  
23 been known by the name Marc Randazza; (4) Defendants made no use of Plaintiff's name prior to  
24 registering the Infringing Domain Names and, in fact, admitted to registering the domain names  
25 only to profit from their use through extortion or sale; (5) Defendants have not made any *bona fide*  
26 noncommercial or fair use of the Infringing Domain Names; (6) by use of the Infringing Domain  
27 Names, Defendants intend to attract Plaintiff's potential clients and profit from his reputation and  
28 name; (7) the mark contained in the Infringing Domain Names is identical or confusingly similar to  
Plaintiff's personal name, as discussed below; (8) Defendant Cox offered to sell one or more of the  
Infringing Domain Names to Plaintiff or a third party with the intent to profit off of that sale; and

1 (9) Defendant Cox has registered several of the Infringing Domain Names to Defendant Bernstein,  
2 despite the fact that Defendant Cox maintains the sites. Accordingly, at least eight of the nine  
3 factors of bad faith defined by the ACPA clearly weigh in favor of finding that Defendants had the  
4 requisite bad faith intent to profit from the registration of the Infringing Domain Names.

5 Mr. Randazza also satisfies the second element of his claim under the ACPA. The  
6 Infringing Domain Names are identical to Plaintiff's personal name. In fact, the Infringing Domain  
7 Names **contain the entirety of Plaintiff Marc Randazza's personal name**. Additionally, many  
8 of the Infringing Domain Names do not contain any unique word or phrase to indicate that they do  
9 not emanate from Plaintiff, but wholly incorporate Plaintiff's name. Thus, Plaintiff Randazza  
10 respectfully requests that this Court enter a temporary restraining order and preliminary injunction  
11 to protect Plaintiff's prior rights in his personal name based upon the probable success of Plaintiff's  
12 ACPA claim against Defendants.  
13

14  
15 2. Plaintiff Randazza is likely to succeed on the merits of his Right of Publicity  
16 claims.

17 Mr. Randazza is likely to succeed on the merits of his right of publicity claims. In relevant  
18 part, the Nevada right of publicity statute reads:

19 "There is a right of publicity in the name, voice, signature, photograph or likeness of every  
20 person. The right endures for a term consisting of the life of the person and 50 years after  
21 his or her death, regardless of whether the person commercially exploits the right during his  
or her lifetime...

22 ... Any commercial use by another of the name, voice, signature, photograph or likeness of  
23 a person requires the written consent of that person or his or her successor in interest."

24 Nev. R. Stat. 597.790(1)-(2). The Ninth Circuit states that the common law right of publicity is  
25 actionable when a plaintiff alleges "(1) the defendant's use of the plaintiff's identity; (2) the  
26 appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise;  
27 (3) lack of consent; and (4) resulting injury." *White v. Samsung Electronics Am., Inc.*, 971 F.2d  
28

1 1395, 1397 (9th Cir. 1992). It is not important how the defendant misappropriates the plaintiff's  
2 name or identity; it matters only *whether* the plaintiff's identity was misappropriated. *Id.* at 1398.

3 In looking at the facts, it is clear Plaintiff has a valid actionable claim of right of publicity  
4 under both the Nevada statute and common law. Defendants registered the Infringing Domain  
5 Names incorporating the use of the Plaintiff's personal name with the intent to profit from its  
6 commercial use. Defendants attempted to profit from the use of Plaintiff's name through the use of  
7 1) pay-per-click advertising and 2) the sale of the domains either to Plaintiff or a third party with an  
8 interest in Plaintiff's name. Plaintiff did not give his consent for Defendants to register his  
9 personal name as a domain name, by writing or otherwise. As a direct and proximate result of  
10 Defendants' use of his name, Plaintiff has suffered, and will continue to suffer, monetary loss and  
11 irreparable injury to his business, reputation, and goodwill. Thus, Plaintiff Randazza respectfully  
12 requests that this Court enter a temporary restraining order and preliminary injunction to protect  
13 Plaintiff's publicity rights in his personal name based upon the probable success of Plaintiff's right  
14 of publicity claim against Defendants.  
15

17 3. Plaintiffs are likely to succeed on the merits of his common law intrusion  
18 upon seclusion claim.

19 Plaintiffs will likely succeed on the merits of a common law intrusion upon seclusion claim.  
20 In order to succeed on a claim for intrusion upon seclusion, a plaintiff in Nevada must show 1) an  
21 intentional intrusion (physical or otherwise); 2) on the solitude or seclusion of another; 3) that  
22 would be highly offensive to a reasonable person. *Kuhn v. Account Control Technology, Inc.*, 865  
23 F.Supp. 1443, 1448 (D. Nev. 1994). Specifically to the third element, what is highly offensive to a  
24 reasonable person is a matter of social conventions and expectations. *Id.* at 1449. The court  
25 considers other factors, such as "the degree of intrusion, the context, conduct and circumstances  
26 surrounding the intrusion as well as the intruder's motives and objectives, the setting into which he  
27 intrudes, and the expectations of those whose privacy is invaded." *Id.*  
28

1 The use of Mr. Randazza's name, identity, and likeness, as well as the use of the names of  
2 Jennifer Randazza and their three-year-old daughter Natalia Randazza, is highly offensive to a  
3 reasonable person. While Mr. Randazza has established his online identity, Defendants still may  
4 not use his name in an effort to intrude upon Mr. Randazza's privacy in an effort to attempt to  
5 harass and intimidate him. Furthermore, Plaintiff Jennifer Randazza and Plaintiff Natalia Randazza  
6 are private citizens who have a reasonable expectation that their names, photos, and personal  
7 information will not be displayed in a public forum without their consent.  
8

9 The use of private citizen Plaintiff Jennifer Randazza's name and likeness, particularly in  
10 connection with the use of the word "slut," is highly offensive to a reasonable person. Plaintiff  
11 Jennifer Randazza did nothing to instigate Defendants' use of her name and likeness for their own  
12 purposes.  
13

14 The use of three-year-old Plaintiff Natalia Randazza's name to harass his family is highly  
15 offensive to a reasonable person. Natalia Randazza is a toddler whose only reason for being the  
16 subject of Cox's ire is because she is Mr. Randazza's daughter. Plaintiff Natalia Randazza is an  
17 innocent child whose name should not be associated with Defendant's crusade to extort and harm  
18 Plaintiff's reputation and business.

19 As a result of Defendants' conduct, Plaintiff Randazza has suffered injury to his mental  
20 health and safety for him and his family. Thus Plaintiffs respectfully requests that this Court enter  
21 a temporary restraining order and preliminary injunction to protect Plaintiffs' privacy.  
22

23 **C. There are serious questions as to the merits of Plaintiffs' claims, and the**  
24 **hardships balance in Plaintiffs' favor.**

25 As discussed above, Plaintiffs have demonstrated irreparable injury and are thus also  
26 entitled to an injunction upon a showing that there are serious questions as to the merits of  
27 Plaintiffs' claims and that the hardships weigh in Plaintiffs' favor. *See A&M Records, Inc. v.*  
28 *Napster, Inc.* 239 F.3d 1004, 1013 (9th Cir. 2001) (citation omitted). The hardships balance



1 strongly in favor of Plaintiff. Issuance of the injunction would merely require Defendants to stop  
2 using Plaintiff's personal name. Defendants are permitted to register additional domain names, so  
3 long as they do not involve Plaintiff's personal name.

4 In contrast, if the injunction is not issued, Defendants will be capable of following through  
5 with their stated intentions to continue to register "hundreds" of domain names using Plaintiff  
6 Randazza's name "forever." Defendants will also be permitted to benefit commercially off of  
7 Plaintiffs' names, whether through advertising or through the sale of the Infringing Domain Names.  
8 Defendants will continue to be able to intrude on Plaintiffs' seclusion. Defendants cannot be  
9 permitted to continue to tarnish Plaintiffs' name.

10 Finally, issuance of the injunction will maintain the status quo. "[T]he status quo is the last  
11 uncontested status which preceded the pending controversy." *Tanner Motor Livery, Ltd. v. Avis,*  
12 *Inc.*, 316 F.2d 804, 809 (9th Cir. 1963), *cert. denied* 375 U.S. 821 (1963). An injunction would  
13 return the parties to the position that existed before Defendants began using Plaintiffs' personal  
14 names in association with their websites, before the extortion and witness intimidation began.

15 Therefore, Plaintiffs request injunctive relief that Defendants be enjoined from owning,  
16 registering, or operating any domains incorporating the "Randazza" name, whether they be direct  
17 domain registration or through the use of any blogging platform, and that such injunctive relief  
18 contemplate the Defendants using proxies, agents, or third parties to evade this relief, and  
19 specifically enjoins the Defendants from using third parties to do that which the injunction prevents  
20 them from doing directly.

21 **D. This Court should only require nominal security.**

22 In the event that the Court requires a bond or other security to be posted by Plaintiffs, Mr.  
23 Randazza requests that the Court set an amount that is no greater than \$100. Plaintiff Randazza is  
24 well-established in Nevada and is only asking that this Court provide him with control over the  
25  
26  
27  
28

1 Infringing Domain Names during the pendency of this litigation. Defendants are not capable of  
2 showing any injury that would result from such an injunction.

3 Dated: November 28th, 2012

Respectfully submitted,

4   
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