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and ROBIN SIZEMORE
10

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
13 **FRESNO DIVISION**
14

15 HOPSCOTCH ADOPTIONS,
16 INC. and ROBIN SIZEMORE

17 Plaintiffs

18 v.

19 VANESSA KACHADURIAN

20 Defendant.
21

Case No: 1:09-CV-02101-LJO-GSA

PLAINTIFFS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER, ORDER TO SHOW CAUSE AND
MEMORANDUM OF POINTS AND
AUTHORITIES

Date: N/A

Time: N/A

Courtroom: 4, Seventh Floor

Honorable Lawrence J. O'Neill

24 Plaintiffs Hopscotch Adoptions, Inc. ("Hopscotch") and Robin Sizemore
25 ("Sizemore") hereby make this ex parte application to this court for
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APPLICATION FOR TRO

1 1. An order restraining and enjoining Defendant Vanessa Kachadurian
2 (“Kachadurian”):

- 3 a. Further violating or otherwise frustrating the purpose 18 USC §§
4 1030 et seq; 18 U.S.C. § 425(b)(1)(2); 42 U.S.C. § 1996b; or 42
5 U.S.C. §§ 14901 et seq;
- 6 b. Posting or reposting false and defamatory statements about
7 Plaintiffs and their officers, employees and agents (“Hopscotch
8 Entities”) and to take appropriate remedial measures with respect
9 to postings still available on the Internet;
- 10 c. Any further annoyance or harassment of any adoption service
11 provider and/or from interfering with any adoption service
12 providers on the basis of their race, color, religion, national
13 origin, disability or sexual orientation;
- 14 d. Misappropriating the name or likeness of any Hopscotch Entity
15 or other adoption service provider;
- 16 e. Otherwise engaging in acts of interference with any Hopscotch
17 Entity or other adoption service provider;

18 2. An Order requiring Kachadurian to show cause why a preliminary
19 injunction should not be entered against her restraining the same activities until
20 judgment is entered into this case.

21 This relief is sought on an ex parte basis because of the incremental harm
22 that would result to Plaintiffs during the additional period of time it would take to
23 consider this request on a noticed basis.

1 Notice of this application was not provided to Defendant due to her history
2 of acting in retaliation and general erratic behavior and concern that she might
3 attempt to destroy relevant evidence in this matter. (Kelley Decl. at ¶ 2.)

4 This application is based on the accompanying memorandum of points and
5 authorities, the accompanying declarations of Robin Sizemore and Bennet G.
6 Kelley, the complaint on file herein, and such other showing as may be made at any
7 hearing on this application.

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9 Respectfully submitted,

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11 Dated: December 4, 2009.

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12 /s/ Bennet G. Kelley

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HOPSCOTCH ADOPTIONS, INC. and
19 ROBIN SIZEMORE
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1 has never been a client nor an applicant with Hopscotch, Sizemore or any entity
2 affiliated with Sizemore. Sizemore Decl. at ¶ 2.

3 During this period Kachadurian repeatedly contacted current and
4 prospective Hopscotch clients via blog postings and direct email contact and
5 provided false and misleading information about Hopscotch and Sizemore. This
6 includes the following statements made via email and various postings on blogs
7 and internet chatrooms that:

- 8 (i) Hopscotch and Sizemore engage in illegal practices;
- 9 (ii) Sizemore was fired from her previous job with CAS;
- 10 (iii) Sizemore's firing was due to her engaging in such illegal or unethical
11 practices; and/or
- 12 (iv) Sizemore's conduct is somehow connected with the arrest of
13 Hopscotch's in-country facilitator in the Georgian republic.

14 *Id.* at ¶ 3. Kachadurian also has improperly made postings under the name of a
15 Hopscotch employee in violation of the Computer Fraud and Abuse Act. *Id.* at ¶
16 4.

17 Kachadurian's conduct continues in defiance of Plaintiffs' demand that she
18 cease and desist from such unlawful behavior, with Kachadurian continuing to
19 post defamatory statements and contact Hopscotch clients – with multiple
20 occurrences in November 2009. *Id.* at ¶ 5. Kachadurian has caused irreparable
21 harm to Plaintiffs' reputation and business, as during the course of 2009
22 Hopscotch became aware that Kachadurian's attacks were causing Hopscotch to
23 lose business and creating hesitance among adoption seekers in doing business
24 with Hopscotch. *Id.* at ¶ 6.

1 Kachadurian's conduct is part of a broader attack on international adoption
2 service providers that began in 2005 and continues unabated. Verified Complaint
3 at ¶¶ 11, 22-23. This includes taking retaliatory action against one adoption
4 provider - Across The World Adoptions, Inc. ("ATWA") - that rejected her
5 application, requiring ATWA to obtain a restraining order against Kachadurian.
6 Kelley Decl. at ¶ 4.

7 **I. PLAINTIFFS MEET THE STANDARD FOR INJUNCTIVE RELIEF**

8 To warrant injunctive relief, a plaintiff must demonstrate that it is (i) likely
9 to succeed on the merits; (ii) likely to suffer irreparable harm absent interim relief;
10 and (iii) that "the balance of equities tips in his favor, and that an injunction is in
11 the public interest." *Winter v. Natural Res. Def. Council*, 129 S. Ct. 365, 374
12 (2008). In doing so, courts "must balance the competing claims of injury and
13 must consider the effect on each party of the granting or withholding of the
14 requested relief." *Id.* at 376 (quoting *Amoco Prod. Co. v. Village of Gambell*,
15 480 U.S. 531, 542 (1987)).

16 **A. Plaintiffs' Are Likely to Succeed on the Merits**

17 Plaintiffs assert claims against Kachadurian for (1) violations of the
18 Computer Fraud and Abuse Act; (2) defamation; (3) negligent misrepresentation;
19 (4) false light; (5) tortious interference with contractual relations; and (6) tortious
20 interference with prospective advantage.

21 The Computer Fraud and Abuse Act provides penalties for a party who,
22 with an intent to defraud, accesses without authorization a computer involved in
23 interstate commerce to further this fraud. 18 U.S.C. §§ 1030 et seq. That is
24 exactly what Kachadurian did when she fraudulently accessed a website involved
25 in interstate commerce and used the name of a Hopscotch employee without

1 authorization to post false information on a website damaging Hopscotch.
2 Verified Complaint at ¶¶ 26-29.

3 Under California law, defamation (or negligent misrepresentation) is the
4 intentional (or negligent) “publication of a statement of fact that is false,
5 unprivileged and has a tendency to injure or which causes special damages.”
6 *Smith v. Maldonado*, 72 Cal.App.4th 637, 645 (1999). Under the False Light tort
7 it also extends to factual information presented in a manner to create an
8 impression implying something highly offensive about a party that would have a
9 tendency to and does in fact injure the party’s reputation. *Solano v. Playgirl, Inc.*,
10 292 F.3d 1078, 1089 (9th Cir. 2002).

11 Kachadurian has made numerous malicious statements about Plaintiffs
12 claiming that (i) Hopscotch and Sizemore engage in illegal practices; (ii)
13 Sizemore was fired from her previous job with another adoption agency; and (iii)
14 Sizemore’s firing was due to her engaging in such illegal or unethical practices –
15 all of which are absolutely false. Sizemore Decl. at ¶ 2 . Kachadurian also has
16 repeatedly made posts about the arrest of Hopscotch’s in-country facilitator in the
17 Georgian Republic to falsely suggest that the arrest was somehow connected with
18 Sizemore’s conduct despite the fact that the arrest was politically motivated , no
19 charges ever filed and the United States embassy in Georgia continues to approve
20 her multi-entry visa to facilitate intercountry adoptions. *Id.* at ¶ 3. Kachadurian’s
21 repeated and continuing false statements about Plaintiffs were intended to and
22 have caused Plaintiffs irreparable harm as a result. *Id.*

23 To state a cause of action for tortious interference with contracts or
24 prospective advantage a party must show (i) a valid contract or prospective
25 business relationship containing the probability of future economic rewards; (ii)

1 which defendant had knowledge of; and (iii) acted intentionally and wrongfully in
2 a manner to induce a breach or disruption of that relationship such that (iv) a
3 breach occurred and (v) plaintiff suffered damage as a result. *PMC, Inc. v. Saban*
4 *Entertainment, Inc.*, 45 Cal.App.4th 579, 602-603 (1996). This case is a textbook
5 example of tortious interference as Kachadurian has contacted Hopscotch's clients
6 for no other purpose than to induce them to breach, disrupt or cease their business
7 relationship with Hopscotch through defamatory statements. *Id.* at 603 (wrongful
8 conduct includes violations of federal or state law and defamation).

9 **B. Equity Requires That Kachadurian Be Enjoined**

10 Kachadurian has been engaged in a four year cyberwar irreparably
11 damaging legitimate adoption agencies through her repeated and ongoing
12 cybersmears. Hopscotch has identified clients and potential clients who ceased
13 doing business with Hopscotch because of Kachadurian's actions; and has found
14 other potential clients to be hesitant because of her internet postings which
15 continues unabated. Sizemore Decl. at ¶¶ 3-4. Plaintiffs have suffered and will
16 continue to suffer irreparable harm if Kachadurian is not restrained by this Court.
17 *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 841
18 (9th Cir. 2001)(threatened loss of prospective customers and goodwill constitutes
19 irreparable harm).

20 Interim relief is especially necessary to protect Hopscotch given the fact
21 that the peak period for initial inquiries about adoption from potential adoptive
22 parents is in the first few weeks immediately following the Christmas holidays
23 and Kachadurian's past erratic behavior and history for retaliatory action.
24 Sizemore Decl. at ¶ 3.

1 In contrast, Kachadurian will suffer no harm as a result of any restraining
2 order as it merely requires that she refrain from engaging in further unlawful
3 activity.

4 Moreover, enjoining Kachadurian from further harassing any intercountry
5 adoption agency as provided in the proposed Order serves the public interest since
6 her continued assault on all international adoptions frustrates the intent of both the
7 Interethnic Adoption Act (42 U.S.C. § 1996b) and the Intercountry Adoption Act
8 of 2000 (42 U.S.C. § 14901). Verified Complaint at ¶ 24.

9 In addition, given the nature of the public interest involved, the fact that
10 Hopscotch is a not-for-profit entity and the lack of harm to the Defendant,
11 Hopscotch requests that the court impose no bond or a minimal bond should it
12 grant Hopscotch's request for interim relief. *See City of South Pasadena v. Slater*,
13 56 F. Supp. 2d 1106, 1148 (C.D. Cal. 1999) (“[c]ourts routinely impose either no
14 bond or a minimal bond in public interest” cases).

15 CONCLUSION

16 Based on the foregoing and such further evidence as may be produced at the
17 hearing on this matter, this Court should grant Plaintiffs' request for interim relief.

18 Respectfully submitted,

19 Dated: December 4, 2009.

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