

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

MALIBU MEDIA, LLC,


Plaintiff,

v.

KEVIN ETTER, NICHOLAS SHELTON,
AARON REYES, HO YEUNG, DAVID
WYATT, LEAH JUSTICE, LUCILLE
PHILLIPS and JOHN DOES 2, 3 and 5,

Defendants.

Civil Action Case No. 1:12-cv-01115-TWP-DML



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

**PLAINTIFF'S EMERGENCY MOTION TO SET A TELEPHONIC STATUS
CONFERENCE AND TO ENJOIN DEFENDANT FROM FILING CERTAIN PAPERS**

Plaintiff's motion seeks a telephone conference to discuss certain material that may be filed by counsel for Defendant and to "[e]njoin[] Defendant from filing any papers that could be construed as embarrassing to undersigned counsel until after such hearing." First, any sort of injunction on the filing of motions or other documents, particularly in the entirely abstract scenario presented by the Plaintiff by this motion, could well constitute an impermissible prior restraint upon Defendant's free speech rights. However, more fundamentally, until demonstrated otherwise, the Court assumes that all counsel that appear before it are aware of and endeavor to comply with the relevant rules, decisions and statutes that govern their conduct before the Court. To grant Plaintiff's motion would be to presume, in the absence of any evidence, Defendant's counsel's intent to not comply with such rules, decisions and statutes. The Court does and must expect such compliance and, if any counsel fails in that duty, can then exercise the full extent of its authority to punish such failure. But an invitation to presume and/or enjoin such non-compliance in the absence of any evidence thereof is an invitation the Court cannot accept. Accordingly, Plaintiff's motion must be **DENIED**.

Dated: May 24, 2013

the Court prior to the offensive documents being filed.

WHEREFORE, Plaintiff respectfully requests this Court enter an order:

- (A) Granting Plaintiff's Emergency Motion For a Telephonic Status Conference;
- (B) Scheduling a Telephonic Status Conference at the Court's earliest convenience;

(C) Enjoining Defendant from filing any papers that could be construed as embarrassing to undersigned counsel until after the hearing; and

(D) Granting Plaintiff all such other and further relief as this Court deems just and proper.

Please note: A proposed order is attached hereto for the Court's convenience.

Dated this 16th day of May, 2013

Respectfully submitted,

NICOLETTI & ASSOCIATES, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2013 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Paul J. Nicoletti

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Defendants.

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**ORDER ON PLAINTIFF'S EMERGENCY MOTION TO SET A TELEPHONIC
STATUS CONFERENCE AND TO ENJOIN DEFENDANT FROM FILING
CERTAIN PAPERS**

THIS CAUSE came before the Court upon the Plaintiff's Emergency Motion to Set a Telephonic Status Conference and to Enjoin Defendant From Filing Certain Papers, and the Court being duly advised in the premises does hereby:

ORDER AND ADJUDGE: Plaintiff's Emergency Motion is hereby granted. The Court will hold a telephonic status conference on the _____ of May, 2013 at _____ between counsel for Plaintiff and counsel for Defendant David Wyatt. The Court will provide dialing instructions through a separate minute entry. Defendant is enjoined from filing any papers that could be construed as embarrassing to undersigned counsel until after the hearing.

SO ORDERED this ____ day of _____, 2013.

By: _____
UNITED STATES DISTRICT JUDGE