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SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

MEGAN WELTER, an individual,
Plaintiff,

v.

JOHN and JANE DOES 1-10 are
fictitious persons who may have an
interest herein. ABC PARTNERSHIPS
1-10; XYZ CORPORATIONS 1-10 and
DEF LIMITED LIABILITY
COMPANIES 1-10,
Defendants;

Case No. CV2016-004734

**MOTION BY DEFENDANT
AVVO, INC. (DESIGNATED AS XYZ
CORPORATION) TO VACATE
PRELIMINARY INJUNCTION**

Defendant Avvo, Inc., moves the Court to vacate the Stipulated Order for Permanent Injunction entered in this case on June 29, 2016 (the “Stipulated Injunction”), insofar as it runs against parties other than Ryan McMahon, because it is

1 offensive to the First Amendment, violates 47 U.S.C. § 230, and is contrary to many
2 other established principles of law. Avvo, Inc. has standing to make this motion because
3 it is one of the defendants designated as XYZ Corporation by Plaintiff and because it is
4 the operator of one of the websites adversely affected by the Stipulated Injunction. This
5 Motion is supported by the following Memorandum of Law.

6
7 **MEMORANDUM OF LAW**

8 **I. INTRODUCTION**

9 In this case, a woman who was the subject of unflattering news coverage was
10 able, based on no more than the unsworn signature of her boyfriend on a stipulation, to
11 obtain an order from this Court seeking to suppress nearly a hundred online stories in
12 newspapers, television stations, and other web sites that had covered a controversy that
13 arose after she called the police to complain about an 2013 incident of alleged domestic
14 abuse by the boyfriend. It was the plaintiff who was arrested, not the boyfriend, when
15 the boyfriend's cell phone video revealed that it was she who had been the aggressor.
16 She brought suit three years later against several Doe individuals and entities claiming
17 that the news coverage defamed her in that it was shot through with false statements
18 about her. The boyfriend then entered into a "Stipulated Order for Permanent
19 Injunction" that purported to admit that "all or substantially all" of what he had said
20 about the plaintiff was false; the order directed that he, as well as any entity that
21 "enabled [the boyfriend's] publication of the below-referenced Content," immediately
22 remove from the internet "all negative statements" about the plaintiff, and further
23 commanded that anybody publishing anything negative about the plaintiff seek to have
24 that content removed from any search engines. The order attached a listing of some 98
25 Internet web pages, as well as nine YouTube videos, that were to be stricken from the
26 Internet. No notice was given to any of the individuals or entities that an order was

1 pending seeking to restrain their free speech, and there was never any finding that
2 anything said on any of these pages was false, let alone that the speech was knowingly
3 or recklessly false.

4 Avvo, Inc., the well-known provider of online consumer legal resources, hosted
5 one of the 98 articles whose continued publication the Court enjoined (number 86 on the
6 list of URLs to be removed from the Internet). The Avvo article was an explanation by a
7 local attorney of how Arizona's disorderly conduct law works, as illustrated by the
8 charges against the plaintiff. Although in theory the lawyer would have been amenable
9 to suit had he made any knowingly false statements about the plaintiff, federal law
10 makes Avvo immune from being subjected to suit over an article that it hosted; the
11 defamation claim was filed long after the statute of limitations had expired; and in any
12 event the Due Process clause protects Avvo from being sued in this state and from being
13 subjected to injunctive relief without any notice and an opportunity to defend its rights.
14 The First Amendment also bars imposition of an injunction without notice, and bars the
15 injunction on its merits because it is a prior restraint of speech imposed without any
16 findings of falsity or actual malice. Consequently, Avvo now asks the Court to vacate
17 this unconstitutional order that suppresses the free speech that it hosts on its web site.

18

19 **II. FACTS AND PROCEEDINGS TO DATE**

20 The plaintiff in this case, Megan Welter, and her employer, the Arizona
21 Cardinals, sought public attention in 2013, peddling the feel-good story of how she had
22 gone from being a U.S. Army platoon leader in Iraq to serving as a cheerleader for the
23 Arizona Cardinals football team. *E.g.*, Fouhy, *Arizona Cardinals cheerleader Megan*
24 *Welter has special past*, [http://www.abc15.com/sports/sports-blogs-local/cardinals-](http://www.abc15.com/sports/sports-blogs-local/cardinals-cheerleader-has-special-past)
25 [cheerleader-has-special-past; http://www.azcardinals.com/videos-photos/videos/Zoom-](http://www.azcardinals.com/videos-photos/videos/Zoom-Saluting-One-of-our-Own/b70230ca736-4889-a9ae-641df1106f19)
26 [Saluting-One-of-our-Own/b70230ca736-4889-a9ae-641df1106f19](http://www.azcardinals.com/videos-photos/videos/Zoom-Saluting-One-of-our-Own/b70230ca736-4889-a9ae-641df1106f19). Her story received

1 national attention at the end of July, 2013. [http://www.foxsports.com/nfl/story/arizona-](http://www.foxsports.com/nfl/story/arizona-cardinals-cheerleader-megan-welter-also-an-iraq-war-vet-073113)
 2 [cardinals-cheerleader-megan-welter-also-an-iraq-war-vet-073113](http://www.foxsports.com/nfl/story/arizona-cardinals-cheerleader-megan-welter-also-an-iraq-war-vet-073113). A few days later,
 3 however, she became the focus of publicity of a less flattering sort, even if it was **also**
 4 publicity that she brought on herself by calling the police. Welter’s call, placed to an
 5 emergency number, sought assistance because, she reported, her boyfriend had been
 6 beating her.

7 The following facts are drawn from three main sources: video from a bodycam
 8 worn by one of the responding police officers; audio from a cell phone video taken at
 9 the scene and later seized by the police; and the police report. When the police arrived,
 10 Welter repeated the story that her boyfriend had been beating her, but the boyfriend
 11 presented them with contrary evidence, in the form of cellphone video showing that it
 12 was Welter herself who was the assailant. Indeed, although when the police arrived,
 13 Welter initially placed the blame on her boyfriend, she admitted to the police that she
 14 had hit and punched her boyfriend, as well as that she wanted him to leave her dwelling
 15 place and yelled “Rape” only because she did not know how else to accomplish that.
 16 The officers on the scene concluded that it was Welter herself, rather than the boyfriend
 17 (named Ryan McMahan), who was the assailant. Apparently, Welter had discovered a
 18 text message on McMahan’s phone from a former girlfriend of McMahan’s and had
 19 erupted with a fit of jealous rage that included first an angry tirade and then a physical
 20 attack. Welter was arrested and charged, although McMahan was quoted in the press as
 21 saying that he did not want to press charges because he felt that, although Welter had
 22 made mistakes, she did not deserve to be imprisoned for them. *Arizona Cardinals*
 23 *cheerleader and Iraq war vet arrested for beating boyfriend over flirty text he sent to*
 24 *his former girlfriend*, [http://www.dailymail.co.uk/news/article-2383667/Arizona-](http://www.dailymail.co.uk/news/article-2383667/Arizona-Cardinals-cheerleader-Iraq-war-vet-arrested-beating-boyfriend-flirty-text-sent-girlfriend.html)
 25 [Cardinals-cheerleader-Iraq-war-vet-arrested-beating-boyfriend-flirty-text-sent-](http://www.dailymail.co.uk/news/article-2383667/Arizona-Cardinals-cheerleader-Iraq-war-vet-arrested-beating-boyfriend-flirty-text-sent-girlfriend.html)
 26 [girlfriend.html](http://www.dailymail.co.uk/news/article-2383667/Arizona-Cardinals-cheerleader-Iraq-war-vet-arrested-beating-boyfriend-flirty-text-sent-girlfriend.html).

1 There was extensive media coverage of the incident, perhaps because of Welter’s
 2 cheerleader position but perhaps also because of the publicity she had previously
 3 received about that position and her veteran status. The coverage was not limited to the
 4 local newspapers and television stations, but was also featured on the national news as
 5 well as a variety of sports-oriented blogs and web sites. These stories repeated both
 6 Welter’s and McMahon’s statements to the police and in the video clips. Many of the
 7 online stories included the bodycam video, and some of them linked to the police report,
 8 which includes a number of statements by McMahon. Most of these stories appeared in
 9 early August, 2013. Included among these stories was one in the Phoenix New Times,
 10 which began:

11 Last week, Arizona Cardinals cheerleader Megan Welter was celebrated
 12 in the news as an Iraq war veteran who fulfilled her dream of dancing with
 13 pompoms; this week, Scottsdale police arrested her on suspicion of
 assaulting her boyfriend because of texts he received from an ex, police
 say.

14 Phippen, *Arizona Cardinals Cheerleader Arrested for Allegedly*
 15 *Assaulting Boyfriend*, Phoenix New Times (Aug. 4, 2013),
 16 [http://www.phoenixnewtimes.com/news/arizona-cardinals-cheerleader-](http://www.phoenixnewtimes.com/news/arizona-cardinals-cheerleader-arrested-for-allegedly-assaulting-boyfriend-6659503)
[arrested-for-allegedly-assaulting-boyfriend-6659503.](http://www.phoenixnewtimes.com/news/arizona-cardinals-cheerleader-arrested-for-allegedly-assaulting-boyfriend-6659503)

17 Like many other articles, this one included statements attributed to McMahon, some
 18 from the video evidence and some made directly to the New Times reporter.

19 An additional story appeared in late August, 2013, on the web site of defendant
 20 Avvo, Inc., a site where both clients and lawyers post reviews and ratings of lawyers
 21 with whom they have dealings. In addition to the ratings portion of the web site, Avvo
 22 has a section on legal topics, which carries both questions posed by consumers and
 23 generalized analysis provided by attorneys who have established Avvo accounts.
 24 Exhibit “1,” Declaration of Esther Gerhman Sirotnik (“Sirotnik Dec.”) ¶¶ 7-8. Such
 25 attorneys can upload articles with no direct involvement by Avvo, *id.* ¶ 9; Avvo’s
 26 software assigns articles based on the presence of keywords in the text to particular

1 pages within the site. *Id.* ¶ 10. Thus, Avvo’s site includes a page entitled *Advice on*
 2 *Criminal charges for disorderly conduct in Arizona*,
 3 [https://www.avvo.com/topics/criminal-charges-for-disorderly-](https://www.avvo.com/topics/criminal-charges-for-disorderly-conduct/advice?page=2&state=az)
 4 [conduct/advice?page=2&state=az](https://www.avvo.com/topics/criminal-charges-for-disorderly-conduct/advice?page=2&state=az), posted to Avvo’s web site by Jeremy Geigle, a local
 5 criminal defense attorney with the Jackson White firm. One of the articles linked from
 6 that page is entitled *Arizona Cardinals Cheerleader Arrested for Disorderly Conduct,*
 7 *Criminal Damage, & Assault*. Geigle’s article begins by linking to the Phoenix New
 8 Times article, then summarizes the facts of the case before launching into a brief
 9 discussion of the elements of a charge of disorderly conduct (one of the three charges
 10 against Welter) as well as describing possible punishments for Arizonians who are
 11 convicted of this offense.

12 Nearly three years after the articles were published, on May 24, 2016, this
 13 lawsuit was filed. The complaint purported to allege claims of defamation as well as
 14 false light and invasion of privacy, seeking both damages and injunctive relief, against
 15 forty anonymous defendants: ten individual Does, ten anonymous partnerships, ten
 16 anonymous corporations, and ten anonymous LLC’s. The complaint alleged broadly
 17 that “defendants posted voluminous false, damaging, misleading and defamatory
 18 statements about the plaintiff on the Internet, located at numerous web links.” (¶ 11 of
 19 Complaint). The complaint did not specify which statements were allegedly false, but
 20 did incorporate by reference an attachment, Exhibit A, that listed the URLs of 98 online
 21 articles, and nine URLs for YouTube videos (some of which appear to be identical; two
 22 are no longer available online), which were lumped together in the complaint under the
 23 term “the False Statements.” The complaint demands awards of compensatory
 24 damages, special damages, punitive damages, and attorney fees, as well as preliminary
 25 and injunctive relief. Because Avvo, Inc. hosts one of these 98 articles, it is apparent
 26

1 that Avvo, Inc. is one of the XYZ Corporations identified in the complaint as defendants
2 in this case.

3 Even though McMahon was not named in the complaint, Welter filed with the
4 complaint a “[Proposed] Stipulated Order for Permanent Injunction” that called for the
5 entry of a permanent injunction against Ryan McMahon. The order would bar
6 McMahon from publishing false statements about plaintiff and forbidding plaintiff from
7 making false statements about McMahon, but would also “compel[]removal of the
8 uniform resource locators (‘URLs’) in Exhibit A.” Stipulation ¶ 1. Paragraph 3 of the
9 stipulation, which was unsworn, recited that “Defendant [singular] admits that all or
10 substantially all of the statements made in the URLs are false and defamatory,” but the
11 stipulation contained no “admission” that McMahon or anybody else had published the
12 supposed falsities negligently or with actual malice. And instead of simply including
13 relief against individual defendant Ryan McMahon, paragraph 2 of the injunction
14 defined the following category of people and entities, other than McMahon, who were
15 to be subject to much the same duties as McMahon himself, despite the fact that **they**
16 had never agreed to the order:

17 “Defendant’s Agents, affiliates and/or **other person/entity** assisting or
18 **enabling Defendant’s publication of the below-referenced Content**
(collectively, “Defendant’s Agents”

19 And the “Content” subject to the removal order by the “Agents” thus defined was
20 breathtakingly broad:

21 all negative statements. material and/or information pertaining to Plaintiff
22 . . . including the Content located at the following URLs, and/or any
23 variations thereof

24 Finally, the “Agents” were to remove the “Content” from “all websites, search engines,
25 forums, blogs, lists, social media sites and/or other forums of mass communications.”

1 The proposed order also ordered the “Agents” to remove any and all references
 2 to the Content, including partial references to the Content. ¶ 4. Moreover, anticipating
 3 that Content might be referenced “on additional webpages in the future,” the so-called
 4 “Agents” were ordered to take all actions to seek removal of the content from search
 5 engines. “such that the Content is rendered unsearchable.” The “Agents” were further
 6 ordered not to post any “defamatory, negative material or information about each other
 7 and/or any agent affiliate on any Forum,” ¶ 7, or “to any third party.” ¶ 8. The proposed
 8 stipulated injunction, as submitted with the complaint, included a line for Ryan
 9 McMahon to sign his name, and two lines to fill in his address. There was also a line for
 10 Megan Welter to sign (with no address), a line for plaintiff’s counsel to sign; and blank
 11 lines left for entry of the address at which the fully signed order was to be mailed to
 12 McMahon. The caption, however, was never changed to reflect that Ryan McMahon
 13 was a defendant in the action in addition to the 40 anonymous defendants (or in place of
 14 one of the individual Does).

15 At some later point — the docket does not specify when — the proposed order
 16 was furnished to the Court for its signature, This version of the order contains a
 17 signature by Ryan McMahon, but instead of blank lines for his address, the signed
 18 version shows the address of plaintiff’s law firm, Kelly / Warner, PLLC typed in as
 19 McMahon’s “c/o” address. The document was purportedly signed by McMahon on May
 20 19, 2016 — the day before the complaint was filed, and thus before the filing of the
 21 **blank** proposed stipulation bearing no signatures. Below the place for the mailing
 22 address to McMahon to be written, there was another signature purporting to be that of
 23 Ryan McMahon, and the address of Kelly/Warner is shown as the place for the order to
 24 be mailed to McMahon. On June 29, 2016, a telephonic status conference was held in
 25 this case. The minute entry reflects that “The Defendant, Ryan C. McMahon appears on
 26

1 his own behalf (a/k/a John Doe).” That same day, Judge Starr signed the Stipulated
2 Injunction.

3 So far as the record reflects, no effort was made to provide notice to the
4 companies and others involved with authoring and/or hosting the various web sites
5 against which the injunction was directed. Avvo, Inc. itself never received notice either
6 of the request for the injunction or indeed of the issuance of the injunction itself until
7 very recently. SirotnikDec ¶ 12.

8 Ryan McMahon was recently in contact with some private parties, complaining
9 about what he claimed to have been an unethical effort to secure his signature on papers
10 in this case and asserting that it was never his intention to “admit” that his statements to
11 the police on the night of the incident with plaintiff Welter, which were later reported in
12 the press, were in any way false. Copies of this correspondence were provided to
13 Avvo’s counsel. Exhibit “2”. Declaration of Paul Levy ¶¶ 2-3 and Exhibit A thereto.
14 While Ryan McMahon’s statements about his signature were arguably inconsistent,
15 regardless of what his intentions were in signing the Stipulated Injunction, there are
16 ample legal grounds to set aside the Stipulated Injunction.

17

18 **III. ARGUMENT**

19 The complaint and the Stipulated Injunction were riddled with violations of the
20 federal and state constitutional, statutory and common law rights of the many third
21 parties who were subjected to a prior restraint of their right to talk about the legal
22 controversy that ensued after plaintiff Megan Welter made a call for help to the local
23 police. Although her former boyfriend Ryan McMahon was apparently willing to assist
24 her quest to bury these many online articles by agreeing to entry of an injunction against
25 himself, he had no ability to empower the Court to enjoin the free speech of others, even
26 if those others repeated his own statements that he might later have come to regret. And

1 the means employed by plaintiff to secure this injunctive relief against the third-party
2 publishers, withholding notice by pretending to sue anonymous defendants, are
3 additional grounds for vacating the Stipulated Injunction.

4 First, there was no basis for filing this lawsuit as an action against Doe
5 defendants. On the date she filed this lawsuit, Megan Welter knew that the original
6 source of the negative reports about her were the words of her then-boyfriend Ryan
7 McMahon, as reported in the media and in the police report that was linked from some
8 of the stories, and her own statements and actions as portrayed on the police bodycam
9 video, the video taken from McMahon's cell phone. McMahon's signature on the
10 stipulated order was dated May 19, the day before the lawsuit was filed. Thus,
11 McMahon, at least, was not a Doe defendant. Moreover, to the extent that her real
12 objective was to use a purported agreement with McMahon as a basis for seeking an
13 injunction against the continued posting of the underlying source materials, and the
14 news reports and analyses that reported those details — that is to say, the reports
15 published at the URLs listed in Exhibit A to the Stipulated Injunction — Welter knew
16 the identities of the media entities and internet platforms that she wanted to subject to
17 injunctive relief. Avvo's contact address for legal process is available on both the
18 Terms of Service and the Privacy Policy linked from the bottom of its web site; the
19 name of the individual Arizona lawyer who wrote the article about how Welter's case
20 illustrates the application of Arizona disorderly conduct law was displayed on the
21 article, and the lawyer's address could be found on his firm's web site.

22 Second, even assuming that there was evidence that some facts stated by
23 McMahon about plaintiff Welter (and then reported by the press) were false, and even if
24 there were any reason to believe that the statements from McMahon falsely accused
25 Welter with actual malice on McMahon's part, the defamation and false light invasion
26 of privacy claims were time-barred. The stories were published in August, 2013, and

1 this action was not filed until May 2016, nearly three years later. The statute of
 2 limitations for defamation claims is one year, A.R.S. § 12-541; for privacy claims, the
 3 limitations period is two years. *Hansen v. Stoll*, 130 Ariz. 454, 460, 636 P.2d 1236,
 4 1242 (App. 1981). And although the publications remained online at time of suit, the
 5 statute of limitations begins to run at the time of first publication, *Clark v. Airesearch*
 6 *Mfg. Co. of Ariz.*, 138 Ariz. 240, 242, 673 P.2d 984 (App. 1983), and Arizona applies
 7 the single publication rule, A.R.S. § 12-651, in the internet context. Thus, “the statute
 8 of limitations begins to run when the allegedly defamatory material is first made
 9 available to the public by posting it on a website.” *Larue v. Brown*, 235 Ariz. 440, 445,
 10 333 P.3d 767, 772 (App. 2014).

11 Third, Ryan McMahon’s purported confession that he had made false factual
 12 statements does not constitute evidence of falsity that is admissible against the enjoined
 13 parties. The stipulation was not signed under oath; the stipulation does not specify
 14 which words were false; and the authors and publishers of the news stories have had no
 15 opportunity to cross-examine McMahon. Thus, no **evidence** supports the issuance of
 16 injunctive relief against the defendants whose web sites carried stories reporting on the
 17 police visit to the residence, including reports of what McMahon told the police and
 18 what he told the various reporters who covered the story. Even as a matter of state law,
 19 without admissible evidence Welter did not carry her burden of establishing an
 20 entitlement to injunctive relief that extended to the third parties that carried these
 21 reports. *Modular Mining Sys. v. Jigsaw Techs.*, 221 Ariz. 515, 519, 212 P.3d 853, 857
 22 (App. 2009)

23 Fourth, extending the injunction to third parties such as Avvo violates the
 24 fundamental precept that “a court order does not bind a non-party to the litigation in
 25 which the order is entered.” *State ex rel. Thomas v. Grant*, 222 Ariz. 197, 198, 213 P.3d
 26

1 346, 347 (App. 2009).¹ To be sure, an enjoined party who connives to evade an
 2 injunction by recruiting third parties to carry enjoined statements may sometimes be
 3 subjected to injunctive relief as well, to prevent evasion of the injunction; such third
 4 parties may be enjoined as aiders and abettors of contempt. But “[a]ctions that aid and
 5 abet in violating the injunction must occur after the injunction is imposed.” *Blockowicz*
 6 *v. Williams*, 630 F.3d 563, 567 (7th Cir. 2010).² Neither the news media nor
 7 professional web sites such as Avvo become “co-conspirators” with parties that have
 8 agreed not to speak ill of each other when they report on the otherwise-enjoined
 9 criticisms, or when they leave **previous** reports on their web sites despite the adoption
 10 of injunctions such as the one that the Court entered in this case. Similarly, although an
 11 injunction may be enforced against third parties that are in privity with a properly
 12 enjoined defendant, such as the defendant’s agents or his successors and assigns,
 13 *Vasquez v. Rackauckas*, 734 F.3d 1025, 1053 n. 25 (9th Cir. 2013), so long as the third
 14 party receives notice of the injunction and an opportunity to respond, *Bussart v.*
 15 *Superior Court in and for Yavapai County*, 11 Ariz. App. 348, 351, 464 P.2d 668, 671
 16 (App. 1970) merely reporting on a controversy does not make third parties the “agents”
 17 of one of the parties to the controversy; and in any event, the procedure in this case was
 18 deliberately designed to avoid any notice to Avvo as well as the many media entities
 19 subjected to this unlawful injunction. Avvo is not Ryan McMahon’s agent, Sirotnik

20
 21 ¹ Although Avvo believes that it is one of the defendant corporations that was named an
 22 anonymous defendant, in that the URL for a story carried on its web site was one of the
 23 stories that the complaint alleged was defamatory, it was never served with process and
 24 thus never brought before the Court as a party that could be ordered to do anything.

25 ² Although *Blockowicz* was decided under Rule 65(d) of the Federal Rules of Civil
 26 Procedure, that Rule is similar to Arizona Rule 65(d); consequently, the federal decision
 is properly considered in construing the Arizona rule. *La Paz County v. Yuma County*,
 153 Ariz. 162, 164, 735 P.2d 772, 774 (1987) (citing *Jenney v. Arizona Express*, 89
 Ariz. 343, 349, 362 P.2d 664 (1961)); *Cornet Stores v. Superior Court*, 108 Ariz. 84, 86,
 492 P.2d 1191, 1193 (1972)

1 Dec. ¶ 11, and Avvo received no notice of this case or, indeed, notice of the entry of the
2 injunction against it. *Id.* ¶ 12.

3 Fifth, extending the injunction to Avvo violates a provision of federal law,
4 section 230 of the Communications Decency Act, 47 U.S.C. § 230.³ If there were
5 something actionable in the story posted on Avvo by Arizona attorney Jeremy Geigle,
6 suit would have to be brought against Geigle himself. Avvo, however, is an Internet
7 platform on which both lawyers and consumers may post content, and Geigle’s article is
8 precisely that: content provided by Geigle and uploaded by Geigle to Avvo’s Internet
9 servers. *Sirotnik Dec.*, ¶ 9. Section 230 protects the provider of an interactive computer
10 service from being held liable for content provided by one of its users. *Fair Hous.*
11 *Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157 (9th Cir.
12 2008) (en banc); *Austin v. CrystalTech Web Hosting*, 211 Ariz. 569, 573, 125 P.3d 389,
13 393 (App. 2005).

14 Finally, the injunction against publication and public access to Avvo’s story
15 violates the First Amendment as well as federal and state law. It violates the First
16 Amendment in part because it is a prior restraint — an injunction issued against speech
17 without any evidence and without any judicial findings issued after a full and fair
18 hearing that any statement in the article was false or published with actual malice. As
19 the Supreme Court said in *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419
20 (1971), in declaring a defamation-based injunction to be an impermissible prior
21 restraint, “No prior decisions support the claim that the interest of an individual in being
22 free from public criticism of his business practices in pamphlets or leaflets warrants use

23
24 ³ Section 230(c)(1) provides “No provider or user of an interactive computer service shall be
25 treated as the publisher or speaker of any information provided by another information content
26 provider.” Section 230(e)(3) provides, in part, “No cause of action may be brought and no
liability may be imposed under any State or local law that is inconsistent with this section.”

1 of the injunctive power of a court.” Even alleged falsity of speech is not a sufficient
2 basis for removing it from First Amendment protection unless the plaintiff satisfies the
3 standards (such as the actual malice requirement) that the Supreme Court has enunciated
4 for defamation claims. *United States v. Alvarez*, 567 U.S. 709, 717 (2012) And the
5 Arizona Court of Appeals has held, “Absent a clear finding supported by the evidence
6 that a given expression is unentitled to First Amendment protection, a prior restraint
7 should not issue and cannot stand.” *State ex rel. Corbin v. Tolleson*, 160 Ariz, 385, 396,
8 773 P.2d 490, 501 (App. 1989). Finally, the Supreme Court has also held that the First
9 Amendment entitles a party to notice and an opportunity to be heard before injunctive
10 relief is issued interfering with its free speech. *Carroll v. President & Comm’rs of*
11 *Princess Anne*, 393 U.S. 175, 181-184 (1968). The failure to give such notice thus
12 violated the First Amendment.

13 In conclusion, Megan Welter no doubt regrets that she called down a rain of
14 publicity on herself, and her former boyfriend appears to have been willing to help her
15 in her effort to put her past behind her. But American law does not provide a “right to
16 be forgotten” that overrides the First Amendment rights of news media and professional
17 web sites to provide truthful information about past controversies. Welter cannot be
18 granted injunctive relief suppressing unflattering coverage, even if her former boyfriend
19 had the misplaced gallantry to help her get such a court order.

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1 **IV. CONCLUSION**

2 Avvo, Inc. requests that the Court vacate the Stipulated Injunction, insofar it runs
3 against parties other than Ryan McMahon.

4 DATED this 22nd day of June, 2017.
5

6 **Jaburg & Wilk, P.C.**

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18 **ORIGINAL E-FILED** and **COPY**
19 of the foregoing mailed this
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/s/Debra Gower

EXHIBIT 1

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Jaburg & Wilk, P.C.
3200 N. Central Avenue, 20th Floor
Phoenix, AZ 85012
602.248.1000

Maria Crimi Speth (012574)
mcs@jaburgwilk.com

Attorneys for Defendant Avvo, Inc.

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

MEGAN WELTER, an individual,

Plaintiff,

v.

JOHN and JANE DOES 1-10 are
fictitious persons who may have an
interest herein. ABC PARTNERSHIPS
1-10; XYZ CORPORATIONS 1-10 and
DEF LIMITED LIABILITY
COMPANIES 1-10,

Defendants;

Case No. CV2016-004734

**DECLARATION OF ESTHER
GEHRMAN SIROTNIK IN SUPPORT
OF DEFENDANT AVVO'S MOTION
TO VACATE PRELIMINARY
INJUNCTION**

I, Esther Gehrman Sirotnik, declare as follows:

1. I am Senior Corporate Counsel for defendant Avvo, Inc. ("Avvo"). The matters stated in this declaration are true of my own personal knowledge. If called as a witness, I could and would competently testify to these matters.

2. As Avvo's Senior Corporate Counsel, I assist Avvo's Chief Legal Officer with Avvo's legal, government relations, and customer service functions. As part of my

1 responsibilities, I am highly knowledgeable about the operation of Avvo’s website, specifically
2 including Avvo’s process and policies regarding content posted to the site.

3 3. AVVO operates Avvo.com, a website that provides detailed information
4 about lawyers and legal issues to its more than eight million monthly visitors. The
5 purpose of Avvo.com is to empower consumers with information about lawyers and the
6 law so that they may make intelligent, informed decisions about their legal needs. This
7 information is particularly important for consumers who would not otherwise have
8 ready access to such legal information and may lack the personal or professional
9 connections necessary to obtain a trusted recommendation for an experienced attorney.

10 4. Avvo earns revenue in several ways, including offering a premium service
11 for attorneys, selling advertising space on its website, and offering a service that allows
12 consumers to connect directly to attorneys.

13 5. In recognition of its valuable services, the American Bar Association
14 honored Avvo in 2015 with Meritorious Recognition for the Louis M. Brown Award for
15 Legal Access.

16 6. Avvo.com provides background information about lawyers, including
17 name, license information, and whether any disciplinary activity has been taken against
18 them by the licensing authorities. Avvo publishes profiles for over 97% of all licensed
19 attorneys in the United States, including every attorney licensed in Arizona.

20 7. Attorneys can “claim” their profiles on Avvo by verifying their identity to
21 Avvo. Once an attorney has claimed their profile, they can add biographical details to
22 their profile, answer questions in Avvo question-and-answer forum, and post Legal
23 Guides to Avvo.

24 8. Avvo creates templates for “Legal Guides,” which are designed to be
25 consumer-oriented research materials for particular legal issues. Attorneys who have
26

1 “claimed” their Avvo profiles may post legal guides, for free, by logging into the Avvo
2 site and accessing the Legal Guide template page.

3 9. Although Avvo provides the template format and some general guidance to
4 attorneys on how to write Legal Guides that are accessible to lay audiences, the topic and
5 content of any given Legal Guide is chosen and written by the attorney. Once an attorney
6 has completed writing a Legal Guide, the attorney submits it for publication and the Legal
7 Guide is automatically published on Avvo’s site.

8 10. Through the use of tags and keywords, legal guides will be categorized into
9 particular topics and/or legal practice areas, and will appear on Avvo’s website on pages
10 with other Legal Guides pertaining to the same topic or practice area.

11 11. Avvo is not and has never been an agent of Ryan McMahon.

12 12. Avvo has never received notice of this action, the motion for stipulated
13 judgment, or the order on same. We were only informed about this action recently via
14 communication from a third party.

15 I declare under penalty of perjury under the laws of the United States of America
16 that the foregoing is true and correct, and that this Declaration was executed on this 22nd
17 day of June, 2017, in Seattle, Washington.

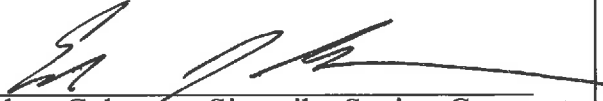
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21 Esther Gehrman Sirotnik, Senior Corporate
22 Counsel, Avvo, Inc.
23
24
25
26

EXHIBIT 2

1 **Jaburg & Wilk, P.C.**
2 3200 N. Central Avenue, 20th Floor
3 Phoenix, AZ 85012
4 602.248.1000

5 Maria Crimi Speth (012574)
6 mcs@jaburgwilk.com

7 **Public Citizen Litigation Group**
8 Paul Alan Levy (pro hac vice sought)
9 Patrick Llewellyn
10 1600 20th Street NW
11 Washington, D.C. 20009
12 202.588.7725
13 plevy@citizen.org

14 Attorneys for Defendant Avvo, Inc.

15 **SUPERIOR COURT OF ARIZONA**

16 **COUNTY OF MARICOPA**

17 MEGAN WELTER, an individual,

18 Plaintiff,

19 v.

20 JOHN and JANE DOES 1-10 are
21 fictitious persons who may have an
22 interest herein. ABC PARTNERSHIPS
23 1-10; XYZ CORPORATIONS 1-10 and
24 DEF LIMITED LIABILITY
25 COMPANIES 1-10,

26 Defendants;

Case No. CV2016-004734

**DECLARATION OF PAUL ALAN
LEVY IN SUPPORT OF DEFENDANT
AVVO'S MOTION TO VACATE
PRELIMINARY INJUNCTION**

I, Paul Alan Levy, declare as follows:

1. I am lead counsel for Avvo, Inc., in this case. The matters stated in this declaration are true of my own personal knowledge. If called as a witness, I could and would competently testify to these matters.

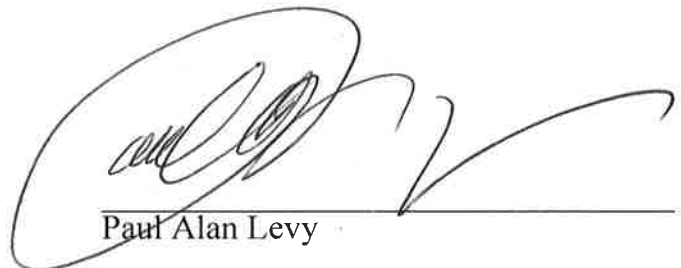
1 2. While I was preparing the brief for Avvo seeking to have the permanent
2 injunction in this case vacated, I received a series of unsolicited emails describing (and
3 attaching) exchanges between Ryan McMahon, the defendant in this case, and several
4 other individuals who had contacted him about the stipulation in this case bearing his
5 signature.

6 3. In these exchanges (some by email and some on Facebook messaging),
7 McMahon initially denied that he had placed his own signature on the various papers
8 submitted in his name; in later emails, McMahon claimed that he was unaware that the
9 stipulation included any implicit admission on his part that he had made false statements
10 to the police when they came in response to plaintiff Welter's call for help. A copy of
11 some of these exchanges is attached as Exhibit A.

12 4. I contacted plaintiff's counsel to inquire about the facts of this case. I
13 received a response from plaintiff's counsel Raeesabbas Mohamed, in the form of a reply
14 to one of the emails, asserting that he had spent two hours explaining the proposed
15 stipulation to McMahon, saying that he had exchanged many emails with McMahon and
16 arguing that Ryan McMahon's recent statements are not credible. I asked Mr. Mohamed
17 to provide a copy of those emails. He declined to provide them. I attach the email
18 exchange as Exhibit B.

19 5. I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct, and that this Declaration was executed on
21 this 21st day of June, 2017, in Washington DC.

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Paul Alan Levy

Paul Alan Levy

From: Volokh, Eugene <VOLOKH@law.ucla.edu>
Sent: Monday, June 12, 2017 4:59 PM
To: Paul Alan Levy
Subject: FW: Kelly/Warner Law Firm (Unethical practices)

From: McMahon, Ryan [mailto:RyanMcMahon@quickenloans.com]
Sent: Monday, June 12, 2017 1:20 PM
To: AGInfo@azag.gov
Cc: ryan.anderson@azag.gov; mia.garcia@azag.gov; support@usaherald.com; bradley.perry@staff.azbar.org; legalresponsecontact@gmail.com; Volokh, Eugene <VOLOKH@law.ucla.edu>
Subject: Kelly/Warner Law Firm (Unethical practices)

To whom it may concern

My name is Ryan McMahon and I have recently been contacted concerning possible legal violations with reference to a fraudulent signature as submitted by Kelly/Warner Law firm (kellywarnerlaw.com) located in Scottsdale Arizona. I have read the bellow articles and if what has been stated is correct I want to make it know that I have never, nor would I ever sign any statement contradicting what I have stated the night of the incident between myself and Megan Welter. With that said, that is my signature however I have never been contacted by the law firm Kelly/ Warner nor have I ever heard of them before being made aware of this by USA Herald over the weekend. Let me be clear one more time, that is my signature but I have never signed the legal document that has been listed in the article below.

I want to let you know that I do believe that Megan has made some mistakes and she has paid for them. I would be willing to help her take the articles off line however I will not if it means I would have to incriminate myself or lie about the events that night. I hope that the USA herald who I have CC take into account that she may have no knowledge of this and **especially** to remember that I (Ryan McMahon) have victim rights still concerning this. I want to remind them that my picture or any personal information not be published as it would violate those rights.

Concerning this case, I am more than willing to help bring these unethical lawyers to justice and will be willing to answer any questions and or help in anyway the Arizona State bar or Attorney General as they see fit. In closing even though I am not a lawyer I hold the profession in very high regard. I truly find it sick that this law firm has disgraced their legal duty to improve the law, the legal profession and to exemplify the legal profession's ideals of public service. People need to be able to trust the law and its servants so please do not let these ideals be tarnished and do not let this stand. To the legal team that will be prosecuting this case please let me know if there is anything I can help with.

Sincerely
Ryan McMahon

<http://usaherald.com/nfl-cheerleader-megan-welter-lawsuit-censor-media-contained-forged-signature/>

<http://usaherald.com/arizona-attorney-daniel-warner-investigation-alleged-legal-fraud/>

Quicken Loans
Engineered to Amaze

Levy Affidavit
Exhibit A

Ryan McMahon | Mortgage Banker
Direct: (480) 305-9841 | Toll Free: (800) 226-6308 x59841
Cell: (480) 709-6015 | Fax: (844) 835-8107 | NMLS# 1537155

HIGHEST IN CUSTOMER SATISFACTION IN THE U.S. - J.D. POWER



2010 2011 2012 2013 2014 2015 2016
Primary Mortgage Origination



2014 2015 2016
Mortgage Servicing

**"Highest in Customer Satisfaction for Primary Mortgage Origination,
Seven Years in a Row, and Mortgage Servicing, Three Years in a Row"**

Ryan McMahon + 📺 📞 ⚙️ ✕



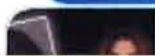
You and Ryan McMahon aren't connected on Facebook
Lives in Scottsdale, Arizona

TUE 7:18PM

Hi Ryan

This story just broke, I am a reporter that is covering it. I only have 1 question for you.

<http://usa Herald.com/law-firms-questionable-tactics-threaten-media-freedom/>



Law Firm's

Type a message...



Ryan McMahon + 📺 📞 ⚙️ ✕



Law Firm's Questionable Despite being ca...
usa Herald.com

Is the signature of yours on there real? Or was it a fake?

SAT 12:06AM

Ryan McMahon accepted your request.



Who do you work for, how can I verify your employment?

SAT 7:51PM

Type a message...



Ryan McMahon + 📺 📞 ⚙️ ✕

SAT 7:51PM

Hi



Who do you work for, how can I verify your employment?

I wanted to bring this to your attention as the story was in the Washington Post and USA Herald.



I'm very happy that you did. Thank you!

And the lawsuit has your

Type a message...



Ryan McMahon + 📺 📞 ⚙️ ✕

And the lawsuit has your signature on it if you read it, but this law firm has gotten into trouble for forging signatures in the past.

Only 2 questions, is it a forged signature? Which is what we thought it was.

And if not, why would you sign that? To help Weller?



Do you mind telling me Who do you work for, how can I verify your employment?

Type a message...



Ryan McMahon



We're covering the story on these attorneys.

I'm a contributor to a number of different publishers.

And the questions are not that personal, if you did sign it then there isn't much of a story here and I'm happy to discuss off the record.

No that's fine I'm sure you can imagine given the situation I've been contacted in the past by several people and sometimes it just got a little annoying so I

Type a message



Ryan McMahon



my life and have been contacted by the authorities as a credible threat.

And go ahead and email me right now at Support@USAHerald.com.

I totally understand. Go ahead and email me at Support@USAHerald.com right now a message and I'll verify it for you.

I'm handling the research for the story, it is getting covered by Jeff Watterson.

Type a message



Ryan McMahon



just wanted to know who it is that you work for and how I can verify it. Trust me once I know that you are not one of Megan's friends I have no problem telling you anything that you would like.



Oh ok no problem at all.

I work with USA Herald.

The girl is nuts seriously nuts. I've been contacted by the police because her mother once tried to put a hit out on my life and have been

Type a message



Ryan McMahon



With that said I never signed that ever. Not only that I will be contacting the Arizona bar in bringing it to their attention first thing Monday morning.

Yes!!!

Perfect.

Ok, I have the info for the person heading up the investigation. Hold on I'll get it for you.

I really do appreciate you bringing this to my attention

Type a message



Ryan McMahon



I really do appreciate you bringing this to my attention though.

Please cc Support@USAHerald.com.



That would be perfect

Bradley.Perry@staff.azbar.org

please cc Support@USAHerald.com



Type a message



Ryan McMahon



includes the AG.
Ryan.Anderson@azag.gov
Mia.Garcia@azag.gov
legalresponsecontact@gmail.com
VOLOKH@law.ucla.edu
Mark.Brnovich@azag.gov

That's great! Thank you!

hey not to cut this off but I'm in the middle of something and I need to focus. If you need anything in the future please reach out.



That's it Ryan, thank you

Type a message



Ryan McMahon



I give you my word that I will

I'm also going to give you the AG's office that we are working with on this. Please email them too on the string, plus the reporters involved.

So you're telling me that you never signed that and they forged your signature?

Ryan - here are the other people to add to cc, which includes the AG:

Ryan.Anderson@azag.gov

Type a message



Ryan McMahon



That's it Ryan, thank you.

What's your email address?

That's it, I'll email you from our USA Herald email if you need anything.

It will have my mobile number etc. on it. Thank you.

SUN 9:24PM

Hi Ryan, I have an update for you. Are you there?

SUN 11:23PM

Type a message



Ryan McMahon



SUN 9:24PM

Hi Ryan, I have an update for you. Are you there?

SUN 11:23PM



I am

1:50PM

Hi

Please confirm when you report this to the bar. Make sure you get in touch with Bradley Perry.



Ryan McMahon



1:50PM

Hi

Please confirm when you report this to the bar. Make sure you get in touch with Bradley Perry.

I'm going to send you an affidavit to sign as well. This is fraud, we feel so bad that you are going through this Ryan.

What's your telephone number and email? Please advise.

Seen 3:24pm



Paul Alan Levy

From: Raees Mohamed <raees@kellywarnerlaw.com>
Sent: Tuesday, June 13, 2017 6:59 PM
To: Paul Alan Levy
Cc: VOLOKH@law.ucla.edu
Subject: Re: Re Kelly/Warner Criminal Forgery - Ryan McMahon

(One "s", two "e"s, in "Raees". It's in all of my emails - FYI.)

Paul: Since you're threatening to "proceed", which I assume is publishing an article of some sort, let me remind you why I cannot send you any documents from my client's file -- a fact that any lawyer should be cognizant of. See below. BTW -- Is Ryan McMahon no longer cooperating with your "fact" source for any particular reason? That's interesting, because he obviously has the emails, too. Unfortunately, for now, that means you'll be relying on the words of Gorman and Rodrick.

Thanks for you time. Here's what you are asking for:

Rules of Professional Conduct

1. Client-Lawyer Relationship Related Opinions

ER 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c) or (d), or ER 3.3(a)(3).

(b) A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm.

(c) A lawyer may reveal the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime.

(d) A lawyer may reveal such information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(2) to mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(3) to secure legal advice about the lawyer's compliance with these Rules;

Levy Affidavit
Exhibit B

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with other law or a final order of a court or tribunal of competent jurisdiction directing the lawyer to disclose such information.

(6) to prevent reasonably certain death or substantial bodily harm.

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See ER 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The public is better protected if full and open communication by the client is encouraged than if it is inhibited. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality also applies in such situations where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[6] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Disclosure Adverse to Client

[7] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b) recognizes the overriding value of life and physical integrity, and requires the lawyer to make a disclosure in order to prevent homicide or serious bodily injury that the lawyer reasonably believes is intended by a client. In addition, under paragraph (c), the lawyer has discretion to make a disclosure of the client's intention to commit a crime and the information necessary to prevent it. It is very difficult for a lawyer to "know" when such unlawful purposes will actually be carried out, for the client may have a change of mind.

[8] Paragraph (c) permits the lawyer to reveal the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime. Paragraph (c) does not require the lawyer to reveal the intention of a client to commit wrongful conduct, but the lawyer may not counsel or assist a client in conduct the lawyer knows is criminal or fraudulent. See ER 1.2(d); see also ER 1.16 with respect to the lawyer's obligation or right to withdraw from the representation from the client in such circumstances. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct, in connection with this Rule, the lawyer may make inquiry within the organization as indicated in ER 1.13(b).

[9] The range of situations where disclosure is permitted by paragraph (d)(1) of the Rule is both broader and narrower than those encompassed by paragraph (c). Paragraph (c) permits disclosure only of a client's intent to commit a future crime, but is not limited to instances where the client seeks to use the lawyer's services in doing so. Paragraph (d)(1), on the other hand, applies to both crimes and frauds on the part of the client, and applies to both on-going conduct as well as that contemplated for the future. The instances in which paragraph (d)(1) would permit disclosure, however, are limited to those where the lawyer's services are or were involved, and where the resulting injury is to the financial interests or property of others. In addition to this Rule, a lawyer has a duty under ER 3.3 not to use false evidence.

[10] Paragraph (d)(2) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (d)(2) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[11] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing

information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (d)(3) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[12] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (d)(4) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[13] A lawyer entitled to a fee is permitted by paragraph (d)(4) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[14] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes ER 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by ER 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (d)(5) permits the lawyer to make such disclosures as are necessary to comply with the law.

[15] Paragraph (d)(5) also permits compliance with a court order requiring a lawyer to disclose information relating to a client's representation. If a lawyer is called as a witness to give testimony concerning a client or is otherwise ordered to reveal information relating to the client's representation, however, the lawyer must, absent informed consent of the client to do otherwise and except for permissive disclosure under paragraphs (c) or (d), assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by this Rule, the attorney-client privilege, the work product doctrine, or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal. See ER 1.4. Unless review is sought, however, paragraph (d)(5) permits the lawyer to comply with the court's order.

[16] In situations not covered by the mandatory disclosure requirements of paragraph (b), paragraph (d)(6) permits discretionary disclosure when the lawyer reasonably believes disclosure is necessary to prevent reasonably certain death or substantial bodily harm.

[17] Paragraph (d)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See ER 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only when there is a reasonable possibility that a new relationship might be established. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a

criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these ERs.

[18] Any information disclosed pursuant to paragraph (d)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (d)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (d)(7). Paragraph (d)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[19] Paragraph (d) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[20] Paragraph (d) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (d)(1) through (d)(5). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (d) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by this Rule. See ERs 1.2(d), 4.1(b), 8.1 and 8.3. ER 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See ER 3.3(b).

Withdrawal

[21] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in ER 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in ER 1.6. Neither this Rule nor ER 1.8(b) nor ER 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Acting Competently to Preserve Confidentiality

[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See ERs 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software

excessively difficult to use). A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to forgo security measures that would otherwise be required by this ER. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to the use of a means of communication that would otherwise be prohibited by this ER. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these ERs.

Former Client

[24] The duty of confidentiality continues after the client-lawyer relationship has terminated. See ER 1.9(c)(2). See ER 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

On Tue, Jun 13, 2017 at 3:21 PM, Paul Alan Levy <plevy@citizen.org> wrote:

Raess, are you going to send me those documents, or shall I proceed on the assumption that you have decided not to do so, representing that you cited the documents but then chose not to disclose them?

Paul Alan Levy

Public Citizen Litigation Group

1600 20th Street, NW

Washington, D.C. 20009

(202) 588-7725

<https://www.citizen.org/our-work/litigation/internet-free-speech>

Twitter: @paulalanlevy

Public Citizen Foundation participates in the Combined Federal Campaign with the CFC Code 11168

From: Raees Mohamed [mailto:raees@kellywarnerlaw.com]
Sent: Tuesday, June 13, 2017 4:27 PM
To: Paul Alan Levy
Cc: VOLOKH@law.ucla.edu
Subject: Re: Re Kelly/Warner Criminal Forgery - Ryan McMahon

Can you tell me why you want this information? Second, do you have a response to any of the information that I provided you with?

On Tue, Jun 13, 2017 at 12:59 PM, Paul Alan Levy <plevy@citizen.org> wrote:

I'd be grateful if you would send me the email chain between you and McMahon.

Paul Alan Levy

Public Citizen Litigation Group

1600 20th Street, NW

Washington, D.C. 20009

(202) 588-7725

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Twitter: @paulalanlevy

Public Citizen Foundation participates in the Combined Federal Campaign with the CFC Code 11168

From: Raees Mohamed [mailto:raees@kellywarnerlaw.com]
Sent: Tuesday, June 13, 2017 3:01 PM
To: Paul Alan Levy
Cc: VOLOKH@law.ucla.edu

Subject: Fwd: Re Kelly/Warner Criminal Forgery - Ryan McMahon

Mr. Levy,

I am not sure why you would be interested in supporting Richard Gorman (owner of the fake news site USAHerald.com) <http://kellywarnerlaw.com/alert-richard-andrew-gorman-aka-rich-gorman/> and Chuck Rodrick <http://kellywarnerlaw.com/alert-charles-chuck-rodrick-aka-charles-gilson/>. Both are convicted felons – Gorman of a sex crime, and Rodrick of a fraud scheme, in addition to operating sex offender (the irony) extortion websites. I am certain you've done your diligence on them. How is it that you endorse their behavior?

These characters' efforts to smear our firm are laughable – the latest rant is the icing on the cake, as you'll see.

As you know we're limited by our duty of confidentiality to our former/current clients. Accordingly, my comments will be limited to addressing the defendant's latest misrepresentations.

As to Ryan McMahon - Mr. McMahon has clearly lied a few times in less than 24 hours, and has already backtracked from his earlier statements. The fact remains that I personally met with Mr. McMahon for 2 hours, to go over the documents that he took 45 minutes to read and discuss, which he ultimately signed. He was well aware of what the documents said. He agreed to them, and even requested that his own name be added to the stipulation to de-index. Mr. McMahon had ample time to review the documents and take them to an attorney. I have over 20 emails documenting my interactions with McMahon. He also admitted in open court that he knew the contents of the documents he was signing and submitting in court.

The USAHerald (run by Gorman) first solicits Mr. McMahon on Facebook, and sends a link to the USAHerald's own fake news article to Defendant Ryan McMahon, with false information about McMahon's case. After reading the suggestions from USAHerald, that signatures were fake in his case too, McMahon replies on Facebook stating: **"With that said I never signed that ever.** [Lie# 1] Not only that I will contacting the Arizona bar in bringing it to their attention first thing Monday morning." Meaning, now that USAHerald is throwing mud at Kelly Warner and making accusations of wrong-doing, he'll jump on the band wagon too (i.e., "with that said"). His language is key here, so remember it. He continues the same conditional "if you're telling the truth-then I am too" sequence throughout his lies.

Let's review the credibility of Mr. McMahon's own statements over the last 24 hours:

The following statements are from his First Email on 6-12-17:

1. Not my signature... (As he claimed after reading Gorman's website, and in response to USAHerald's Facebook message).

a. Lie# 2: "I have read the bellow [sic] articles and **if what has been stated is correct** I want to make it know [sic] that **I have never, nor would I ever sign any statement contradicting what I have stated** the night of the incident between myself and Megan Welter." (emphasis added). See McMahon email dated 6-12-17.

Once again, *if* what USAHerald is saying in their articles about his signature is true, *then* he agrees with USAHerald, that it is not his signature. (Are you laughing yet?)

2. Wait that is my signature...

- a. Backtrack #1: "**With that said, that is my signature...**" (emphasis added).

Whoops. Clear backtracking by McMahon, now that he recalls signing the documents and that the documents irrefutably contain his signature. He's caught in a lie, so what did you expect? (Read below on his sudden epiphany).

- b. Backtrack #2 + Lie #3: "Again I need to be clear, **that is my signature** however I have never nor would I ever self-incriminate or lie concerning the incident between myself and Megan Welter." *Same 6-12-17 email from McMahon.*

- c. Backtrack# 3 + Lie# 4: "Let me be clear one more time, **that is my signature but I have never signed the legal document that has been listed in the article below.**"

The stipulations that McMahon agreed to contradict his statements to police the night of the incidence. Whoops. Realizing that he goofed in both, lying about his signature now, and lying about the events that night, McMahon is quick to claim that his statements to police on the night of the incidence are true, and that his signature is actually his, but that *he* didn't sign the documents. But he hasn't lied about this three times already, has he? No wonder he is now quite concerned about never telling a "lie" or "incriminating" himself.

3. Never been contacted by Kelly/Warner...never heard of them before USAHerald article...

- a. "...however I **have never been contacted by the law firm Kelly/ Warner** nor have I ever **heard of them before** being made aware of this by USA Herald over the weekend." *See same McMahon email dated 6-12-17.*

So while he now admits that the documents bear his signature, he now maintains that:

(1) Lie# 5: McMahon has never been contacted by Kelly/Warner.

(2) Lie #6: McMahon had never heard of Kelly/Warner, prior to receiving USAHerald's link about his case.

So I suppose that McMahon, Gorman, and Roderick will maintain that the approximately 20 emails about the documents he signed and multiple calls with McMahon, personal visit to McMahon's home to execute documents (with him emailing me directions to his home, and me documenting all of the details of this meeting), his appearance telephonically at a status conference (and emails leading up to it with him agreeing to appear after requesting a different time), were all folklore? Documentary evidence refutes his "never been contacted" "and never heard of them" statements. Surprised? McMahon is lying solely to be complicit with Gorman and Roderick, and has been caught. Despite **swearing** that he would never "self-incriminate or lie" or contradict himself, McMahon has lied no less then five times already. Do you see the pattern yet?

Statements from his Second Email on 6-12-17, after realizing that he's been caught in a lie, which documentary evidence (including his own emails) will prove:

"Wait that is my signature, and I am not lying..."

1. Backtrack #5 + Lie #7: "**Again I need to be clear, that is my signature however I have never nor would I ever self-incriminate or lie** concerning the incident between myself and Megan Welter."

Repeatedly, McMahon admits now, that it is his signature on the legal documents submitted to the court. But for some reason, McMahon seems especially concerned with incriminating himself and lying now – something that he has done no less than SEVEN TIMES, based on this own statements. McMahon realizes that he lied about his signature, and that he lied about the statements to the police.

2. Backtrack #6: "With that said **I was contacted by a lawyer last year that said his name was Raees Mohamed.**"

Whoops. Again, McMahon changes his story – first he never signed the docs, then he signed the docs but the signature was not actually his, then he never heard of Kelly Warner, and now he admits he spoke to Raees Mohamed, of Kelly Warner. There's a reason for his sudden epiphany (read below).

3. Backtrack #7 and Lie #8: "**So here in lies the problem....yes I did say that Megan should have every right to start over and did sign a document 'ONLY'** saying that I'm okay with the web sites coming down."

Now that McMahon realizes he has been caught (read below on why his epiphany occurs), he admits that he voluntarily signed a legal document, and that the legal documents stipulate to the removal of content that he created and/or assisted in publishing.

McMahon's realization could not be stated more clearly – "So here in lies the problem" – his problem is he's stuck in a pickle: (1) he admitted that he signed the documents *after* he lied and said he didn't; and therefore, (2) he realizes that he either *lied* to the police and news media about what actually happened or *lied* to Kelly Warner and the court. This is why he vehemently maintains, for no other reason, that he does not want to incriminate himself, and that he never lies ("never" now sounds like "always", doesn't it?).

Besides, why did McMahon readily stipulate to the removal of the websites if his story was entirely true, anyway? McMahon even requested that his name also be included in the removal stipulation, BTW.

4. Backtrack #8 and Lie #9: "If the documents say anything other than that then it is forged."

How convenient. This is yet another reflection of McMahon's regret that he's been caught in a lie.

5. Backtrack #9 and Lie #10: "Raees sent me an e-mail saying that the judge would like to ask me if it was okay to have those come down to which I agreed. If you listen to the transcripts I even said at the end something to the effect that 'Everyone should get a second chance and I hope she learns from this'.

This statement is peculiar. After all, McMahon previously stated that he: (1) didn't agree to any stipulation; (2) didn't sign anything; (3) "never mind", but he did and just not *that* legal document; (4) that he only agreed to what is not *contradictory* to his prior statements including statements he made to law enforcement (and pleads to believe he's not lying now); (5) that in fact, he agreed to his statements about plaintiff being removed from various websites; and (6) and that it was he that appeared telephonically and stated in court and on the record, that he willingly read and agreed to the stipulation that he now admits he signed (but only where it does not contradict his prior statements, of course).

6. Lie #11: "Did not give permission to the Kelly/warner law firm to use their office address to receive legal documents associated to this case."

We would have no reason to use our address, here. This was a specific request made by McMahon. He stated that he did not want his address to be made public record and associated with this case. He specifically requested that we include our office address in the line that he left open, after he signed the documents.

What Caused McMahon's Epiphany?

Between the time of his Facebook message to the Herald a few days ago, and his two separate emails sent on the same day (6/12), McMahon apparently had an epiphany. What caused it?

Simple: After receiving notice from Chuck that he was planning to create more fake news, I sent an email to McMahon, asking him the following question: "I received an email this morning stating that you are allegedly denying that you signed this stipulation attached. Is that true? Can you tell me what's going on?". This is the "harassment" he's referencing. My email was sent as a response to chain of approximately 9 emails with McMahon, which referenced his stipulation that he voluntarily signed and the telephonic conference with the court. Realizing the he was **caught lying red-handed** and stuck in a pickle, McMahon leaped from his prior statements about never signing anything, not knowing who Kelly Warner Law is, not stipulating to anything, etc. Hence his insistence, that he would "never lie" or "incriminate himself", despite doing exactly that, **about 11 times** between his FB messages and two emails.

Mr. Levy – I can appreciate an academic discussion about free speech vs. defamation (which are not mutually exclusive). Once this investigation with the State Bar has been resolved, I'd be happy to engage in such a discussion with you and/or Mr. Volokh on your website, the Post, or elsewhere. I am happy to meet in you DC (you'd pay for my trip) or in Scottsdale to accomplish the same. It would probably get more traction than these stories. But to endorse the lies of Gorman and Rodrick -- a disgruntled ex-defendant and a disgruntled ex-client, respectively, both felons -- doesn't make any sense. And I'm rather shocked that you and Mr. Volokh have repeatedly refused to wait until the investigation with the State Bar has been resolved before publishing your "hit pieces." You are both aware of the confidentiality issues, among our other ethical concerns as attorneys. Yet, you both appear to be exploiting our ethical confines. This is very troubling and seems unethical.

In any event, I am confident that the facts will surface. It's unfortunate, but in this particular instance, Gorman, Rodrick, and McMahon will suffer backlash and certain legal consequences, in due time. I am not sure that endorsing these folks is good for your credibility, now, or in the future.

Thanks,

Raees

----- Forwarded message -----

From: **Chuck Rodrick** <chuckrodrick@gmail.com>

Date: Sat, Jun 10, 2017 at 6:46 PM

Subject: Fwd: Re Kelly/Warner Criminal Forgery - Ryan McMahon

To: "Daniel R. Warner" <dan@kellywarnerlaw.com>, Aaron Kelly <aaron@kellywarnerlaw.com>, Rachel Eisner <rachel@kellywarnerlaw.com>, anne@kellywarnerlaw.com, raees@kellywarnerlaw.com, "Gibbs, Erin F. (PX) (FBI)" <erin.gibbs@ic.fbi.gov>, "Lawson, Todd" <Todd.Lawson@azag.gov>, "Snelders, Craig L. (PX) (FBI)" <craig.snelders@ic.fbi.gov>, michael.deleon@ic.fbi.gov, Bradley.Perry@staff.azbar.org, Rick.Debruhl@azbar.org, "Volokh, Eugene" <volokh@law.ucla.edu>, Mia.Garcia@azag.gov

Attorney Raees Mohamed

Do you have any comment on the most recent findings? If Ryan did not sign the court documents discussed do you really thing the FTR of the hearing with judge HONORABLE PATRICIA ANN STARR will actually be Ryans voice? We will be in possession of the public hearing soon and we will find out who was actually on the phone with the judge.

As UCLA Professor Eugene Volokh and the media has indicated there are many other cases uncovered including false notarization's and fake defendants in multiple cases throughout the United States some of which relate directly to me.

The best course of action I think is to comment and even come forward one way or another about what really occurred and to contact one of the persons copied on this email and simply tell the truth of exactly what happened and who's idea it was.

I can not help but think that the discussions with "Barri Grossman" and Special Agent Erin Gibbs may be similar in nature and should be looked into in depth as perhaps Special Agent FBI Erin Gibbs may in fact have been duped into providing the 14th letter in yet another civil matter based on "Emails and Phone Calls"

Charles Rodrick

----- Forwarded message -----

From: **Jeff Watterson** <support@usaherald.com>

Date: Sat, Jun 10, 2017 at 5:32 PM

Subject: Re Kelly/Warner Criminal Forgery - Ryan McMahon

To: Mark.Brnovich@azag.gov, Bradley Perry <Bradley.Perry@staff.azbar.org>

Cc: Ryan.Anderson@azag.gov, Mia.Garcia@azag.gov, legalresponsecontact@gmail.com, VOLOKH@law.ucla.edu

Dear Bradley,

It's to my understanding that you are currently heading up the investigation into Attorney Aaron Kelly & Attorney Daniel Warner's multi-state filing of lawsuits with fake defendants, forged signatures, and fake notarizations.

I'd like to bring to your attention that tonight we learned that Ryan McMahon confirmed with us that his signature was forged on this lawsuit, resulting in a another fraudulent order in your state: <http://usaherald.com/law-firms-questionable-tactics-threaten-media-freedom/>.

I've attached Ryan's confirmation on this email (with his permission) and have cc'ed Washington Post Contributor Eugene Volokh, whom originally reported on this story here https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/04/18/another-trick-to-try-to-get-mainstream-media-articles-deindexed-by-google/?utm_term=.5fd315ed875c.

Additionally, I've cc'ed AG Mark Brnovich along with members of his staff.

Please investigate accordingly. Thank you.

All The Best,

Jeff Watterson

Story Advancement Team

T: 917-677-5797

E: Support@USAHerald.com

USAHerald.com – We Make Stories Go Viral

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Raesabbas Mohamed, Esq.

PARTNER

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