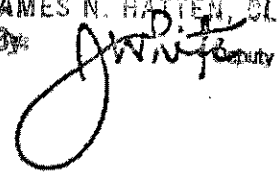


FEB 22 2011

JAMES N. HATTEN, CLERK  
By:  Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GREGORY D. EVANS, LIGATT  
SECURITY INTERNATIONAL, INC.,  
and SPOOFEM.COM USA INC.,

Plaintiffs,

vs.

JOHN DOES 1-8,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION FILE

NO. 1:11-CV-00458-WSD

FILED UNDER SEAL

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION FOR TEMPORARY RESTRINGING  
ORDER AND PRELIMINARY INJUNCTION**

Pursuant to the Court's request of February 18, 2011, Plaintiffs Gregory D. Evans, LIGATT Security International, Inc. and Spooferem.com USA, Inc. ("Plaintiffs") states follows:

**ARGUMENT AND CITATION OF AUTHORITIES**

On February 18, 2011, this Court requested that Plaintiffs supplement their memorandum of law in support of their motion to address the following specific questions:

- Q.1 What authority is there for a District Court to enter a Temporary Restraining Order ("TRO") against defendants that are not identified and are unknown?

- Q.2 What authority is there for a District Court to enter a TRO against persons who are not parties to the lawsuit and are not given the opportunity to appear?
- Q.3 Whether the allegations in the complaint are sufficient for the court to exercise personal jurisdiction over each of the defendants?

The answers to each of these questions, which support a finding that Plaintiffs' motion for temporary restraining order should be granted, appear below.

**I. THIS COURT MAY ENTER A TEMPORARY RESTRAINING ORDER AGAINST THE JOHN DOES IN THE COMPLAINT.**

A District Court has authority to enter a temporary restraining order ("TRO") against defendants who are not identified and unknown at the time the TRO is sought. *See, e.g. Brockum Co. v. Various John Does*, 685 F. Supp. 476 (E.D. Pa. May 19, 1988); *Joel v. Various John Does*, 499 F. Supp. 791 (E.D. Wis. 1980). Although some courts have denied injunctions in such cases, many courts have granted the injunction even though the identity of the defendants were unknown. *See Rock Tours, Ltd., v. Various John Does*, 507 F. Supp. 63, 66 (N.D. Ala. 1981)("the lack of actual defendants has apparently not posed an insurmountable barrier to preliminary injunctive relief in at least sixteen similar federal district court cases...")(citing cases).

The facts in *Joel* are similar to the facts in the case *sub judice*. The plaintiffs in *Joel* moved the court for the issuance of an ex parte TRO prohibiting certain unnamed persons from selling merchandise bearing the entertainer Billy Joel's name or likeness.

The Court recognized the issues associated with “enjoin[ing] the activities of persons whose identities [we]re unknown at the time,” but ultimately granted the requested injunction. 499 F. Supp. at 792. In doing so, the Court relied on the plaintiffs’ demonstration that they were faced with irreparable harm if the injunction was not issued, and that they had a strong likelihood of success on the merits. *Id.* The Court also explained that “[w]hile the proposed remedy is novel, that in itself should not weigh against its adoption by this court. A court of equity is free to fashion whatever remedy will adequately protect the rights of the parties before it.” *Id.*

The reasoning in *Joel* applies with equal force to the facts of this case. Indeed, like the plaintiffs in *Joel*, Plaintiffs have demonstrated (1) that they are faced with irreparable harm if their motion is denied; (2) that they have strong likelihood of success on the merits; and, importantly, (3) they are without any (meaningful) means of preventing Defendants’ unlawful conduct and the resulting damages. For these reasons, along with those included in Plaintiffs’ opening memorandum, this Court should grant Plaintiffs’ TRO.

**II. THIS COURT MAY ENTER A TEMPORARY RESTRAINING ORDER AGAINST NON-PARTIES TO THE INSTANT MATTER.**

In certain circumstances, a Court may issue an injunction against a non-party. *See United States v. New York Telephone, Co.*, 434 U.S. 159, 98 S.Ct. 364 (1977)(upholding a non-party injunction explaining that “[t]he power conferred by the [All Writs] Act

extends, under appropriate circumstances, to persons who, though not parties to the original action ..., are in a position to frustrate [or facilitate] the implementation of a court order or the proper administration of justice"); *U.S. Commodity Futures Trading Com'n v. Amaranth Advisors, LLC*, 523 F.Supp.2d 328, 335 (S.D.N.Y.,2007)(explaining that a court's authority to issue an injunction under the All Writs Act "is not limited by Rule 65(d), which restricts the scope of injunctions to parties and persons in their control or in collaboration with them..."); *Andrews v. Andrews*, 160 Fed.Appx. 798, 800, 2005 WL 3551173, 1 (10th Cir. 2005)(noting that "the non-party status of an injunction's target may thus no longer be a conclusive impediment" to issuing an injunction).

"If a court finds an injunction 'necessary and appropriate,' the All-Writs Act empowers the court to enjoin and bind non-parties to an action when needed to preserve the court's ability to reach or enforce its decision in a case over which it has proper jurisdiction." *U.S. Commodity Futures*, 523 F. Supp.2d at 335 (citing *In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2nd Cir. 1985)).

Plaintiffs recognize that this recourse is extreme. However, it is necessary and appropriate. As detailed throughout Plaintiffs' opening brief and Complaint, Defendants have repeatedly demonstrated their willingness to openly defy authority. To date, Plaintiffs have received no assurances from Defendants that their conduct will

change or cease, even under threat of litigation. In the meantime, Plaintiffs fear that they will continue to suffer irreparable injury.

To be clear, Plaintiffs' grave concern is not unfounded. Defendants have shown a propensity for being brash and have apparently been emboldened by the anonymity afforded them by the Internet. *See, e.g.*, Composite Exhibit C at Twitter Post ## 74 ("Servers are physically located in Brazil and its Russian owned. Eat it Greg.") 107 ("Looks like we have something to share") 109 ("Meanwhile, we are pouring though [sic] volumes of documents and scanning. We will have a data dump for you all soon. Stay Tuned."). In other extreme cases, albeit distinguished as to the specific circumstances, Courts have crafted orders directed at third-party registrars. *Chanel, Inc. v. Krispin*, 08-23439-CIV-MORENO/TORRES, 2010 U.S. Dist. LEXIS 123458, at \*13-15 (S.D. Fla. 2010) (ordering that registrar transfer domain names as part of sanctions order).

### **III. PLAINTIFFS' COMPLAINT ALLEGES A SUFFICIENT FACTUAL BASIS TO SUPPORT PERSONAL JURISDICTION AGAINST DEFENDANTS.**

In its request to Plaintiffs regarding the third question presented herein, the Court provided *American Girl, LLC v. Nameview, Inc.*, 381 F. Supp. 2d 876, 880-81 (E.D. Wisc. 2005) as an exemplary case for analysis. That case, however, undertook a general jurisdictional analysis in a case dealing with "trademark infringement, unfair competition and trademark dilution and that defendants have committed

'typosquatting' in violation of the Anticybersquatting Consumer Protection Act ("ACPA")." *Id.* at 878. A more recent case, *Tamburo, v. Dworking*, addresses the jurisdictional question from a more applicable analytical framework under *Calder's* "effects test." *See Tamburo v. Dworking*, 601 F.3d 693 (2009). Accordingly, we discuss herein the jurisdictional question under the holding in *Tamburo* and similar cases.

### **Standard for Establishing Jurisdiction**

The general framework for determining personal jurisdiction under state long arm statutes is well established. *Global Payments Direct, Inc. v. Amerian Bank of Commerce*, No. 105CV0747JOF, 2006 WL 269967 at \* 2 (N.D.Ga. 2006). A federal court must have both statutory and constitutional authority to assert jurisdiction over a defendant. *Id.* In the event that the court determines that a jurisdiction's long-arm statute is coterminous with constitutional due process, the jurisdictional analysis is properly limited to whether constitutional due process is satisfied. *Id.*

The Georgia Long Arm Statute provides, in pertinent part, that jurisdiction may be exercised upon any nonresident as if they were a resident of the State of Georgia if they, in person or through an agent:

- (1) Transacts any business within this state;
- (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;
- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-

feason regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state; [or]  
(4) Owns, uses, or possesses any real property situated within this state.

O.C.G.A. §9-10-91.

To support the exercise of specific jurisdiction, the defendant's contacts must directly relate to the challenged conduct or transaction. *Tamburo*, 601 F.3d at 702. Specific personal jurisdiction is appropriate where (1) the defendant has purposefully directed his activities at the forum state or purposefully availed himself of the privilege of conducting business in that state, (2) that alleged injury arises out of the defendant's forum-related activities, and (3) the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. *Id.*

As guided by the court's analysis in *Tambro*, it is clear both that: 1) this Court has *in personam* jurisdiction over the John Doe Defendants named in Plaintiffs' Complaint; and 2) that Plaintiffs have alleged sufficient facts in their Complaint for the Court to exercise personal jurisdiction over each of the Defendants.

**1. The Allegations in the Complaint Satisfy the Georgia Long Arm Statute.**

As an initial matter, there appears to be considerable debate about whether the Georgia Long Arm Statute permits the exercise of jurisdiction so long as it comports

with Constitutional due process.<sup>1</sup> As demonstrated below, there can be little dispute that the Complaint alleges sufficient facts to satisfy Constitutional due process. This Court need not resolve the foregoing debate, however, as Plaintiffs can satisfy Georgia's Long Arm Statute and Constitutional due process.

Although Plaintiffs were unable to find controlling authority directly on point, relevant case law and the Long Arm statute itself supports Plaintiffs' contentions. Specifically, in finding jurisdiction in similar cases, Georgia courts have noted that "Georgia courts have interpreted [O.C.G.A. §9-10-91] subsection (2) broadly to permit actions in Georgia against nonresidents whose torts outside of the state cause injury within the state." *See Georgia Gulf Corp. v. Ward*, 701 F.Supp. 1556, 1561 (N.D. Ga. 1987). Indeed, it is not necessary that the defendant or his agent be physically within the forum, for an act or transaction by mail may suffice. *Psychological Resources Support Systems, Inc. v. Gerleman*, 624 F.Supp. 483, 485 (N.D. Ga. 1985); *Innovative Clinical & Cons. Serv., LLC v. First national Bank of Ames*, 279 Ga. 672, 675 (nothing in the Statute's subsection "requires the physical presence of the nonresident in Georgia or minimizes the import of a nonresident's intangible contacts with the State).

---

<sup>1</sup> Compare *Diamond Crystal Brands, Inc., v. Food Movers Int'l, Inc.* 593 F.3d 1249, 1254 (11th Cir. 2010) (Georgia long-arm statute is not coextensive with procedural due process); with *Lowdon Pty Ltd. v. Westminster Ceramics, LLC*, 534 F.Supp.2d 1354 (N.D. Ga., 2008), *Imagineline, Inc. v. Fotolia, LLC*, 663 F.Supp.2d 1367, 1372-73 (N.D. Ga. 2009) and *Global Payments Direct, Inc., v. American Bank Of Commerce*, No. Civ.A. 105CV0747JOF, 2006 WL 269967 \*2 n.2 (N.D. Ga. 2006) ("the Georgia Supreme Court recently put the issue to rest in ruling that the scope of the long-arm statute is coterminous with due process").



Here, Plaintiffs have alleged that Defendant John Doe 1 has tortiously accessed Plaintiffs' servers and computers, among other things, in Georgia and that the other Defendants conspired with John Doe 1 to perpetrate John Doe 1's tortious scheme and received directly from John Doe 1 data and information stolen by John Doe 1 (Compl. at ¶¶37-41, 83-85)<sup>2</sup>. Any doubt that Defendants' conduct was intended to cause harm to Plaintiffs, companies and individuals residing in the State of Georgia, is dispensed by the Defendants willingness to implement and execute their scheme "clandestine[ly]" as requested by John Doe 1 (Compl. at Ex. B), John Doe 1's declaration that Mr. Greg Evans "must be stopped by any means necessary" (Compl. at Ex. B), John Doe 2's public encouragement of others to access and distribution Plaintiffs' confidential information (Compl. at Ex. C) and the volume of the information distributed by Defendants (Compl. at Exs. B-G). Because Plaintiffs' principal place of business is Georgia, injury to Plaintiffs' personal and business reputations, along with other damage, are felt in Georgia. *See also, Nissan Motor Co., Ltd. v. Nissan Computer Corp*, 89 F. Supp. 2d. 1154 (CD. Cal. 2000) (a corporation suffers the harm of an extra-forum intentional tort in the corporation's home state).

In a similar case, *Licciardello v. Lovelady*, the Eleventh Circuit found that the long arm statute was satisfied and personal jurisdiction was proper. 544 F.3d 1280 (11th Cir.

---

<sup>2</sup> Under the theory of conspiracy jurisdiction, the in-state acts of a resident co-conspirator may be imputed to a nonresident co-conspirator so as to satisfy the specific contact requirements of the Long Arm Statute. *Hyperdynamics Corp. v. Southridge Capital Mgmt. LLC*, 305 Ga.App. 283, 293-94 (Ga. App. 2010).

2008). Although the *Licciardello* court analyzed Florida's long arm statute, the operative language of the statute was identical to the language in the Georgia's statute<sup>3</sup> and the court's analysis and reasoning is instructive. There, the court held that the creation in Tennessee of a website containing an allegedly infringing trademark is a tortious act "within [the] state [of Florida]" because the statute permitted jurisdiction over the nonresident defendant who commits a tort outside of the state that causes injury inside the state. *Id.* at 1283-84. As noted above, Georgia's jurisprudence likewise allows for jurisdiction over a nonresident who commits a tort outside of Georgia that causes injury therein. Accordingly, Georgia's long arm statute should be satisfied under O.C.G.A. §9-10-91 subsection 2.

Alternatively, such conduct minimally constitutes "tortious injury in [Georgia]" (e.g., Plaintiffs' loss of business reputation and web site; damage to Plaintiffs' server, Compl. at ¶¶26, 31, 40-44) caused by acts "outside of the state" (e.g., downloading and posting, Compl. at ¶¶6,40-41 ) by one who "engages in any other persistent course of conduct [in Georgia]" (e.g., continually posting information and communications aimed at Plaintiffs Compl. at Ex. C-G).

---

<sup>3</sup> Florida's long arm statute permits a Florida court to assert jurisdiction over any person who "commit[s] a tortious act within this state." *Licciardello*, 544 F.3d at 1283.

**2. The Allegations in the Complaint Satisfy the *Calder* Effects Test.**

As noted by the Seventh Circuit in court in *Tamburo v. Dworkin*, “*Calder* speaks directly to personal jurisdiction in intentional-tort cases; the principles articulated there can be applied to cases involving tortious conduct committed over the Internet.” 601 F.3d 693, 703 n.7 (7th Cir. 2010). The *Tamburo* Court’s application of *Calder* is directly applicable here.

**i. Purposeful Direction**

In the context of a intentional tort claim, the “purposeful direction” prong of the *Calder* test has three requirements for personal jurisdiction: 1) intentional conduct (or “intentionally and allegedly tortious conduct”); 2) expressly aimed at the forum state; and 3) with the defendant’s knowledge that the effects would be felt—that is, that plaintiff would be injured—in the forum state. *Id.* at 703. Like the plaintiff in *Tamburo*, Plaintiffs allege that the individual defendants intentionally posted Plaintiffs’ materials to the Internet, that this interfered with his business and that Defendants entered into a conspiracy to commit these wrongful acts against Plaintiffs. Compare *Id.* at 704 with Compl. at ¶¶45-85. As “[t]hese are intentional-tort allegations,” this case is brought “squarely within the *Calder* formula even if the scope of the inquiry is more narrowly focused on the alleged tortious acts.” *Tamburo*, 601 F.3d at 704.

The *Tamburo* court's reasoning with respect to "express aiming" and "knowledge that plaintiff would be injured in the forum state" also holds true in this case. In reaching its conclusion, the Court noted that the case "involve[d] both a forum-state injury and tortious conduct specifically directed at the forum, making the forum state the focal point of the tort—at least with respect to the individual defendants." *Id.* at 706. By definition, and as detailed throughout the Complaint, the hacking maneuver conducted against Plaintiffs was an orchestrated attack directed at Plaintiffs in the State of Georgia. Defendants' own admission establish as much. See Exhibits B (apologizing to "innocent bystanders" and stating that "[Gregory Evans] must be stopped at all costs") and C ("Keep Leaking" post), F at p.3 ("just in case you were wondering where Greg Evans lives, here's his lease agreement"). Like the Defendants in *Tamburo*, who encouraged others to boycott *Tamburo's* products, the Defendants here have done the same. *Tamburo*, 601 F.3d at 704; see e.g., Exh. B ("To the partners and directors of Gregory Evans' many companies: shame on you . . . following a crooked man . . . [g]et out while you still can."). Thus, in both cases, "although they acted from points outside the forum state, these defendants specifically aimed their tortious conduct at [Plaintiffs] and [their] business[es] in [Georgia and] Illinois with the knowledge that [they] loved, worked and would suffer the 'brunt of the injury' there." *Id.*

The fact that Defendants comments were circulated more broadly over the Internet cannot help them here. Like the *Tamburo* defendants, Defendants purposely targeted Plaintiffs and their business in Georgia with the express goal of inflicting commercial and reputational harm on them there, “even though their alleged defamatory and otherwise tortious statements were circulated more diffusely across the Internet. *Id* at 707.

**ii. The Alleged Injury Arises Out of Defendants’ Forum-Related Activities**

As discussed above, Defendants expressly aimed their tortious conduct at Plaintiffs and their Georgia-based business for the purpose of causing them injury there. Indeed, there can be little genuine doubt that Defendants intended to embarrass and humiliate Plaintiffs and cause them injury and financial hardship. *Id.* at 709

**iii. Traditional Notions of Fair Play and Substantial Justice**

This final prong in the *Calder* analysis favors Plaintiffs. In this case, the Georgia Plaintiffs, injured by the intentional misconduct of a nonresident expressly aimed at the Georgia plaintiff, is not required to travel to the nonresident's state of residence to obtain a remedy. *Id.* at 709-10. Indeed, Georgia has a strong interest in providing a forum for its residents and local businesses to seek redress for tort injures suffered within the state and inflicted by out-of-state actors. *Id.* Moreover, because Defendants

have chosen to perpetuate their acts openly, but under pseudonyms and aliases, they did not leave Plaintiffs much of a choice even if it desired to sue Defendants in their forum state, which they do not. And even if Plaintiffs did know Defendants' identifies, a single suit in Georgia also promotes the most efficient resolution of these claims. *Id.*

Accordingly, this Court has ample factual and legal basis to find jurisdiction in this case. *See Tamburo v. Dworking*, 601 F.3d 693 (2009) (jurisdiction exists over non-resident); *Licciardello v. Lovelady*, 544 F.3d 1280 (11th Cir. 2008) (same).

### CONCLUSION

For all of the foregoing reasons, and those contained in Plaintiffs' initial Memorandum of Law, Plaintiffs respectfully request that this Court grant is Motion for Temporary Restraining Order and Preliminary Injunctive Relief against Defendants as set forth more fully in Plaintiffs' previously-filed Motion.

**LR 7.1.D., NDGa CERTIFICATION**

The undersigned counsel for Plaintiffs state and certify that the foregoing brief has been prepared with one of the font and point selections approved by the court in LR 5.1B.



---

D. TENNELL LOCKETT  
Georgia Bar No. 455547

TOWNSEND LOCKETT & MILFORT, LLC  
1401 Peachtree Street  
Atlanta, Georgia 30309  
Telephone:(404) 870-8501  
Fax: (404) 870-8502

Attorneys for Plaintiffs Gregory D. Evans,  
LIGATT Security International, Inc. and  
Spoofem.com USA Inc.

Respectfully submitted this 22<sup>nd</sup> day of February, 2011.



---

D. TENNELL LOCKETT  
Georgia Bar No. 455547

TOWNSEND LOCKETT & MILFORT, LLC  
1401 Peachtree Street  
Atlanta, Georgia 30309  
Telephone: (404) 870-8501  
Fax: (404) 870-8502

Attorneys for Plaintiffs Gregory D. Evans,  
LIGATT Security International, Inc. and  
Spoofer.com USA Inc.