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9 *sued as George Dikian*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 VPN.COM LLC,
13 *Plaintiff,*
14 vs.
15 GEORGE DIKIAN et al.
16 *Defendants.*

CASE NO. 2:22-cv-04453-AB-MAR

**EX PARTE APPLICATION FOR
TEMPORARY EMERGENCY ORDER**

17 Pursuant to Local Rules 7-19 and 7-19.1, and this court’s Standing Order,
18 Defendant sued as George Dikian hereby requests a temporary emergency order
19 requiring Plaintiff to refrain from filing any amended complaint or other document
20 which names the real identity of the Defendant in this matter, or from otherwise
21 disclosing RPI’s true identity publicly, until such time as the court has ruled on
22 Defendant’s Motion to Proceed under Pseudonym. Defendant shall file that
23 Motion by Friday July 21, for a regularly noticed hearing.

24 By phone call at 2 p.m. PDT today and email at 2:04 p.m. PDT today,
25 Plaintiff’s counsel stated that Plaintiff intends to oppose this Application (*see also*
26 *infra*, #14, 19). Per Local Rule 7-19.1, Plaintiff’s counsel is Michael Cilento,
27 Lewis & Lin LLC, 77 Sands Street, 6th Floor, Brooklyn, NY 11201. Mr. Cilento’s

1 direct phone number is 347-404-5844, and his email address is
2 michael@ilawco.com.

3 In support of this Application, Defendant states as follows:

- 4 1. On June 29, 2022, Plaintiff filed the operative Complaint in this matter,
5 naming George Dikian, Qiang Du¹ and John Doe as Defendants. (Dkt.
6 No.1).
- 7 2. The Complaint alleges that “Defendants used, *inter alia*, the reputation of
8 Dikian, a well-known domain name investor and reseller, as well as a ...
9 website that posed as an escrow service, as the linchpins of their scheme to
10 convince [Plaintiff] VPN that VPN was brokering legitimate transactions
11 between Dikian and Du.” (*Id.*, #2).
- 12 3. In fact, Dikian is a professional alias and pseudonym that has been used by a
13 defendant real party in interest (hereinafter “RPI”) for some 25 years, in
14 order to protect RPI’s privacy and property, as RPI is the owner of many
15 extremely valuable domain name properties. Those properties include all of
16 the domain names listed in the Complaint, including 89.com which Plaintiff
17 valued at \$4.4 million (*Id.*, #24), and a list of 95 numeric domains which
18 Plaintiff valued at \$12.5 million (*Id.*, #39-40 and Annex A). RPI also owns
19 many other valuable domain name properties not mentioned in the
20 Complaint.
- 21 4. Plaintiff has known the real identity of Defendant RPI since at least as early
22 as December 15, 2022, when Plaintiff sent a third-party subpoena seeking
23 information about RPI, using RPI’s real name.

24
25
26 ¹ Plaintiff voluntarily dismissed Qiang Du as a defendant on December 22, 2022.
27 (Dkt., No. 35). Plaintiff has not sought leave to amend the Complaint within the
28 time allowed by the court’s scheduling orders, despite the parties’ stipulation and
the court’s prior order extending -- by more than two months -- the time for
Plaintiff to seek leave to amend the Complaint. (Dkt., No. 45).

- 1 5. Defendant RPI also signed RPI's real name upon the sworn Verification of
2 RPI's Responses to Plaintiff's First Set of Interrogatories, wherein RPI's real
3 identity was stated in response to Interrogatory #1.
- 4 6. Defendant RPI also has produced a copy of RPI's driver's license to
5 Plaintiff's counsel, in response to Plaintiff's First Set of Requests for
6 Production.
- 7 7. Plaintiff has sent at least seven third-party subpoenas seeking confidential
8 information about RPI, including to Microsoft, Yahoo!, RPI's domain name
9 registrar (Tucows), and RPI's domain escrow service (Escrow.com). All
10 companies responded, and the Escrow.com subpoena response included a
11 copy of RPI's former Nevada driver's license.
- 12 8. Based on the foregoing, it is clear that Plaintiff has known RPI's true
13 identity for at least eight months, and that Plaintiff has had no difficulty
14 obtaining evidence relating to RPI's true identity, both from RPI and from
15 reputable third parties.
- 16 9. The parties negotiated and the court has entered a Protective Order "to
17 adequately protect information the parties are entitled to keep confidential."
18 (Dkt., No. 43, Sec. II.A).
- 19 10. Defendant RPI maintains that RPI is entitled to keep its true identity
20 confidential, in order to maintain RPI's longstanding professional alias and
21 pseudonym which have been used privately and reputably in the domain
22 name industry for more than 20 years in effort to protect RPI's privacy and
23 property. Indeed, in this case, two expert witnesses have confirmed that
24 RPI's Yahoo! Mail account listed in public WHOIS records
25 (g.dikian@yahoo.com) was hacked into by a criminal that logged into that
26 account from European service providers, in order to perpetrate the alleged
27 fraud on Plaintiff. This proves that RPI's valuable domain name properties
28 are a target of criminals, and that the extra layer of protection provided by

1 RPI's alias helped to keep the criminals away from stealing those properties
2 from RPI directly.

3 11. RPI will explain this further, and will provide the expert reports and a sworn
4 Declaration to the court in support of RPI's Motion to Proceed under
5 Pseudonym, which will be filed no later than Friday, July 21, 2023.

6 12. In this Application, RPI only seeks an emergency, temporary order requiring
7 Plaintiff to refrain from filing any amended complaint or other document
8 which names the real identity of the Defendant in this matter, or from
9 otherwise disclosing RPI's true identity publicly, until such time as the court
10 has ruled on the aforesaid Motion.

11 13. In email yesterday and today, Plaintiff's counsel has threatened to file an *ex*
12 *parte* application "this week" for leave to file an amended complaint to,
13 among other things, name the true identity of Dikian and RPI, and also to
14 delay the trial schedule.

15 14. RPI's counsel has offered to stipulate to filing of the amended complaint,
16 provided that RPI's identity is not disclosed therein, and no new claims are
17 added at this late date.² RPI's counsel has provided Ninth Circuit case
18 authority and preliminary argument for maintaining RPI's privacy, and has
19 received no counter-argument or authority from Plaintiff's counsel.

20 Specifically, undersigned counsel emailed Plaintiff's counsel yesterday and
21 stated in part:

22
23 Ninth Circuit case law allows a party to proceed through litigation
24 under a pseudonym "when the party's need for anonymity outweighs
25 prejudice to the opposing party and the public's interest in knowing
26 the party's identity." *Does I thru XXIII v. Advanced Textile Corp.*, [214 F.3d 1058, 1067-68](#) (9th Cir. 2000). Here, our client has used that

27 ² Plaintiff's counsel yesterday indicated that Plaintiff no longer seeks to add any
28 new claim, and so this issue of RPI's true identity appears to be the only point of
contention about the proposed amendments.

1 alias for more than 20 years in effort to protect [] valuable domain
2 assets and [] personal safety. The fact that criminals have targeted
3 [RPI] and those assets starkly proves why [RPI] needs to take such
4 measures. VPN has not argued, and can not argue, that it is
5 prejudiced at all in the litigation. Indeed they sued Dikian, you and
6 your client know [RPI's] real identity through confidential
7 information produced in the litigation, and you have not had any
8 problems getting any discovery from our client or from third parties
9 about our client.

10 As for the public interest, it is not strong in this case. *See, e.g., Doe v.*
11 *Mozer*, No. 2:16-cv-00210-KJD-VCF, at *2 (D. Nev. June 24,
12 2016) (“prejudice against the public's interest in knowing the party's
13 true name is insignificant. Party anonymity does not obstruct the
14 public's view of the issues or the Court's performance in resolving
15 them.”). There is no legitimate reason why our client's alias should be
16 destroyed, and you have not made any such argument to date.

17 As this appears to be our only area of remaining disagreement as to
18 the case schedule and the pleadings, we again suggest that we
19 stipulate to the schedule that we have agreed to, and to your other
20 proposed amendments (once we see them...). And if your client still
21 insists on wanting to reveal our client's real name, then we propose to
22 file a motion this week to proceed under the pseudonym. In the event
23 the court denies that motion, then your client would be allowed
24 another amendment at that time.

25 I am available to meet and confer further about these issues this week.

26 15.RPI maintains that there would be no prejudice to Plaintiff whatsoever if
27 RPI is allowed to proceed in this matter under RPI's pseudonym, as Plaintiff
28 sued RPI's alias name George Dikian, and Plaintiff has proceeded through
more than one year of litigation and discovery already, without any problem
or prejudice.

16.RPI further maintains that Plaintiff's sole reason to “out” RPI's true identity
is to harass RPI, as no other reason has even been alleged by Plaintiff for
doing so.

1 17.RPI further maintains that such disclosure would breach the terms of the
2 Protective Order.

3 18.RPI further maintains that there is no public interest in revealing RPI’s real
4 name, as RPI is not a public figure. RPI has been operating privately in the
5 domain name industry, under the George Dikian alias, for some 25 years
6 without complaint.

7 19.Nevertheless, in Plaintiff’s counsel’s own words in reply email this morning,
8 “the time for you to move for a protective order is ‘long passed.’ [RPI] will
9 be named this week. [RPI] should prepare ... for that.”

10 20.There can be no material prejudice to Plaintiff if this application is granted.
11 The requested order will only maintain the *status quo* until the court can rule
12 on a fully briefed motion.

13 21.Therefore, RPI requests the court to enter a temporary emergency order
14 requiring Plaintiff to refrain from filing any amended complaint or other
15 document which names the real identity of Defendant RPI, and from
16 otherwise disclosing RPI’s true identity publicly, until such time as the court
17 has ruled on RPI’s Motion to Proceed under Pseudonym.

18 22.In accord with Local Rule 7-19, a proposed *ex parte* order is lodged
19 herewith.

20 RESPECTFULLY SUBMITTED,

21
22 DATED: JULY 18, 2023

RODENBAUGH LAW

23
24 By: /s/ Mike Rodenbaugh
25 Mike Rodenbaugh (SBN 179059)

26 *Attorneys for Defendant*
27 *sued as George Dikian*