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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

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

Case No: 2:22-cv-04453-AB-MAR

**RESPONSE IN OPPOSITION TO
DEFENDANT DIKIAN'S
EMERGENCY EX-PARTE
APPLICATION FOR A TRO**

[Declaration of Michael D. Cilento, Esq. and
exhibits submitted herewith]

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Introduction

Plaintiff VPN.COM LLC (“VPN”), through undersigned counsel, submits this Response in Opposition to Defendant Dikian’s emergency ex-parte application seeking a temporary restraining order preventing VPN from filing a first amended complaint to correctly identify and name Defendant “Dikian.” Defendant has waited nearly a year to bring this request to the Court, which belies the necessity for any emergency relief – VPN could have filed a motion to amend the complaint naming Dikian’s true identity at any point. The fact that VPN did not do so yet, for reasons explained below, does not create an emergency warranting the grant of a temporary restraining order. Nor has Defendant provided any good reason why he should be allowed to proceed in this case anonymously or pseudonymously, nor demonstrated why this is an unusual case warranting such relief.

Background

1. VPN initiated this action after VPN was unambiguously defrauded in connection with two domain name sale transactions.
2. VPN sued “George Dikian,” because that was believed to be the identity of the individual that committed the fraud.

1 3. After more of VPN’s own, early investigation, it was suspected
2 that “George Dikian” may in fact be a fake identity. VPN also discovered an
3 individual that it believed could be the true identity of “George Dikian,” but
4 VPN could not fully confirm this.

5 4. Defendant Dikian, and his counsel, for their part, refused to
6 confirm, either formally or informally, the true identity of Defendant Dikian for
7 nearly a year after the case commenced.

8 5. Only after *several* threats of a motion to compel, the first being via
9 letter on February 3, 2023, *see* **Exhibit A** to the Cilento Dec. attached hereto,
10 and after more evidence came in that pointed to the true identity, did “George
11 Dikian” finally on May 8, 2023, disclose his true identity to VPN.

12 6. Undersigned counsel also informed Dikian’s counsel several times
13 that if Dikian wished to attempt to proceed in the action anonymously, he
14 should file a formal motion with the Court. This was also stated as early as
15 February 3, 2023, in **Exhibit A**. Dikian never moved for a protective order.

16 7. Even before Dikian would confirm his true identity, however, VPN
17 informed Dikian via email on April 26, 2023, that VPN would like to meet and
18 confer regarding a planned motion for leave to file an amended complaint in the
19 action to, *inter alia*, name the identity that VPN strongly believed was Dikian’s
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1 true identity, and to add in certain other allegations, including that of a previous
2 victim of Dikian. *See* **Exhibit B**.¹

3 8. In this April 26 meet-and-confer email, VPN sent Dikian a
4 redlined proposed amended complaint that VPN intended to file. *See id.* After
5 receiving the proposed amended complaint, Dikian specifically asked VPN
6 through email from counsel to hold off on filing the amended complaint until
7 after the mediation scheduled for June 30, 2023, as it would make the chances
8 of a successful mediation greatly increase. *See* **Exhibit C**.

9 9. VPN agreed to hold off on filing the motion to amend, and the
10 parties submitted a stipulation to extend the amended pleadings case deadline to
11 July 28, 2023, and other certain deadlines were extended, and the Court So
12 Ordered the stipulation on May 3, 2023. *See* ECF 45.

13 10. Unfortunately, the parties could not settle at the mediation.
14 However, at Dikian's explicit request at the mediation and through an email
15 from counsel for Dikian, the parties scheduled and held follow-up talks to see if
16 a resolution could be possible. *See, e.g.,* ECF 48, Mediation Report (reporting
17 that follow-up talks were being scheduled).

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19 ¹ VPN has redacted Dikian's true identity in the Exhibits, in order to allow this Court to
20 meaningfully rule on the current application.

1 11. Unfortunately, those talks too were unsuccessful, and did not
2 conclude until the last conversation between the parties via phone on July 14,
3 2023.

4 12. During the time from the mediation through to the conclusion of
5 the further talks (*i.e.*, from June 30 – July 14), the parties, through counsel, had
6 been negotiating a stipulation to extend case deadlines, including the time to
7 hear a motion to amend pleadings, since VPN had again agreed to hold off on
8 filing the motion to amend until the talks concluded.

9 13. On July 10, 2023, counsel had a formal meet and confer call on
10 several issues, including the need to stipulate to extend certain case deadlines,
11 including the deadline for motions to amend pleadings. Undersigned counsel
12 sent a memorialization email of this meet and confer call to Dikian’s counsel.
13 *See* **Exhibit D**.

14 14. However, on the night of July 12, 2023, essentially a day before
15 the settlement talks fully broke down on July 14, Dikian’s counsel sent an email
16 withdrawing consent to extend the deadline for an amended pleadings hearing
17 date, and informed undersigned counsel that the time to confer on a motion to
18 amend pleadings is “long passed.” *See* **Exhibit E**.

1 19. Dikian’s only two arguments to do so are that (i) Dikian has used a
2 long-standing fake identity wrongfully to conduct business, violate ICANN
3 rules, and defraud people, and (ii) Dikian has a few million dollars’ worth of
4 “valuable assets.” Neither of these arguments warrants allowing Dikian to
5 proceed anonymously.

6 20. As a preliminary matter, there is no urgency supporting the grant
7 of a temporary restraining order. This case has been ongoing for over a year. If
8 maintaining the secrecy of Dikian’s identity was truly an emergency, then
9 Dikian should have moved for a protective order long ago. Counsel for VPN
10 encouraged Dikian to do just that, but Dikian chose not to take any steps
11 towards shielding his identity – until now.

12 21. Additionally, the Ninth Circuit has made clear that use of a
13 pseudonym should only be permitted occasionally and in “unusual” cases.
14 *United States v. Stoterau*, 524 F.3d 988, 1012 (9th Cir. 2008) (“As a general
15 rule, the identity of the parties ... should not be concealed except in an unusual
16 case, where there is a need for the cloak of anonymity.”) (internal citation and
17 quotation marks omitted).

18 22. Here, there is no reason for Dikian to remain pseudonymous. The
19 application states that Dikian has been “targeted by criminals,” but Dikian’s
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1 presents no evidence of this, and other evidence points strongly to Dikian being
2 the criminal with multiple victims. Dikian has not provided any police report,
3 any complaint to an email service provider, any lawsuit, any contemporaneous
4 steps taken to investigate the alleged criminality he is now claiming he has
5 experienced. – nothing that could show he has actually been targeted by
6 criminals at all, let alone to a point where it would require proceeding
7 anonymously.

8 23. Nor has Dikian provided any evidence of potential future harm or
9 retaliation. Severity of the potential threatened harm to the movant is one of the
10 most important factors in determining whether to allow a litigant to proceed
11 anonymously. *See Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596
12 F.3d 1036, 1043 (9th Cir. 2010). Here, there is nothing to suggest any
13 threatened harm, let alone severe harm – and certainly no greater harm than *any*
14 *other litigant* accused of fraud.

15 24. As to the “expert reports” that Dikian claims he will use to
16 somehow either exonerate him or show he’s been the target of criminality –
17 they will not show either. Suffice it to say for now that the expert reports Dikian
18 has produced in this action are deeply flawed in methodology, technique, and
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1 substance, such that they are likely to be excluded by this Court on VPN’s
2 planned *Daubert* motions.

3 25. In any event, there is no logical reason why the Court should
4 consider evidence for likelihood of success on the merits of the underlying
5 claims in determining whether a party should proceed anonymously, and the
6 expert reports have nothing to do with future, threatened harm. In fact, as
7 Dikian alleges now, he was targeted while he was using the fake identity
8 “George Dikian” not his real identity.

9 26. Dikian’s other argument – that he should be allowed to proceed
10 anonymously because he has “valuable assets” – is not something that the Court
11 should even entertain. If anyone who has “valuable assets” could proceed in
12 litigation anonymously, that would completely undermine the fairness of the
13 justice system.

14 27. On the other hand, if Dikian were allowed to proceed
15 anonymously, VPN and the public would both be severely prejudiced. First,
16 VPN needs to name Defendant by his correct name in order for VPN to be able
17 to properly litigate the case, including by being able to secure a judgment
18 against the real identity of Dikian. “George Dikian” is a fake identity, and
19 securing a judgment against it is of no value.

1 28. Second, the public has a right to know Dikian’s true identity. The
2 allegations in the Complaint sound in fraud. Dikian has been using a fake
3 identity, and has multiple, documented victims, in part *because* of the use of the
4 fake identity. The public deserves to know who the actual person is behind this
5 fake identity and behind these frauds. It will also help to prevent Dikian from
6 being able to defraud others in the future, and help prevent others from falling
7 victim to scams using the Dikian identity

8 29. Even under Dikian’s version of the case, Dikian’s defense boils
9 down largely to an argument that he was grossly negligent in allowing his
10 fictitious identity be used to scam multiple victims out of hundreds of thousands
11 of dollars– even well after he was allegedly aware that such scams were being
12 perpetrated under his name. Even if that were true, which the evidence seriously
13 belies, the public is entitled to know Dikian’s real identity so that others can
14 decide – based on as much transparency as possible – whether and on what
15 terms to transact with ”Dikian.”

16 **Conclusion**

17 30. VPN needs to amend its Complaint to properly name Dikian’s true
18 identity, as well as to add additional allegations gleaned from discovery,
19 including allegations regarding other victims of Dikian.

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