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6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 JOHN DOE,)

10 Plaintiff,)

11 v.)

12 BORDERLAND BEAT, BLOGGER.COM,)
13 GOOGLE LLC, EL SIGLO DE TORREON,)
NOVENTO GRADOS, CODIGO ROJO)
14 NOTICIAS, INFOBAE, EL MANANA,)
15 REPORTE NIVEL UNO, OMNI, VALOR)
16 NOTICIAS PV NAYARIT, VANGUARDIA,)
and ROES 1-50, INCLUSIVE,)

17 Defendants.)
18)
19)

Case No.: 4:20-cv-06822-JD

DEFENDANT ROE 1's MOTION FOR
LEAVE TO FILE A MOTION FOR
RECONSIDERATION OF THIS
COURT'S "TERMINATION" OF THE
MOTION TO VACATE AS "MOOT"

Judge: The Hon. James Donato

Filed Herewith:

[Proposed] Order

MOTION

1 TO PLAINTIFF JOHN DOE AND HIS COUNSEL OF RECORD: PLEASE TAKE NOTICE
2 that defendant Roe 1 (“Roe”) hereby request the Court under Federal Rule of Civil Procedure 54(b)
3 and Local Rule 7-9 to place the Motion to Vacate [DE 31 (under seal) back on calendar for hearing, or
4 in the alternative, for leave to file a formal motion to reconsider the decision whereby this Court
5 “terminated” that Motion to Vacate as “moot.”
6

7 This request is made on the ground that the Pseudonym Order remains in place and is therefore
8 not “moot,” and that this Court’s “termination” of the motion constituted a “manifest failure by the
9 Court to consider material facts or dispositive legal arguments which were presented to the Court
10 before such interlocutory order.” (L.R. 7-9(a)(3)).

MEMORANDUM OF POINTS AND AUTHORITIES

11 Borderland Beat, and all remaining defendants in this case, are media entities, against whom
12 Plaintiff Doe has sought monetary and injunctive relief arising from those entities reporting on him.
13 Complaint [DE 1]
14

15 Doe sought an order *ex parte*, [DE 3], which this Court [Magistrate Judge Wetmore] granted,
16 [DE 6] that prohibits these media entities from publishing the identity of Doe, the person who has
17 sued them (“Pseudonym Order”). The identity of the person who is suing them is information that
18 was known to the defendants and Borderland Beat from the circumstances; it was not disclosed
19 pursuant to a protective order.

20 Roe filed a motion to vacate the Pseudonym Order [DE 28 (setting hearing) DE 31 under
21 seal)], arguing that the Pseudonym Order, under the circumstances, constitutes an unconstitutional
22 prior restraint on speech, which Doe obtained in an *ex parte* proceeding, and that this Court had never
23 had an opportunity to consider the full factual record or First Amendment arguments in issuing the
24 Pseudonym Order. DE 31 (under seal) at 9-15 (redacted version at DE 35-5).

25 The Motion to Vacate was filed concurrently with, and referenced, an Anti-SLAPP motion that
26 argued that the very premise underlying the Pseudonym Order – that defendants had done something
27 “illegal” by publishing information that Doe himself had placed into the public docket of another
28

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1 court, which information was later sealed by order of that Court –was erroneous. DE 31 (under seal)
2 at 12-14; [Redacted version at DE 35-9]; see also Motion to Vacate at 12.

3 In response to the Motion to Vacate and the Anti-SLAPP motion, Doe filed a request to
4 dismiss the case against Roes 1-25 (the “Borderland Beat Defendants) without prejudice. DE 30.
5 This Court on June 1 dismissed the case against the Borderland Beat defendants, and issued an order
6 that “terminated” the Motion to Vacate as “moot,” and cancelled the pending case management
7 conference.

8 As a result, this Court *never ruled on, or even considered, the merits* of the Motion to Vacate.
9 Indeed, Plaintiff Doe never filed an opposition brief.

10 But the Motion to Vacate is *not moot*, because the Pseudonym Order remains in effect, and
11 continues to bind Roe.

12 The undersigned counsel has communicated repeatedly with Doe’s counsel who, on the one
13 hand, refuses to stipulate that the Pseudonym Order no longer binds the Borderland Beat defendants,
14 and on the other hand, refuses to stipulate that the Motion to Vacate may be placed back on this
15 Court’s calendar.

16 Under the unusual procedural circumstances, it is not clear that the “leave to file” requirement
17 of Local Rule 7-9 is applicable. Roe is not necessarily requesting leave to file a separate motion to
18 “reconsider” the denial of the Motion to Vacate in the conventional sense, because this Court has
19 never “considered” the Motion to Vacate *in the first place*.

20 Roe respectfully requests simply that this Court place the Motion to Vacate *back on calendar*
21 for a hearing, on such date as would give Doe sufficient time to draft an opposition thereto under
22 Local Rules 7-2 and 7-3.

23 Alternatively, Roe respectfully asks leave to file a formal motion to reconsider this Court’s
24 “termination” of the Motion to Vacate.

25 Dated: June 23, 2021

_____/s/_____
Joshua Koltun
Attorney for Defendant Roe 1