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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DMYTRO KOVALENKO,

Plaintiff(s),

v.

EPIK HOLDINGS INC et al,

Defendant(s).

CASE NO. 2:22-cv-01578-TL

ORDER

This matter is before the Court on Plaintiff Dmytro Kovalenko’s motion for preliminary injunction and temporary restraining order (the “Motion”). Dkt. No. 2. Having considered the relevant record and finding oral argument on the motion for temporary restraining order (“TRO”) unnecessary, *see* LCR 7(b)(4), 65(b)(3), the Court hereby (1) declines to issue a TRO and DENIES in part the Motion without prejudice; and (2) DEFERS RULING on the remainder of the Motion pending service on Defendants and a potential hearing on the request for a preliminary injunction.

## I. BACKGROUND

1  
2 This action arises out of Plaintiff’s action for defamation and invasion of privacy against  
3 Defendants Epik Holdings, Inc. and Anonymize, Inc. Dkt. No. 1 ¶¶ 20–32. Plaintiff is a  
4 Ukrainian businessman engaged in international trading of coal products. *Id.* ¶ 6. In January  
5 2022, a website called 368.media published an article representing that, in part, Plaintiff was  
6 involved in illegal schemes to ship coal into Ukraine with the assistance of corrupt Russian and  
7 Ukrainian officers, earning profit margins that resulted in the overpayment for coal and  
8 electricity by consumers. *Id.* ¶¶ 10–12. 368.media removed the article at the request of Plaintiff’s  
9 counsel. *Id.* ¶ 12. In the same month, another website, [www.weeklynewsreview.com](http://www.weeklynewsreview.com), also  
10 published the article. *Id.* Plaintiff was able to secure a court order in Cyprus directing that the  
11 second article be deleted, which was subsequently completed. *Id.*

12 On or around January 29, 2022, yet another website, [www.warsawpoint.com](http://www.warsawpoint.com), published  
13 the article (the “Third Article”). *Id.* ¶ 10. Plaintiff’s counsel emailed the website on January 29,  
14 demanding that it remove the Third Article. *Id.* ¶ 13. The following day, Plaintiff’s counsel  
15 received a response containing a link to an encrypted and self-destructing message, which  
16 demanded a payment of 0.1 bitcoin for the removal of the Third Article. *Id.* ¶¶ 14–15. While  
17 Plaintiff has not been able to identify the owner of [www.warsawpoint.com](http://www.warsawpoint.com), Plaintiff believes that  
18 Defendant Epik owns the domain for the website, that Defendant Anonymize provides services  
19 to protect the identity of the website’s owner, and that the two Defendants jointly operate the  
20 website. *Id.* ¶ 17.

21 On September 23, 2022, Plaintiff’s counsel emailed Epik and Anonymize demanding the  
22 immediate removal of the Third Article and stating that the January 30 message constituted  
23 unlawful blackmail. *Id.* ¶ 18. On September 26, a Customer Success Representative responded to  
24 the email by instructing that abuse complaints to Epik should be submitted to a different channel,

1 and the Customer Success Representative further notified Plaintiff’s counsel that the “ticket” had  
2 been marked as resolved. *Id.* ¶ 19. Plaintiff’s counsel never received a response from  
3 Anonymize. *Id.*

4 Plaintiff filed this action on November 4. *Id.* at 10. Plaintiff also filed the Motion, seeking  
5 a TRO and preliminary injunction to enjoin Defendants to remove the Third Article. Dkt. No. 2  
6 at 1. Plaintiff requests oral argument and an expedited hearing. *Id.* Summons was issued later the  
7 same day (Dkt. No. 5), and no Defendant appears to have been served or have appeared in this  
8 action.

## 9 II. DISCUSSION

10 A TRO, as with any preliminary injunctive relief, is an extraordinary remedy that is  
11 “never awarded as of right.” *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24  
12 (2008); *see also Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.  
13 2001) (noting the analysis for a TRO and a preliminary injunction are substantially identical),  
14 *overruled on other grounds by Winter*, 555 U.S. 7.

15 Importantly, given that the U.S. federal jurisprudence “runs counter to the notion of court  
16 action taken before reasonable notice and an opportunity to be heard has been granted both sides  
17 of a dispute . . . , courts have recognized very few circumstances justifying the issuance of  
18 an *ex parte* TRO.” *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006)  
19 (quoting *Granny Goose Foods, Inc. Teamster*, 415 U.S. 423, 438–39 (1974)). In line with this  
20 principle, Federal Rule of Civil Procedure 65 provides that:

21 (a)(1) **Notice.** The court may issue a preliminary injunction only on  
22 notice to the adverse party.

23 . . .

1 (b)(1) *Issuing Without Notice*. The court may issue a temporary  
2 restraining order without written or oral notice to the adverse party  
or its attorney only if:

3 (A) specific facts in an affidavit or a verified complaint  
4 clearly show that immediate and irreparable injury, loss, or  
5 damage will result to the movant *before* the adverse party  
6 can be heard in opposition; and

7 (B) the movant’s attorney certifies in writing any efforts  
8 made to give notice and the reasons why it should not be  
9 required.

10 (emphasis added).

11 Local Civil Rule (“LCR”) 65 of this District also provides that:

12 (b)(1) *Issuance Without Notice Disfavored*. Motions for temporary  
13 restraining orders without notice to and an opportunity to be heard  
14 by the adverse party are disfavored and will rarely be granted.  
15 Unless the requirements of Fed. R. Civ. P. 65(b) for issuance  
16 without notice are satisfied, the moving party must serve all  
17 motion papers on the opposing party, by electronic means if  
18 available, before or contemporaneously with the filing of the  
19 motion and include a certificate of service with the motion. The  
20 motion must also include contact information for the opposing  
21 party’s counsel or for an unrepresented party.

22 . . .

23 (b)(5) Unless the court orders otherwise, the adverse party must  
24 (1) file a notice indicating whether it plans to oppose the motion  
within twenty-four hours after service of the motion, and (2) file its  
response, if any, within forty-eight hours after the motion is  
served. . . . If the movant meets the requirements of Fed. R. Civ. P.  
65(b), the court may grant the motion without awaiting a response.

19 In short, the Court cannot grant Plaintiff’s request for a TRO without either adequate  
20 notice to Defendants or an adequate basis for issuing an *ex parte* TRO before Defendants can be  
21 heard. *See, e.g., Gale Force Nine LLC v. Wizards of the Coast LLC*, No. C20-1700, 2020 WL  
22 6817684, at \*2 (W.D. Wash. Nov. 19, 2020) (denying TRO because plaintiff “failed to meet the  
23 requirements for a TRO without notice”), *report and recommendation adopted by* 2020 WL  
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1 6927606 (Nov. 20, 2020). Plaintiff has failed to make the requisite showing of either element.  
2 Accordingly, the Court denies Plaintiff's request for a TRO.

3 First, Plaintiff shows no evidence that any notice was provided to Defendants. This action  
4 was filed on November 4, 2022, along with the Motion, and summons was issued later that same  
5 day. *See* Dkt. Nos. 1, 2, 5. The Motion, and its supporting documents, contain no representation,  
6 evidence, or even mention of notice to Defendants, which should have occurred "before or  
7 contemporaneously with the filing of the motion," LCR 65(b)(1), or why such notice could not  
8 have been provided. No Defendant has appeared in the action, and there is no other evidence of  
9 any Defendant's awareness of this action, much less the Motion.

10 Second, Plaintiff fails to justify this lack of notice. Plaintiff's counsel has not "certifie[d]  
11 in writing any efforts made to give notice and the reasons why it should not be required," Fed. R.  
12 Civ. P. 65(b)(1)(B), and the Court finds no such justification from the record upon review.  
13 Importantly, there is no evidence of any *immediate* injury that Plaintiff will suffer *before*  
14 Defendants can be provided notice. *See id.* 65(b)(1). Indeed, Plaintiff learned of the Third  
15 Article's existence in late January 2022 (Dkt. No. 3 ¶ 4), emailed the website publishing the  
16 Third Article on January 29, and received a response the following day (*id.* ¶¶ 8–9). Plaintiff  
17 then waited over nine months to file this action and the Motion, seeking a TRO from this Court.  
18 Plaintiff explains that "various events, including the Russian invasion of Ukraine, have delayed  
19 his ability to move for injunctive relief," and that he prioritized the impact of the invasion on his  
20 family, friends, and colleagues over "his own personal agenda." Dkt. No. 2 at 9–10. While the  
21 Court appreciates and does not intend to minimize the disruption and impact that the invasion  
22 has had on Plaintiff's life, Plaintiff's own nine-month delay nonetheless demonstrates that there  
23 is no danger of *immediate* injury sufficient to justify an *ex parte* TRO here. At most, Plaintiff  
24

1 only alleges a continuation of injuries he has already suffered, or a speculative injury of an  
2 immediate loss of business or potential clients. This is not sufficient.


3 While the Court is sympathetic to Plaintiff's plight and concerned about the January 30,  
4 2022 demand (Dkt. No. 1 at 5–6), Plaintiff has not shown that he has provided Defendants with  
5 adequate notice and opportunity to respond, nor that he is entitled to an *ex parte* TRO without  
6 notice. Plaintiff's request for a TRO is therefore denied without prejudice. However, the Court is  
7 prepared to consider Plaintiff's request for a preliminary injunction once Defendants are  
8 provided with adequate notice and opportunity to respond. The Court will schedule a hearing on  
9 the request for a preliminary injunction, if needed, at a later date.

10 **III. CONCLUSION**

11 Accordingly, Plaintiff's Motion (Dkt. No. 2) is DENIED without prejudice to the extent  
12 that it seeks a TRO. The Court DEFERS RULING on the remainder of the Motion, to the extent that  
13 it seeks a preliminary injunction, pending proper notice to Defendants and a potential hearing.

14 The Clerk is DIRECTED to re-note the Motion for **December 2, 2022**, pursuant to LCR  
15 7(d)(3).

16 Dated this 7th day of November 2022.

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19 Tana Lin  
20 United States District Judge  
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