LINDEN LAW FIRM, LLC
A New Jersey Limited Liability Company
By: Ari D. Linden, Esquire (ID # 003072005)
2 Kings Highway West
Suite 204
Haddonfield, NJ 08033
Telephone: 856-427-6100
ari@linden-law.com
Attorney for Defendants

WILLIAM SIEGLE, Plaintiff, v. LARRY MARTIN, JR. and MICHAEL SNAPP Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BURLINGTON COUNTY CIVIL ACTION DOCKET NO.: BUR-L-2674-18 **DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION**

STATEMENT OF FACTS

The Defendants herein, Larry Martin, Jr. and Michael Snapp, have brought this Motion for Reconsideration in response to the Plaintiff, William Siegle, obtaining a preliminary injunction, despite the fact that he failed to make the requisite showing to obtain this extraordinary relief in direct violation of the Defendants' First Amendment rights and the Court's failure to consider these rights when granting the temporary (January 9, 2019) and ultimately the ongoing/permanent restraints (January 15, 2019). It is axiomatic that, in order to obtain injunctive relief, Plaintiff would have to demonstrate a reasonable probability of ultimate success on the claims asserted in the Verified Complaint, which is predicated here on allegedly libellous or defamatory statements made by the Defendants.

Whether the focus is on either Defamation (which requires publication of a false and defamatory statement concerning another) or Tortious Interference (which requires a showing of wrongful conduct and malice), Plaintiff must show, in addition to all of the other elements required by Crowe v. De Gioia, 90 N.J. 126, (1982), that the Defendants made some false, wrongful statement.

Plaintiff's application fails to establish that even a single statement made by the Defendants was false; instead, the Plaintiff merely concludes that the Defendants were defamatory without providing factual support. To illustrate, Plaintiff's Verified Complaint alleges that "the websites created by the Defendants contained false/defamatory statements that the Defendants knew to be false," yet the Plaintiff does not, in either the Complaint, the Brief, or any other supporting document, establish or frankly even point to any statement which is false or defamatory nor does the Plaintiff provide any other information to establish defamatory content. (See Complaint, ¶34) Similarly, though Plaintiff needs to establish wrongful conduct, malice and that he actually lost defined business as a result of Defendant's actions, the Verified Complaint merely alleges that unspecified family members, friends and employees contacted Plaintiff after seeing the website. He further alleges that undefined "business relationships as well as potential business relationships have been terminated as a result of the above-referenced websites." (See Complaint, ¶22)

Although the conclusory allegations made within the Verified Complaint may satisfy notice pleading, Plaintiff's application falls woefully short of the standard necessary to obtain injunctive relief. To show a probability of success on the merits, Plaintiff would, at a minimum, have to first inform the court of what specific statements

were defamatory, then produce additional information to establish the falsity of the statements, and identify with specificity the prospective contracts lost as a result of Defendants' malice, which the Plaintiff would also have to establish with undisputed facts. Plaintiff has done none of that, dooming his application under the standard required to obtain an injunction. Yet even if the Plaintiff were somehow able to overcome all of the issues with the quantum of information supplied with his application, the substantive law establishes beyond doubt that an injunction should never have issued when lost business is weighed against First Amendment rights.

As the Plaintiff's counsel made abundantly clear during the oral argument seeking the initial temporary restraints, Plaintiff sought nothing less than a prior restraint on the Defendants' First Amendment rights. When describing why temporary restraints were necessary, Plaintiff's counsel argued, "The – the gist of the temporary restraints are to have a website that was created by the defendants shut down, as the website is tortiously interfering with the potential business contacts of my client." (Tr1-9, p. 5) Accordingly, there can be no reasonable dispute as to what Plaintiff sought to obtain – a prior restraint on Plaintiff's First Amendment rights, prior to any adjudication that Defendants had done anything defamatory. Although prior restraints, in general, constitute extraordinary relief requiring clear and convincing proof prior, restraints on speech are nearly unheard of within our jurisprudence. Yet these restraints are precisely what the Court entered, on a meagre record devoid of proof and undisputed factual support (Tr1-15, p. 10). In the Court's own words, "Well, temporary restraint, we're just talking about a few things. We have to have an actual hearing then with testimony…" (Tr1-0, p.14). In fact, the second "hearing" did not in fact contain testimony and the Defendants at that point (and to date)

have not yet had any opportunity to file any document or attend/participate in any hearing prior to this submission which in and of itself should provide sufficient basis for reconsideration, let alone the clear violation of the peremptory violation of their First Amendment Rights.

As will be described in greater detail below, the material facts that are undisputed establish precisely why those temporary restraints should not have been entered. It is undisputed that the Plaintiff, who resides next door to the Defendants, threw two rocks at Defendants' home and that one went through their dining room window and another bent the window frame in the front of Defendants' home. It is undisputed that the Defendants neighbour captured the unprovoked attack on video which was turned over to the police. It is undisputed that a second neighbour witnessed the attack first hand. It is undisputed that the Defendants contacted the police, and reported the matter and it is undisputed that the Evesham Township Police charged the Plaintiff with Criminal Mischief – a case that remains pending. It is undisputed that the Plaintiff would videotape the Defendants as they entered and left their home, without reason, justification or excuse. Finally, it is undisputed that the Defendants purchased the domain names www.williamsiegle.com and www.billsiegle.com and posted all of this factually accurate and undisputed information. (See Exhibit "A" to Plaintiff's Brief in Support of Order to Show Cause) In short, the Defendants have done nothing more than compile information and place the information on a website.

Defendants' right to publish factually accurate information about the manner within which Plaintiff attacked their home is undeniably protected by the First Amendment. Although Defendants may have no Constitutional right to publish

information that is clearly false, Plaintiff has been unable to establish that any statement contained in the website was defamatory, libellous, incorrect, or even inaccurate. Frankly, the website contains links/copies of actual police reports and video evidence, nothing in the form of an opinion is even expressed. Every single fact published on the website attached as Exhibit "A" to Plaintiff's filing involved either information within the public sphere or occurrences where the Defendants were direct participants with personal knowledge of the events. Yet the undeniable fact remains that, under the First Amendment jurisprudence of both New Jersey and the Federal systems, *even if the Defendants' website was potentially libellous, injunctive relief is inappropriate.* Despite the substantial and consistent body of State and Federal law establishing that a prior restraint on speech, even libellous speech, is unconstitutional, Plaintiff has failed to cite even a single case to this effect. Oddly, Plaintiff seeks to maintain the status quo, failing to realize that the status quo at the time Plaintiff filed his application included the Defendants' assertion of their First Amendment rights.

The temporary restraints in the present case need to be lifted for two overarching reasons. First, Plaintiff has failed to meet the heavy burden of establishing the right to an injunction by clear and convincing evidence, since there has been no proof of irreparable harm, a probability of success on the merits, a settled legal right or anything close to a balancing of the equities. It shocks the conscience that Plaintiff had the audacity to throw a rock through the Defendants' window, in full view of the public, and then complain when the Defendants publicize a video of the attack and the subsequent police response to the attack. If Plaintiff has suffered professionally because people refuse to do business with someone that would act in such a manner, then Plaintiff himself is the sole

proximate cause of that harm. Second, the Court failed to take into account the fact the Plaintiff's application sought a prior restraint on speech, presumably because Plaintiff failed to bring to the Courts attention the substantial body of law demonstrating that he simply is not entitled to the relief sought. This Court should take note of the matters and controlling decisions that it overlooked when imposing the temporary restraints and grant the Motion for Reconsideration.

Further, Defendants were not provided any opportunity to argue against the restraints imposed. There were two (2) "hearings" conducted, both by telephone and neither with the Defendants' counsel having so much as filed a Notice of Appearance on the docket, let alone any substantive filings or even an Answer to the underlying Complaint. This is the first submission made by the Defendants which provides for the error necessary to allow for reconsideration in addition to the restraints placed upon the Defendants' First Amendment rights.

LEGAL ARGUMENT

I. PLAINTIFF HAS FAILED TO SATISFY ANY OF THE ELEMENTS NECESSARY TO BE ENTITLED TO PRELIMINARY INJUNCTIVE RELIEF, REQUIRING COMPLETE DISMISSAL OF HIS ACTION.

Courts within the State of New Jersey have recognized that "[a]n injunction is an extraordinary remedy to be used sparingly, to be granted only with the exercise of great care and only where the proven equities establish a clear need. A court may grant the extraordinary relief of the preliminary injunction only in the clearest of factual circumstances and for the most compelling of equities." Mays v. Penza, 179 N.J. Super. 175, 179-180 (Law Div. 1980); Dolan v. De Capua, 16 N.J. 599, 614 (1954). To be entitled to such extraordinary relief, a movant bears the burden of establishing, by a

standard of clear and convincing evidence, four elements: 1) immediate and irreparable harm is likely if the relief is denied; 2) the claim is based upon a well settled legal right; 3) the material facts are not substantially disputed, and there exists a reasonable probability of ultimate success on the merits; and 4) the balance of the hardship to the parties favors the issuance of the requested relief. Crowe v. De Gioia, 90 N.J. 126, (1982); Dressler v. Donovan, 2012 N.J. Super. Unpub. LEXIS 1247, *12 (Law Div. 2012); Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).

In the present case, Plaintiff cannot satisfy any one, much less all four, of these elements. If he suffered any harm at all, said harm is neither immediate nor irreparable, since monetary damages are adequate to compensate him for any lost business he can actually substantiate, which at this point is none. The claim is not based on a well-settled legal right, since Courts throughout the country have recognized his claim as calling for an unconstitutional prior restraint on speech. The undisputed, material facts establish that Plaintiff has no probability of success on the merits, much less a substantial one. Finally, the balance of equities favors the parties that were victims of the Plaintiff's unprovoked attack upon their home, who did nothing more than publicize Plaintiff's heinous acts.

A. The Plaintiff's Claim is Not Based on a Well Settled Legal Right, Nor Has Plaintiff Established a Reasonable Probability of Success on the Claim for Defamation, Since the Relief Sought Constitutes an Unreasonable Restraint Upon Defendants' First Amendment Rights.

Courts throughout the nation have adhered to the time-honored rule that "equity will not enjoin a defamation." Kramer v. Thompson, 947 F.2d 666, 676 (3d Cir. 1991); United States v. Doe, 455 F.2d 753, 759 fn4 (1st Cir. 1972)("In the more common situation, it has long been settled that the publication of defamation, although actionable, may not be enjoined"). As the Third Circuit has stated, "the maxim that equity will not

enjoin a libel has enjoyed nearly two centuries of widespread acceptance at common law. The welter of academic and judicial criticism of the last seventy years has, in truth, done little more than chip away at its edges." Id. at 677-78; see also Community for Creative Non-Violence v. Pierce, 814 F.2d 663, 672 (D.C. Cir. 1987)("usual rule is that equity does not enjoin a libel or slander and that the only remedy for defamation is an action for damages.") A preliminary restraint enjoining "verbal or written defamatory statements about ... Plaintiff's business operations ... raises issues concerning Defendant's First Amendment rights," since "[g]enerally, allegedly defamatory publications may not be enjoined." Newfound Mgmt. Corp. v. Sewer, 34 F. Supp. 2d 305, 315 (D.V.I. 1999)(citing Floyd Abrams, Prior Restraints, 420 PLI/Pat 343, 495 (1995)).

Accordingly, the First Amendment, which is "applicable to the states through the Fourteenth Amendment, overlays State defamation law and imposes a number of constraints on a plaintiff who seeks relief for defamation." Sindi v. El-Moslimany, 896 F.3d 1, 13-14 (1st Cir. 2018)(citing N.Y. Times Co. v. Sullivan, 376 U.S. 254, 276-77 (1964)). The Courts have long held that "a prior restraint on speech ... carries with it 'a heavy presumption against its constitutional validity.'" Bailey v. Systems Innovation, Inc., 852 F.2d 93, 98 (3d Cir. 1988)(quoting New York Times Co. v. United States, 403 U.S. 713, 714 (1971)). When a Plaintiff fails to present evidence to overcome this "heavy burden," an injunction should not issue, "as a remedy exists after the 'abuse' (if it ever actually occurs) and not before it." Newfound Mgmt., 34 F.Supp.2d at 316. The Supreme Court has deemed it "essential that the First Amendment protect some erroneous publications as well as true ones" in order "to insure the ascertainment and publication of the truth about public affairs." St. Amant v. Thompson, 390 U.S. 727, 732 (1968).

The "maxim that equity will not enjoin a libel" thereby applies even if the speech is deemed defamatory, precisely because the injunction deprives the defendant of his right to a jury trial on the issue of the truth of the publication and constitutes an unconstitutional prior restraint on freedom of expression. Kramer, 947 F.2d at 674-75 (citing Mazzocone v. Willing, 393 A.2d 1155, 1158-59 (1978)). In commenting upon the Supreme Court of Pennsylvania's decision in Willing, the Third Circuit made the following synopsis of both the case itself and the operative legal doctrines:

> In short, Willing may be summarized as follows. The Superior Court was presented with a case which, in its view and that of many of the commentators, cried out for re-examining the common-law precept that equity will not enjoin a defamation. The Superior Court, after carefully considering each of the traditional justifications for the precept, found one no longer viable and the remaining three unpersuasive **given the certainty that Willing's statements were false, the likelihood that she would continue to issue libellous statements, her inability to satisfy a damages judgment, and the fact that the public had little interest in the speech at issue**. The Supreme Court, however, stood firmly behind the traditional bar to equitable relief, holding essentially that Willing's constitutional rights to uncensored speech and trial by jury were paramount even though, as a practical matter, she would be immune to a damages action after the speech were issued.

Kramer, 947 F.2d at 675 (emphasis added). Even in the situation where the speech was clearly libellous and the defendant was judgment proof (two factors that stand in stark contrast to the present case where the Defendants are successful business owners), an injunction still violated the Constitution. See Stop the Olympic Prison v. United States Olympic Comm., 489 F. Supp. 1112, 1124-25 (S.D.N.Y. 1980) ("To enjoin any publication, no matter how libellous, would be repugnant to the First Amendment to the Constitution, and to historic principles of equity.")

Once a litigant has proceeded through trial and obtained a jury verdict that the defendant has published statements that are libellous, only then will a court "adopt this

exception to the general rule that equity will not enjoin a defamation." Kramer, 947 F.2d at 677. After a trial by jury, the traditional reasons supporting the general rule no longer apply, since "it obviously cannot be said that a defendant has been denied the right to a jury determination of the veracity of his statements if a judge issues an injunction against further statements *after* a jury has determined that the same statements are untrue" and the restraint is no longer an "unconstitutional prior restraint if it is issued after a jury has determined that the speech is not constitutionally protected." Id. at 675-76. Yet even then, courts "would do well not to overstate the degree of acceptance that has been accorded to this exception." Id. at 678. For most of this century, the exception created for post-verdict restraints existed only in Missouri. Subsequently, certain state courts, not New Jersey however, have permitted the exception. Id. If there remains sufficient doubt as to whether a restraint on speech is proper **after** a jury determines that the defendant's publication was defamatory, then certainly Plaintiff has failed to satisfy his burden of establishing that his claim is predicated upon a settled legal right when the issue concerns a restraint on speech **prior** to a jury verdict.

The Supreme Court of the United States, moreover, has authored a "long list of cases which have invalidated prior restraints," as recognized by our State's Supreme Court. See State v. Allen, 73 N.J. 132, 151 (1977). To illustrate, the Supreme Court has ruled that "[i]n determining the extent of the . . . [First Amendment], it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication." Id. (quoting Near v. Minnesota, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931). The pernicious evil that underlies these decisions "is the notion of censorship," Id. (citing Southeastern Promotions, Ltd. v.

Conrad, 420 U.S. 546 (1975)). As indicated above, the "fear of censorship does not exist when a libel has been clearly established," thereby focusing the analysis upon prior restraints like the one entered in the present case. Barres v. Holt, Rinehart & Winston, Inc., 74 N.J. 461, 466-467 (1977). Because of this overarching concern whenever a prior restraint is imposed by governmental action, "the Supreme Court has consistently held that '[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.'" Allen, 73 N.J. at 152 (citing Pell v. Procunier, 417 U.S. 817, 832 (1974), New York Times Co. v. United States, 403 U.S. 713, 714 (1971) and Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971)). In fact, the New Jersey Supreme Court has described this prohibition as **"nearly absolute,"** yielding only when our nation is at war and "military security" justifies the otherwise unconstitutional action; "[y]et even this exception is narrowly confined." Id.

In the present case, the Court's entry of an injunction is undeniably a prior restraint upon speech that is prohibited by our Constitution. See Auburn Police Union v. Carpenter, 8 F.3d 886, 903 (1st Cir. 1993)(" ... a judicial injunction that prohibits speech prior to a determination that the speech is unprotected also constitutes a prior restraint.") And the impropriety of the injunction is apparent, regardless of whether the statements are defamatory or not, and regardless of whether the actions of the Defendants here can be characterized as harassment. As the Federal Courts have made clear, "the type of harassment in cases where courts have issued preliminary injunctions is much more egregious than that presented here," since in general "such cases involve an invasion of plaintiff's privacy or defamatory speech directed at a captive audience." Bihari, 119 F.Supp.2d at 326-27. As in Bihari, the Defendants here have "not invaded [Plaintiff]'s

privacy or forced [their] disparaging message on any listener;" rather, the Defendants have simply published information on a website, which the plaintiff sought to enjoin. As in the present case, it was "quite clear that the speech itself is what plaintiffs are targeting," yet commercial harm as a result of website postings simply does not meet "the heavy burden required to secure a prior restraint." Id. at 327.

Finally, even without the overarching constitutional issue, the entry of the injunction in the present case was still improper, since the Plaintiff would have to show a reasonable probability of success on the defamation claim. The very first element of this cause of action is "the assertion of a false and defamatory statement concerning another." World Mission Soc'y Church of God v. Colón, 2013 N.J. Super. Unpub. LEXIS 3075, *33 (Law Div. 2013)(citing DeAngelis v. Hill, 180 N.J. 1, 12-13, 847 A.2d 1261 (2004)). The protected speech in the present case was not defamatory in any fashion, since it was entirely accurate and truthful. Plaintiff William Siegle is a licensed realtor and the Broker/Owner of Re/Max Hometown in Moorestown, NJ. Plaintiff did, in fact, through a rock through the Defendants' window, and, as a result, was charged with Criminal Mischief by the Evesham Township Police Department. If there were any dispute to the accuracy of these statements, Defendants have video proof of the Plaintiff's criminal acts and have posted the Police Report of the incident. The Evesham Township Police did, in fact, arrest Plaintiff in front of his home on November 30, 2018. Plaintiff did, in fact, call the police once he became aware of the information the Defendants published.

In order to establish even a prima facie claim for defamation, much less a reasonable probability of success on the ultimate merits, Plaintiff would have to isolate precisely what statements are defamatory, as well as produce some proof as to the falsity

of the statements. Plaintiffs here have failed to isolate a single incorrect, inaccurate or defamatory statement in anything that the Defendants have published, but have merely made the unadorned allegation within its written application. To illustrate, Plaintiff has established that Defendants controlled the websites and published the information, and Plaintiff produced some minimal proof that, as a result, he has received negative feedback from his family and business associates. (See Plaintiff's Brief, p. 6) Plaintiffs never provide any factual support for the legal conclusion that they posted "false and defamatory" information necessary to assert even a colourable claim. Clearly, unadorned allegations are insufficient to obtain injunctive relief, especially in the present case, which involves Constitutional rights to free speech.

If these actions have somehow negatively affected the Plaintiff's business (which Plaintiff has failed to establish with actual competent proof), these speculative damages are the result of the Plaintiff acting like a petulant child and a petty criminal, as opposed to being caused by any wrongful conduct on the part of the Defendants here. Defendants did nothing more than exercise their First Amendment rights and publish accurate, truthful statements about the Plaintiff and his hateful conduct, which he put on display for the entire public to see. The fact that Defendants recorded the attack, and expanded the public that would be able to view the incident by posting it on the internet, does not even come close to the quantum of wrongful, defamatory conduct the Plaintiff would have to show in order to obtain relief.

B. Plaintiff Has Failed to Establish a Reasonable Probability of Ultimate Success on the Merits with Regard to Tortious Interference, since the Plaintiff's Application Does Not Allege Sufficient Facts to Satisfy the Elements of that Cause of Action.

In Crowe v. DeGioia, the Court held that in order to obtain a preliminary injunction, "a plaintiff must make a preliminary showing of a reasonable probability of success on the merits," and the material facts supporting his claims must be uncontroverted. 90 N.J. at 133. Neither has been shown with regard to Plaintiff's claims for tortious interference.

The requisite elements of a claim for tortious interference with prospective economic advantage are (1) plaintiff must have had a reasonable expectation of economic advantage; (2) defendant knew of plaintiff's expectation; (3) defendant wrongfully and intentionally interfered with this expectation; (4) defendant's interference must have caused the loss of Plaintiff's prospective gain; and (5) the injury must have caused damage. See Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 751-752 (1989); Fineman v. Armstrong World Indus., 980 F.2d 171, 186 (3d Cir. 1992). New Jersey law requires that a plaintiff present proof that but for the acts of the defendant, the plaintiff "would have received the anticipated economic benefits." Id. at 751. The Plaintiff must also establish "a sufficiently concrete prospective contractual relation," since the party "must also establish with reasonable certainty a prospective economic relation in order to state a claim for tortious interference under New Jersey law." Fineman, 980 F.2d at 195.

Because the "gravamen of a claim for tortious interference is that the defendant's conduct was wrongful," Plaintiff must "establish that defendant acted with malice." Coast Cities Truck Sales v. Navistar Int'l Transp. Co., 912 F. Supp. 747, 772 (D.N.J.

1995)(citing Printing Mart-Morristown, 116 N.J. at 751). Malice, in turn, "is defined to mean that the harm was inflicted intentionally and without justification or excuse." Printing Mart-Morristown, 116 N.J. at 751; see also Louis Schlesinger Co. v. Rice, 4 N.J. 169, 181 (1950)(malice defined as "intentional doing of a wrongful act without justification or excuse.") In the defamation context, moreover, the Supreme Court has stated that actual malice "means with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254, 279 (1964). Reckless disregard, in turn, may be found when "the defendant entertained serious doubts as to the truth of his publication." Colón, 2013 N.J. Super. Unpub at 35 (citing St. Amant, 390 U.S. at 731). To establish actual malice, "a defamation plaintiff must shoulder a heavy burden," as the Supreme Court "has underscored that '[a] reckless disregard for the truth . . . requires more than a departure from reasonably prudent conduct.'" Sindi, 896 F.3d at 14 (quoting Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 688 (1989)).

In order to enjoin Defendants' First Amendment rights, Plaintiff would also have to show more than merely a commercial impact, since even if a Plaintiff is able to prove that a Defendant "intends to cause plaintiffs commercial harm ... [t]his intent, however improper, cannot justify a prior restraint of constitutionally protected speech." Bihari, 119 F.Supp.2d at 326. Even if a plaintiff can establish "public humiliation, world wide ridicule, character assassination and a ruined reputation," an injunction should not be awarded because they are all insufficient to warrant a prior restraint on the freedom of expression. Hammer v. Trendl, 2002 U.S. Dist. LEXIS 25487, *4-5 (E.D.N.Y. 2002)(citing Keefe, 402 U.S. at 418-19) ("No prior decisions support the claim that the

interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court")).

In the present case, Plaintiff cannot show a reasonable probability of success with regard to a single element of the tortious interference claim, much less all of them. First, Plaintiff has not even set forth a prima facie case that he "had a reasonable expectation of economic advantage," since he fails to provide any information at all as to the "expectation" or the "advantage." He failed to identify the business prospects that refused to enter into a contract with him, why he had a reasonable expectation of conducting business with these unidentified individuals, or any other information that would even hint at "a sufficiently concrete prospective contractual relation" as required by our case law. Since he failed to provide any of this information, he obviously cannot establish that the Defendants knew of his expectation. Since he failed to provide any of this information, he obviously cannot establish that the Defendants' actions were the "but-for" cause of his loss. Since he failed to provide any of this information, he obviously cannot establish that he suffered any quantifiable damages at all. Further, Plaintiff operates as a broker/realtor, this in and of itself is a business where every potential deal is simply that – potential – as there are several parties and factors which would prohibit any economic benefit for the realtor/broker. Plaintiff's obligation was to provide proof, the Court's obligation was to weigh that proof against the Defendants' First Amendment rights prior to entering any restraint upon same, neither party met their obligation and reconsideration is merited.

However, as with the analysis of the defamation claim above, Plaintiff has presented absolutely no facts that Defendants acted wrongfully, with malice and with the

specific intent to interfere with Plaintiff's expectation of prospective economic advantage. After Plaintiff threw a rock through the Defendants' window, they had every justification and excuse for publishing a video of Plaintiff engaging in this criminal conduct. As stated supra, every single statement made on the website was true and accurate. As a matter of law, Plaintiff will be unable to establish actual malice since it will be legally impossible to establish either knowledge that certain statements were false or with reckless disregard to their truth, when the statements in question are all true. In short, the Defendants could not have entertained serious doubts as to the truth of their publication, since objectively there was no doubt as to their truth.

C. Even if Defendants' Actions Resulted in Tortious Harm to the Plaintiff, There Is no Irreparable Harm Since any Potential Harm to Plaintiff May be Compensated Through a Financial Award.

The hallmark of irreparable injury is the inadequacy of monetary damages to compensate the injury allegedly suffered. Crowe, 90 N.J. at 133.; see also Loretangeli v. Critelli, 853 F. 2d 186, 196 (3d Cir. 1988) (applying New Jersey law) (for harm to be considered irreparable, Plaintiff has burden of establishing that "monetary damages suffered are difficult to ascertain or otherwise inadequate.") Summarizing the overarching irreparable harm analysis, the Third Circuit has stated:

> Establishing a risk of harm is not enough. Hohe, 868 F.2d at 72 (3d Cir. 1989). The moving party has the burden of proving a "clear showing of immediate irreparable injury." Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980)(citation omitted). The "requisite feared injury or harm must be irreparable not merely serious or substantial," and "must be of a peculiar nature, so that compensation in money cannot atone for it." Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977). Further, the irreparable harm must be actual and imminent, not merely speculative. See Raitport v. Provident National Bank, 451 F. Supp. 522, 530 (E.D. Pa. 1978).

Angstadt v. Midd-West Sch. Dist., 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002). The New Jersey Courts have made clear that a "preliminary injunction should not be entered except when necessary to prevent substantial, immediate and irreparable harm." Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Finally, the Supreme Court of the United States has stated that a plaintiff must demonstrate potential harm that cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the only way of protecting the plaintiff from harm. See e.g., Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982).

The Supreme Court has further held that "humiliation and damage to reputation" are insufficient to warrant injunctive relief. Even if the facts establish loss of income and damage to reputation, these proofs fall "far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction." Sampson v. Murray, 415 U.S. 61, 91-92 (1974). In fact, the Supreme Court has held "prior restraints to be presumptively invalid, even when the potential harm was much greater than injury to reputation." Bihari, 119 F.Supp.2d at 324. This is especially true in the situation where a Plaintiff seeks a prior restraint on speech, since the Courts have made clear that a Plaintiff who is potentially aggrieved by libel has an adequate remedy at law. See Bihari v. Gross, 119 F. Supp. 2d 309, 325 (S.D.N.Y. 2000)(citing American Malting Co. v. Keitel, 209 F. 351, 356 (2d Cir. 1913) ("The fact that the false statements may injure the plaintiff in his business or as to his property does not alone constitute a sufficient ground for the issuance of an injunction[] [because] the party wronged has an adequate remedy at law."), Finally, since an injunction may not be used simply to eliminate a possibility of a remote future injury, when the "evidence of damage, irreparable or otherwise, is speculative at

best or non-existent at worst, injunctive relief is not warranted." Matrix Essentials v. Cosmetic Gallery, 870 F. Supp. 1237, 1251 (D.N.J. 1994).

In the present case, the substantial body of First Amendment law makes undeniably clear that defamation has an adequate remedy at law. If Plaintiff is able to prove at trial that Defendants are acting in a defamatory manner, they are doing nothing more than adding to the quantum of damages that Plaintiff will ultimately recover. This fact, however, establishes precisely why the damages alleged are not irreparable. Plaintiff's failure to supply any actual information about his damages, moreover, makes clear that his entire claim is speculative, when the standard to obtain injunctive relief requires Plaintiff to establish immediate, imminent and substantial harm. Finally, in accordance with Supreme Court precedent, Plaintiff's humiliation and damage to reputation, which is effectively all that Plaintiff has alleged here, fall "far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction." Plaintiff's humiliation, damage to reputation, and even potential business losses simply do not take precedence over Defendants' First Amendment rights insofar as the entry of an injunction is concerned.

D. The Balance of the Equities Favors the Defendants Who Suffered an Unprovoked Attack by the Plaintiff, Recorded on Film and by an Eye Witness Throwing Rocks Through Their Window, and Now Have Merely Published True and Accurate Information Concerning Plaintiff's Acts.

"The final test in considering the granting of a preliminary injunction is the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134. The Supreme Court of the United States has made clear that the Court must consider the equities as they affect third parties as well. To illustrate, the court faced with an

application for an injunction "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Winter v. NRDC, Inc., 555 U.S. 7, 24 (2008) (quoting Amoco Production Co., 480 U.S. 531, 542 (1987). Nonetheless, when engaged in this balance, "courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." Id. (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)).

In seeking the restraints, Plaintiff argued, "All that Plaintiff requests is that the websites ... be shut down and presented from further dissemination to the public ... . Accordingly, the Defendants will not be harmed by the issuance of this injunction." (Plaintiff's Brief, p. 8). Nothing could be further from the truth. Both the Defendants directly, and the overall public indirectly suffer substantial harm when their First Amendment rights are quelled before there has been an adjudication that their speech was in fact defamatory. "All that Plaintiff requests" was in actuality an unconstitutional restraint. Once again, this would have been readily apparent if the Plaintiff had actually presented this Court with the governing case law or the Defendants been given the opportunity to submit an opposition and have the hearing to which they were entitled prior to the pre-emptive loss of their rights. As the cases cited herein make clear, an individual suffers substantial harm from a prior restraint on speech, thereby making them presumptively invalid. Plaintiff has presented absolutely nothing to counter this presumption; on the contrary, the Plaintiff's desire to gag the Defendants when he has failed to produce even a scintilla of evidence that the statements were defamatory, establishes precisely why the presumption continues to be both valid and necessary.

Finally, it is simply mind-boggling that the Plaintiff would engage in a criminal act against the Plaintiff, and then somehow argue that the equities are in his favor. The Defendants published the Plaintiff's own acts, without embellishment, without hyperbole, and without commentary. They posted nothing but truthful information, yet this Court nonetheless was convinced into entering restraints against the publication of these truthful statements, when an injunction would not have been appropriate even in the situation where the statements were defamatory. Equity simply cannot side with a party who engages in criminality, and then seeks to enjoin the truthful dissemination of that criminality, by failing to present the Court with an accurate description of the law.

II. BECAUSE THIS COURT HAS OVERLOOKED SALIENT FACTS AND CONTROLLING DECISIONS CONCERNING PLAINTIFF'S RIGHT TO INJUNCTIVE RELIEF AND THE SUBSTANTIVE LAW UNDERLYING PLAINTIFF'S APPLICATION, RECONSIDERATION PURSUANT TO R. 4:49-2 IS APPROPRIATE.

Rule 4:49-2 states that a Motion for Reconsideration "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." The Courts have further held, in interpreting the provisions of this Rule, "Reconsideration should be used only for those cases which fall into that narrow corridor in which either (l) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." Fusco v. Board of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002)

As to prong one, it appears from the Court's analysis of the issues that the Court never considered the legal consideration, imposed by courts all across the nation, holding

that a preliminary injunction constitutes "an extraordinary remedy." Attorney General of Oklahoma v. Tyson Foods, Inc., 565 F.3d 769, 776 (10th Cir. 2009); Mays v. Penza, 179 N.J. Super. 175, 179-180 (Law Div. 1980). In fact, the Third Circuit has stated that preliminary restraints constitute an "extraordinary remedy, which should be granted only in limited circumstances." Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989). The Supreme Court has repeatedly maintained, in addition to the extraordinary nature of the remedy, that a preliminary injunction should "never [be] awarded as of right." Winter, 555 U.S. at 7; Munaf v. Geren, 553 U.S. 674, 689 (2008)(A preliminary injunction is an "extraordinary and drastic remedy"). The transcripts from the prior hearing further establish that the Court was never presented with the substantial body of law prohibiting injunctions in defamation actions (absent certain exceptional circumstances that are not present here).

Based on the foregoing, the Court overlooked the substantial and consistent First Amendment jurisprudence, which caused the Court to express its decision based upon a palpably incorrect or irrational basis. Moreover, the Court failed to appreciate the utter lack of probative, competent evidence submitted by the Plaintiff in support of the injunction. The abject truthfulness of the publication, the Plaintiff's failure to establish any of the elements required for injunction, and the gross speculation with regard to damages indicate that the Court awarded the injunction more as a matter of right rather than viewing the application as one for extraordinary relief. Defendants have satisfied the requirements of R.4:49-2, in that the entirety of the argument presented above reflects information the Court should have considered and analyzed prior to the entry of an injunction.

CONCLUSION

For the foregoing reasons, the injunction entered against the Defendants should be removed and the decision to impose the restraints should be reconsidered and overturned.

LINDEN LAW FIRM, LLC

DATED: January 24, 2019

Ari D. Linden, Esquire
Attorney for Defendants