

1 DEBORAH A. KWAST
Public Defender
2 Orange County
MARTIN F. SCHWARZ
3 Deputy Public Defender
State Bar No. 184062
4 14 Civic Center Plaza
Santa Ana, California 92701

5 Telephone: (714) 834-2144
6 Fax: (714) 834-2729

7 *Attorneys for Defendant Erin K. Baldwin*

Dept. C17

Trial: September 13, 2010
OUT OF CUSTODY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 01 2010

ALAN CARLSON, Clerk of the Court

L. Hernandez
BY L. HERNANDEZ, DEPUTY

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
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12 IN THE MATTER OF ERIN K. BALDWIN

13 *Defendant*

14
15 PARSA LAW GROUP, APC, a California
16 Professional Law Corporation,
Plaintiff,

17 vs.

18 BAD BIZ FINDER, an unknown business entity
19 and ERIN K. BALDWIN, an individual,
20 *Defendants.*

Case No. 30-2009-0011752

DEFENDANT'S REPLY/ANSWER
TO THE ORDER TO SHOW
CAUSE AND PLAINTIFF'S
SUPPORTING AFFIDAVITS;
MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATION
OF MARTIN F. SCHWARZ,
AND EXHIBITS IN SUPPORT
THEREOF.

21
22 **DEFENDANT ERIN K. BALDWIN, BY AND THROUGH COUNSEL,**
23 **HEREBY SUBMITS** her Answer/Reply to the Order to Show Cause Issued by the Court
24 and the plaintiff's affidavits filed in support thereof.

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STATEMENT OF RELEVANT FACTS

On June 2, 2009, the court entered a default judgment against defendants Bad Biz Finder and Erin K. Baldwin in the amount of \$604,515.66 and issued a permanent injunction. The injunction proscribed defendants from engaging in the following conduct:

1. Publishing, transmitting, distributing or otherwise publicly displaying all previously-publicized or publicly available defamatory and/or tortuous statements about PARSA LAW GROUP, APC, PARSA LAW GROUP, APC'S services, and/or PARSA LAW GROUP, APC'S officers, directors, members, shareholders, agents, representatives, employees and/or affiliates, namely those blog entries/articles previously and/or currently available at the websites www.badbizfinder.wordpress.com, www.badbizfinder.blogspot.com and www.thereallybadbizfinder.owrdpress.com and reproductions and variations thereof previously and/or currently available elsewhere, including, but not limited to: ww.ripoffreport.com, www.pubcit.typepad.com (CL&P Blog), www.ocmetrobusiness.com and www.digg.com;

2. Publishing, transmitting, distributing or otherwise publicly displaying tortuous statements which state or imply illegal conduct by PARSA LAW GROUP, APC, PARSA LAW GROUP, APC'S services, and/or PARSA LAW GROUP, APC'S officers, directors, members, shareholders, agents, representatives, employees and/or affiliates, absent adjudication of illegality;

3. Publishing, transmitting, distributing or otherwise publicly displaying all previously-publicized or publicly available defamatory and/or tortuous statements about PARSA LAW GROUP, APC, PARSA LAW GROUP, APC'S services, and/or PARSA LAW GROUP, APC'S officers, directors, members, shareholders, agents, representatives, employees and/or affiliates, in [sic] including those found in Exhibit "B" to Plaintiff's Request for a Temporary Restraining Order;

4. Publishing, transmitting, distributing or otherwise publicly displaying all previously-publicized or publicly available defamatory and/or tortuous statements about PARSA LAW

1 GROUP, APC, PARSA LAW GROUP, APC'S services, and/or
2 PARSA LAW GROUP, APC'S officers, directors, members,
3 shareholders, agents, representatives, employees and/or
4 affiliates, and

5 5. Contacting PARSA LAW GROUP, APC's officers,
6 directors, members, shareholders, agents, representative,
7 employees and/or affiliates, either directly or indirectly.

8 On July 14, 2009, plaintiff filed a "Request for Setting of Order to Show Cause re
9 Contempt" and concurrently filed the Affidavit of Nicholas D. Myers, Esquire of Facts
10 Constituting Contempt."

11 On August 27, 2009, plaintiff filed the "Declaration of David A. Bernstein, Esquire
12 for Submission at Hearing on Order to Show Cause re Contempt."

13 On August 31, 2009, defendant failed to appear for the hearing on the Order to Show
14 Cause re Contempt and the court issued a bench warrant for her arrest.

15 On March 28, 2010, defendant was cited and released by the San Bernardino County
16 Sheriff's Department and signed a promise to appear in this court on June 1, 2010.

17 On June 1, 2010, the court appointed the Orange County Public Defender's Office to
18 represent defendant with respect to the contempt proceedings.

19 On June 8, 2010, defendant denied the contempt allegations and a court trial was set
20 for September 13, 2010.

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MEMORANDUM OF POINTS AND AUTHORITIES

Willful disobedience of a court order may be punished under California Code of Civil Procedure section 1209, which prohibits “disobedience of a *lawful* judgment, order or process of the court” and Penal Code section 166, subdivision (a)(4), which prohibits, “[w]illful disobedience of any process or order *lawfully issued* by any court.” (Italics added.) A violation of either section is only punishable as contempt where the court order was lawfully issued. (*People v. Gonzalez* (1996) 12 Cal.4th 804, 816.) Thus, where the order is invalid, a defendant cannot be convicted of being in contempt. (*Id.* at pp. 816-817.) “The rule is well settled in California that a void order cannot be the basis of a valid contempt order.” (*Id.* at p. 817.) To effectuate this rule, a defendant charged with contempt may attack the validity of the underlying order in the trial court:

Because under settled law there can be no contempt of a void injunctive order, and because we have long recognized the propriety of collateral attacks on void orders, it seems evident that the trial court is a proper forum in which to raise the issue of the validity of the injunction. [¶]...[¶] We conclude the municipal court had authority to entertain defendant’s challenge to the validity of the injunction he was violating.
(*Id.* at p. 821.)

The rule applies whether the contempt is prosecuted under the provisions of Code of Civil Procedure section 1209 or Penal Code section 166. (*People v. Gonzalez, supra*, 12 Cal.4th 806, 816-817.) Furthermore, it applies “even if no such claim was made when the injunction issued.” (*Id.* at 818.)

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I.
INJUNCTIVE ORDERS 1, 2, 3, 4 AND 5 ARE
UNCONSTITUTIONAL

A. Injunctive Orders 1, 2, 3, and 4 Comprise an Unconstitutional Prior Restraint

1. Prior Restraints

The right to free speech is protected under the First Amendment of the United States Constitution and Article I, section 2 of the California Constitution. A prior restraint on this fundamental right occurs when a court issues an injunction that prohibits someone from speaking in the future. (*DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 889-890.) “Temporary restraining orders and permanent injunctions—i.e. court orders that actually forbid speech activities—are classic examples of prior restraints.” (*Alexander v. United States* (1993) 509 U.S. 544, 550.) “[P]rior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.” (*Nebraska Press Assn. v. Stuart* (1976) 427 U.S. 539, 559.) They are “the essence of censorship.” *Near v. Minnesota* (1931) 283 U.S. 697, 713.) “Prior restraints are highly disfavored and presumptively violate the First Amendment. [Citations] This is true even when the speech is expected to be of the type that is not constitutionally protected. [Citation.] (*Evans v. Evans* (2008) Cal.App.4th 1157, 1167.) This is because “[i]t is patent that this right to speak, write and publish cannot be abused until it is exercised, and before it is exercised there can be no responsibility.” (*Daily v. Superior Court* (1896) 112 Cal. 94, 97.) Accordingly, prior restraints are highly disfavored and presumptively violate the First Amendment. (*Hurvitz v. Hoefflin* (200) 84 Cal.App.4th 1232, 1241; *Maggi v. Superior Court* (2004) 119 Cal.App.4th 1218, 1225.)

2. Analysis

Here, the permanent injunction broadly prohibits defendant from publishing, transmitting, distributing or otherwise publicly displaying “defamatory or tortuous statements” about “Parsa Law Group” and individuals in some way related to the corporation. It seems beyond dispute that the injunction is a prior restraint. “An order

1 prohibiting a party from making or publishing false statements is a classic type of prior
 2 restraint. [Citation] ‘While [a party may be] held responsible for abusing his right to speak
 3 freely in a subsequent tort action, he has the initial right to speak freely without censorship.’
 4 [Citation].” (*Evans v. Evans, supra*, 162 Cal.App.4th 1157, 1167-1168.)

5 In *Evans v. Evans, supra* 162 Cal.App.4th 1157, the plaintiff obtained an injunction
 6 against his ex-wife enjoining her from publishing “false and defamatory” statements on the
 7 internet. The Court of Appeal found the injunction to constitute an unconstitutional prior
 8 restraint:

9 [T]he court’s preliminary injunction prohibiting Linda from
 10 publishing any “false and defamatory statements on the Internet
 11 is constitutionally invalid. Because there has been no trial and
 12 no determination on the merits that any statement made by
 13 Linda was defamatory, the court cannot prohibit her from
 14 making statements characterized only as “false and
 15 defamatory.” [Citation]

(*Id.* at p. 1169.)

16 Similar to *Evans*, the injunction in this case prohibits defendant from making or
 17 publishing “defamatory or tortuous” statements. The only difference between *Evans* and
 18 the present case is that *Evans* dealt with a preliminary injunction whereas this case involves
 19 a permanent injunction. This fact was discussed by the *Evans* court because there had been
 20 no factual finding by a trier of fact at trial that the statements were in fact defamatory.
 21 (*Evans v. Evans* (2007) 40 Cal.4th 1141, 1169.) Here, the injunction was obtained in
 22 conjunction with a default judgment. As in *Evans*, here there has been no trial on the merits
 23 and no jury determination that the statements are in fact defamatory. Because there has
 24 been no trial on the merits and therefore no jury finding that any prior statements were
 25 defamatory or tortuous, defendant cannot be enjoined from prospectively making
 26 statements generically described as “defamatory or tortuous.”

27 Just as the injunction in *Evans* constituted an impermissible prior restraint for its
 28 broad prohibition against making or publishing “false and defamatory statements,” the
 injunction in this case is also unconstitutional for proscribing defendant from making or

publishing “defamatory or tortuous” statements in orders 1, 2, 3 and 4.

B. Injunctive Orders 1, 2, 3, 4 and 5 are Unconstitutionally Vague

1. The Void-for-Vagueness Doctrine

“Even if an injunction does not impermissibly constitute a prior restraint, the injunction must be sufficiently precise to provide ‘a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.’ [Citations.] An injunction is unconstitutionally vague if it does not clearly define ...the conduct prohibited.” (*Evans v. Evans, supra*, 162 Cal.App.4th 1157, 1167.)

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108.) Thus, any statute or injunction must be defined with sufficient succinctness and definiteness that “ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement” or risk being found constitutionally void for vagueness. (*Kolender v. Lawson* (1983) 461 U.S. 352, 357.) To survive a void for vagueness challenge, a statute or injunction must be “definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt.” (*Walker v Superior Court* (1988) 47 Cal.3d 112, 141; see also *Williams v. Garcetti* (1993) 5 Cal.4th 561, 577.)

With regard to the first condition, “the underlying concern is the core due process requirement of notice.” (*Gallo v. Acuna, supra*, 14 Cal.4th 1090, 1116, original italics; see also *City of Chicago v. Morales, supra*, 527 U.S. 41, 58 [“the purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law”].) A vague statute or injunction offends the principle that “no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.” (*United States v. Harriss* (1954) 347 U.S. 612, 617.) It traps the innocent by not providing fair warning that certain conduct is prohibited. (*Palmer v. Euclid* (1971) 402 U.S. 544, 546; *Grayned v. City of Rockford, supra*, 408 U.S. 104, 108-109.) “[B]ecause we assume

1 that man is free to steer between lawful and unlawful conduct, we insist that laws give the
 2 person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that
 3 he may act accordingly. (*Grayned*, at pp. 108-109.)

4 The second condition is concerned with arbitrary and discriminatory enforcement.
 5 Because an injunction is a court order, a violation of an injunction can be punished
 6 criminally. Accordingly, the injunction must be specific and clear enough to guide the
 7 police and judges in their enforcement of the injunction. "A vague law impermissibly
 8 delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc*
 9 and subjective basis, with the attendant dangers of arbitrary and discriminatory
 10 applications." (*Grayned v. City of Rockford*, *supra*, 408 U.S. 104, 108-109.) Although the
 11 void-for-vagueness doctrine focuses on both actual notice to the citizenry as well as
 12 arbitrary enforcement, the United States Supreme Court has held, "[T]he more important
 13 aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the
 14 doctrine—the requirement that a legislature establish minimal guidelines to govern law
 15 enforcement.' [Citation]." (*Kolender v. Lawson*, *supra*, 461 U.S. 352, 357.) The Court
 16 explained the threat posed by the potential of arbitrary enforcement of non-specific
 17 enactments as follows:

18 It would certainly be dangerous if the legislature could set a net
 19 large enough to catch all possible offenders, and leave it to the
 20 courts to step inside and say who could be rightfully detained,
 21 and who should be set at large. This would, to some extent,
 22 substitute the judicial for the legislative department of
 23 government.

24 (*United States v. Reese* (1876) 92 U.S. 214, 221.)

25 With these considerations in mind, defendant submits orders 1, 2, 3 and 4 are not
 26 sufficiently specific to pass constitutional muster and are void-for-vagueness.

27 2. Analysis

28 As indicated, orders 1, 2, 3 and 4 of permanent injunction broadly prohibit defendant
 from publishing, transmitting distributing or otherwise publicly displaying "defamatory or
 tortuous statements" about "Parsa Law Group" and individuals in some way related to the

1 corporation.

2 The fatal defect in orders in orders 1, 2, 3, and 4 lie in their failure to define the
3 terms "defamatory and tortuous" which qualify each order. Such generic language is
4 necessarily vague because it fails to define what specific comments would violate the
5 injunction. If the entity or individuals protected by the injunction felt the injunction was
6 violated and asked law enforcement to enforce the order, how would an officer determine
7 whether or not defendant's conduct in fact violated the injunction? Moreover, how would
8 defendant, a lay person, understand what conduct was proscribed? Both would be made to
9 guess at what conduct is prohibited.

10 *San Diego Unified Port District v. U.S. Citizens Patrol* (1998) 63 Cal.App.4th 964 is
11 illustrative. There, the Court of Appeal found the use of a "legitimate business" exception
12 in an injunction to implicate the void-for-vagueness doctrine. The case originated when the
13 San Diego Port District sought a preliminary injunction against a Minutemen-style group
14 known as the U.S. Citizens Patrol, to enjoin that organization from causing disturbances at
15 the San Diego International Airport. As granted, the preliminary injunction contained an
16 order which prohibited the U.S. Citizens Patrol from entering the airport grounds or
17 facilities, "except to...transact other legitimate business with airport tenants." (*Id.* at p.
18 968.) The Court of Appeal reversed the order granting the preliminary injunction, holding
19 that it ran afoul of the First Amendment because its prohibition on speech was more
20 burdensome than necessary to serve the government's interest. With regard to the
21 "legitimate business" exception the court explained:

22 The "legitimate business" exception to the restriction on
23 Citizens Patrol's use of the airport is vague as to the meaning of
24 "other legitimate business with airport tenants." Arguably,
25 discussing compliance with FAA regulations with airline
26 employees constitutes transaction of "legitimate business with
27 airport tenants." Thus, the "legitimate business" provision is
28 problematic under the void-for-vagueness doctrine because it
leaves those subject to the injunction guessing as to what is
proscribed and invites arbitrary and discriminatory enforcement
by giving law enforcement officers unbridled discretion as to

1 what constitutes "legitimate business" with airport tenants.
2 (*Id.* at p. 972, fn. 7.)

3 There is no legal distinction between an injunction disallowing all but "legitimate"
4 speech, as in U.S. Citizen's Patrol, and an injunction which sweepingly disallows
5 "defamatory or tortuous" (i.e. illegitimate) speech, as is the case here.

6 In *Balboa Island Village Inn, Inc. v. Lemen, supra*, 40 Cal.4th 1141, 1146, the trial
7 court issued an injunction specifically delineating the tortuous statements the defendant was
8 barred from making. In relevant part, the injunction read:

9 Defendant is prohibited from making the following defamatory
10 statements about Plaintiff to third persons: Plaintiff sells
11 alcohol to minors; Plaintiff stays open until 6:00 am; Plaintiff
12 makes sex videos; Plaintiff is involved in child pornography;
13 Plaintiff distributes illegal drugs; Plaintiff has Mafia
14 connections; Plaintiff encourages lesbian activities; Plaintiff
15 participates in prostitution and acts as a whorehouse; Plaintiff
16 serves tainted food.

17 This type of specificity is required. By only prescribing "defamatory and tortuous"
18 publications in the injunction at issue in this case, the court failed to specify in any detail
19 what specific speech was prohibited.

20 Likewise, in *Evans v. Evans, supra*, 162 Cal.App.4th 1157, 1169 the court found that
21 the "false and defamatory" statements prohibited by the injunction in that case to be
22 unconstitutionally vague because "[t]his sweeping prohibition fails to adequately delineate
23 which of [defendant's] future comments might violate the injunction and lead to contempt
24 of court."

25 For these reasons, defendant submits that orders 1, 2, 3, and 4 are unconstitutionally
26 vague.

27 Order number 5 is worded differently. It broadly prohibits defendant from
28 "[c]ontacting Parsa Law Group, APC's officers, directors, members, shareholders, agents,
representatives, employees and or affiliates either directly or indirectly. The order is
unconstitutionally vague because it does not name what individuals defendant is prohibited

1 from contacting nor does it define who may be “affiliated” with the Parsa Law Group.

2 ***C. Injunctive Orders 1, 2, 3, 4 and 5 are Unconstitutionally Overbroad.***

3 1. Overbreadth

4 “An order issued in the area of First Amendment rights must be couched in the
5 narrowest terms that will accomplish the pin-point objective permitted by constitutional
6 mandate and the essential needs of public order.” (*Carroll v. Princess Anne* (1968) 393
7 U.S. 1175, 183.) “In other words, the order must be tailored as precisely as possible to the
8 exact needs of the case.” (*Id.* at p. 184.)

9 This is even more important in the case of an injunction, which unlike a generally
10 applicable statute, affects only a minority of individuals. Because injunctions are not
11 generally applicable there exists a heightened risk of arbitrary governmental prohibitions.
12 (*Madsen v. Woman’s Health Center* (1994) 512 U.S. 753, 764-765.) Accordingly,
13 “injunctive relief should be no more burdensome to the defendant than necessary to provide
14 complete relief to the plaintiffs.” (*Id.* at p. 765, internal quotations and citation omitted.)

15 2. Analysis

16 Injunctive orders 1, 2, 3, and 4 all bar the “publishing, transmitting, distributing or
17 otherwise publicly displaying¹...”defamatory or tortuous statements about Parsa Law
18 Group, APC, Parsa Law Group, APC’s services, and/or Parsa Law Group, APC’s officers,
19 directors, members, shareholders, agents, representatives, employees and/or affiliates....”
20 Defendant submits the orders are overbroad because they prohibit more than the
21 complained about internet blogging. Instead the orders prohibit defendant from
22 “transmitting” the complained about speech to all third parties, including government
23 officials. For this reason, a similar order was found to be over broad in *Balboa Island*
24 *Village Inn, Inc v. Lemen, supra*, 40 Cal.4th 1141, 1161, which explained, “The right to
25 petition the government for redress of grievances is among the most precious of the liberties
26 safeguarded by the Bill of Rights.” (Internal quotations and citation omitted.)

27
28 ¹ Order 2 only uses the word “tortuous” and excludes “defamatory.”

1 In addition, injunctive order 2 prohibits defendant from “publishing, transmitting,
2 distributing, or otherwise displaying tortuous statements which state or imply illegal
3 conduct by Parsa Law Group, APC, and/or Parsa Law Group, APC’s officers, directors,
4 members, shareholders, agents, representatives, employees and/or affiliates absent
5 adjudication of illegality.” Notwithstanding the use of the vague term “tortuous,” defendant
6 submits that the order is overbroad because it prohibits plainly legal conduct that has
7 nothing to do with any compelling interest the plaintiffs have, that is reporting criminal
8 conduct prior to a court adjudication.

9 Injunctive order 5 prohibits defendant from “[c]ontacting Parsa Law Group, APC’s
10 officers, directors, members, shareholders, agents, representatives, employees and or
11 affiliates either directly or indirectly. Defendant submits that this order is overbroad
12 because it is entirely unrelated to the complained about conduct. In other words, because
13 there are no allegations that defendant has personally contacted any of the unnamed
14 individuals referred to by the injunction and harassed them there can be no compelling need
15 to issue this particular order. Furthermore, the prohibition includes no time, place or
16 manner restrictions and generally prohibits all contact. On these grounds, a strikingly
17 similar order was found to be over broad in *Balboa Island Village Inn, Inc v. Lemen, supra*,
18 40 Cal.4th 1141, 1161. As such, it is unconstitutionally overbroad.

19 II.

20 PLAINTIFFS HAVE FAILED TO MAKE A 21 SHOWING OF CONTEMPT

22 A. Evidentiary Issues

23 In support of Order to Show Cause re Contempt, plaintiffs have offered affidavits by
24 Nicholas D. Myers and David A. Bernstein. The declarations allege that since the issuance
25 of the injunction, defendant has published on the internet a number of blog postings which
26 allegedly violate the injunction.

27 An affidavit filed in a contempt proceedings under Code of Civil Procedure section
28 1211 “is like a complaint in a criminal action; it frames the issues and must charge facts

1 which show a contempt has been committed.” (*Reliable Enterprises, Inc. v Superior Court*
 2 (1984) 158 Cal.App.3d 604, 616, overruled on other grounds in *Mitchell v. Superior Court*
 3 (1989) 49 Cal.3d 1230; see also *Freeman v. Superior Court* (1955) 44 Cal.2d 533, 536-
 4 537.)

5 To the extent, plaintiffs intend to rely on the affidavits as substantive evidence at the
 6 hearing, defendant rejects the affidavits, objects to the court’s consideration of the
 7 affidavits as hearsay and demands live testimony so that he may exercise his rights to cross-
 8 examine the declarants. (*Reifler v. Superior Court* (1974) 39 Cal.App.3d 479, 484-485
 9 [matters of indirect contempt must proceed by way of oral testimony, not affidavit]; *Collins*
 10 *v. Superior Court of Los Angeles County* (1957) 150 Cal.App.2d 354, 363-365 [upon
 11 objection, defendant must be allowed to cross-examine the affiant]; *People v. Williams*
 12 (1973) 30 Cal.App.3d 502, 509-510.)

13 The rule is clear: **“In the absence of statutory permission, an affidavit is not**
 14 **competent evidence; though made under oath, it is hearsay because there has been no**
 15 **opportunity to cross-examine the affiant.”** (4 Witkin Cal. Evid. (4th ed. 2000) Hearsay §
 16 297, p. 1006, emphasis added; see also, *Fewel v. Fewel* (1943) Cal.2d 431, 438; *Moon v.*
 17 *Moon* (1944) 62 Cal.App.2d 185, 188.) Put another way, absent a statute or case law to the
 18 contrary, evidentiary rules established by the Evidence Code apply equally to both trials
 19 and pretrial proceedings.² (*People v. Schubert* (1945) 71 Cal.App.2d 773, 775.) “[T]he
 20 Legislature has provided numerous basic safeguards which are aimed at assuring the
 21 defendant a ‘fair trial’ during the process of commitment as well as at his actual trial.”
 22 (*People v. Elliot* (1960) 54 Cal.2d 498, 503 overruled in part and followed in part by
 23 *People v. Jennings, supra*, 66 Cal. 2d 867). The due process rights afforded a criminal
 24 defendant are instrumental in assuring “substantial rights” during the pendency of a case
 25 and include the right to cross-examine witnesses at an adversarial hearing. (*People v.*

26
 27 ² Neither Code of Civil Procedure sections 1003 nor 2009 under which a trial court may
 28 determine matters on declarations alone and refuse oral testimony, apply in cases of indirect
 contempt. (*Reifler v. Superior Court* (1974) 39 Cal.App.3d .479, 484-485.)

1 *Jennings, supra*, 66 Cal. 2d 867, 874-875.) Fundamental due process rights are inviolate
 2 and a court may never exercise its discretion in such a manner as to deprive a defendant of
 3 a substantial right. (*People v. Jennings, supra*, 66 Cal. 2d 867, 875-876.)

4 The bottom line is that the declarations submitted by plaintiff are hearsay.
 5 Accordingly, defendant is entitled to object to the declaration, his objection should be
 6 sustained and he should be allowed to cross-examine the declarant. (*Collins v. Superior*
 7 *Court of Los Angeles County, supra*, 150 Cal.App.2d 354, 363-365; *People v. Williams,*
 8 *supra*, 30 Cal.App.3d 502, 509-510; *Pajaro Valley Water Management Agency v. McGrath*
 9 (2005) 128 Cal.App.4th 1093, 1107). To rule otherwise would deprive defendant of due
 10 process.

11 ***B. The Affidavits Fail to Prove Contemptuous Conduct.***

12 As a threshold issue, defendant submits that the affidavits fail to provide this court
 13 with jurisdiction over the contempt proceedings because they fail to prove that defendant
 14 engaged in contemptuous conduct. In addition, they fail to specify which specific
 15 injunctive orders were violated and when they were violated. Accordingly, defendant
 16 hereby objects to sufficiency of the affidavits pursuant to Code of Civil Procedure section
 17 122.5, subdivision (a).

18 **1. The Affidavits Fail to Comport with Due Process and Notice Requirements**

19 At the outset, defendant notes that the court's analysis is complicated by the
 20 plaintiff's failure to plead with specificity which orders were violated and when they were
 21 allegedly violated. To some extent, this lack of specificity deprives defendant of fair notice
 22 of what she needs to defend against.

23 In a contempt proceedings, due process requires that the affidavits offered in support
 24 of contempt place the alleged contemnor on notice of "the exact nature of the charge
 25 against him so that he can prepare his defense. (*In re Liu* (1969) 273 Cal.App.2d 135, 141.)
 26 Presumably that is why paragraph 8 of the Judicial Counsel form FL-410 (captioned
 27 ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT), filed in this case to
 28 initiate contempt proceedings requires the proponent of the contempt to "specify which

1 order was violated, how the order was violated and when the order was violated. Plaintiffs
2 have failed to do so both in the Judicial Counsel from and in the supporting affidavits.

3 2. The Affidavits Fail to Make a Prima Facie Case for Defamation

4 Because the injunction broadly prohibits defamatory speech, it is incumbent on
5 plaintiff to prove that defendant's post-injunction speech was in fact defamatory. At the
6 contempt hearing, plaintiffs must prove this beyond a reasonable doubt. However, as
7 threshold issue, plaintiffs must present a prima facia case for contemptuous defamation in
8 their affidavits. (See *Crawford v. Worker's Comp. Appeals Bd.* (1989) 213 Cal.App.3d
9 156, 169.) The failure to do so is jurisdictional. (*In re Hinman* (1966) 239 Cal.App.2d 845,
10 848-849.) "If the affidavit does not recite all the jurisdictional facts by showing a contempt
11 of court on its face, the court is without jurisdiction, and the order of contempt if void."
12 (*Sorell v. Superior Court* (1967) 248 Cal.App.2d 157, 160.)

13 In a defamation action, private-figure plaintiffs must prove at least negligence.
14 When the speech involves a matter of public concern, plaintiff must also prove malice
15 under the standard put forth in *New York Times v. Sullivan* (1964) 376 U.S. 254. (*Brown v.*
16 *Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 747) "Speech involves a matter of public
17 concern when it can fairly be considered to relate to any matter of political, social or other
18 concern to the community." (*Johnson v. Multomah Couth, Or.* (9th Circ. 1995) 48 F.3d
19 420, 422.) Malice is proved only if it is shown that a statement was made "with
20 knowledge that it was false or with reckless disregard of whether it was false or not."
21 (*New York Times v. Sullivan, supra*, 376 U.S. 254, 279-280.) In addition, "when the
22 speech involves a matter of public concern, a private-figure plaintiff has the burden of
23 proving the falsity of the defamation. (*Brown v. Kelly Broadcasting, supra*, 48 Cal.3d 711,
24 747.)

25 Here there is little doubt that the alleged statements involve a matter of public
26 concern. Plaintiff, Parsa Law Group, professed to engage in loan modification on behalf of
27 homeowners facing foreclosure. Defendant is alleged to have run a consumer-advocacy
28 blog, wherein she allegedly posted comments about plaintiff law firm's unprincipled

1 business practices and the State Bar's disciplinary action against Mr. Parsa and the
2 California Attorney General's investigation into the firm and its practices.

3 As a result of these investigations, the firm's principal, James Parsa, tendered his
4 resignation from the state bar with charges pending. The State Bar's disciplinary action
5 involved Mr. Parsa's conviction for statutory rape in violation of Penal Code section 261.5
6 The discipline records are attached as exhibits. (Exhibits B and C.)

7 In addition, the California Attorney General's Office investigated Mr. Parsa and
8 his firm for false and fraudulent business practices. (Exhibit D.) However, when Mr.
9 Parsa resigned from the bar, the Attorney General's Office concluded their investigation
10 without any findings that Mr. Parsa engaged or did not engage in illegal business practices.
11 (Exhibit A.)

12 Neither affidavit submitted by plaintiff asserts that the statements allegedly
13 published by defendant are false nor do they assert malice. Both must be shown in the
14 affidavits fail to establish a prima facie case. Because the error is jurisdictional, the court
15 cannot proceed with the contempt hearing.

16 III. 17 THE CONTEMPT HEARING

18 Although the civil contempt statutes are found in the Code of Civil Procedure,
19 contempt proceedings are criminal in nature and the procedural rights and safeguards of
20 criminal contempt proceedings also apply to civil contempt proceedings, except the right to
21 trial by jury. (*Safer v. Superior Court* (1975) 15 Cal.3d 230, 235; *Gates v. Municipal Court*
22 (1992) 9 Cal.App.4th 45, 56.) Accordingly the burden of proof in a civil contempt
23 proceeding lies with the proponent of the contempt and the standard of proof is proof
24 beyond a reasonable doubt. (*Mitchell v. Superior Court, supra*, 49 Cal.3d 1230, 1256.)
25 Any ambiguity in the order alleged to have been violated must be resolved in favor of the
26 alleged contemnor. (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1014.)

27 Should the court reject defendant's constitutional arguments and also reject
28 defendant's arguments that plaintiff's affidavits are defective, defendant submits plaintiff

1 will be unable to prove beyond a reasonable doubt that the statements are contemptuous
2 and defamatory, because they are in fact true.³

3 **CONCLUSION**

4 For the foregoing reasons, defendant respectfully submits that plaintiffs have failed
5 to plead a prima facie case for contempt and that the underlying injunction is
6 unconstitutional

7 Dated: August 28, 2010

8 Respectfully submitted,
9 DEBORAH KWAIST
10 Public Defender
11 JEAN WILKINSON
12 Chief Deputy Public Defender

13 

14 MARTIN F. SCHWARZ
15 Senior Deputy Public Defender
16 Attorneys for Defendant Erin K. Baldwin
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25 ³ The Orange County Public Defender's Office has been appointed to represent Ms.
26 Baldwin only with respect to her contempt hearing and will not involve itself in the
27 underlying civil action. However, in the interests of justice, counsel would encourage the
28 court to consider, to dissolve the injunction under Code of Civil Procedure section 3424,
subdivision (a), on its own motion.

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EXHIBIT A
(Declaration of Martin F. Schwarz)

1 DEBORAH A. KWAST
Public Defender
2 Orange County
MARTIN F. SCHWARZ
3 Deputy Public Defender
State Bar No. 184062
4 14 Civic Center Plaza
Santa Ana, California 92701
5
Telephone: (714) 834-2144
6 Fax: (714) 834-2729

7 *Attorneys for Defendant Erin K. Baldwin*

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
11

12 IN THE MATTER OF ERIN K. BALDWIN

13 *Defendant*

Case No. 30-2009-0011752

DECLARATION OF MARTIN F.
SCHWARZ

14
15 PARSA LAW GROUP, APC, a California
Professional Law Corporation,
16 *Plaintiff,*

17 vs.

18 BAD BIZ FINDER, an unknown business entity
19 and ERIN K. BALDWIN, an individual,
20 *Defendants.*

21 I, Martin F. Schwarz, do hereby declare:

22 1. That I am an attorney duly licensed to practice law in the State of California
23 and am the Deputy Public Defender assigned to represent the defendant, Erin Baldwin, for
24 purposes of the contempt proceedings.

25 2. On behalf of Ms. Baldwin, I am entering denials to each and every allegation
26 of contempt alleged in the "Order to Show Cause and Affidavit for Contempt," signed and
27 issued by the court on July 15, 2009, the "Affidavit of Nicholas D. Myers, Esquire of Facts
28

1 Constituting Contempt," filed on July 14, 2009 and the "Declaration of David A. Bernstein,
2 Esquire, for Submission at the Hearing on Order to Show Cause re: Contempt," filed on
3 August 27, 2009.

4 3. Exhibits B, C and D are true and correct copies of the original documents in the
5 possession of the California State Bar (Exhibits B & C) and the California Attorney
6 General's Office (Exhibit D).

7 4. On August 13, 2010, I spoke with Deputy Attorney General Benjamin G. Diehl,
8 who informed me that upon James Parsa's resignation from the California State Bar, the
9 Attorney General's Office discontinued its investigation of Mr. Parsa as moot without
10 making any findings with respect to his actions.

11 I declare under penalty of perjury that the foregoing is true and correct, except as to
12 those matters stated upon my information and belief and as to those matters I believe them
13 to be true. Executed on the 28th day of August, 2010 in Santa Ana, California.



MARTIN F. SCHWARZ
Senior Deputy Public Defender
DECLARANT

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Exhibit B
(State Bar Disciplinary Records for James Parsa in Case 09-Q-16797)

FILED

09-C-12545

SEP 17 2009

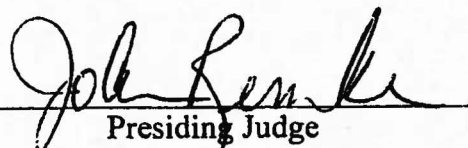
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**REVIEW DEPARTMENT OF THE STATE BAR COURT
IN BANK**

In the Matter of JAMES MAZI PARSA

a Member of the State Bar of California

Since respondent James Mazi Parsa, State Bar Number 153389, has been convicted of violating Penal Code section 261.5, a misdemeanor involving moral turpitude, under the authority of rule 9.10(a), California Rules of Court, it is ordered pursuant to Business and Professions Code section 6102 that respondent be suspended from the practice of law effective October 16, 2009, pending final disposition of this proceeding. It is also ordered that respondent comply with rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this suspension.

As the judgment of conviction is final and it appearing that the statutory criteria for summary disbarment are not met, this case is referred to the hearing department for a hearing and decision recommending the discipline to be imposed.


Presiding Judge



CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 17, 2009, I deposited a true copy of the following document(s):

ORDER FILED SEPTEMBER 17, 2009

in a sealed envelope for collection and mailing on that date as follows:

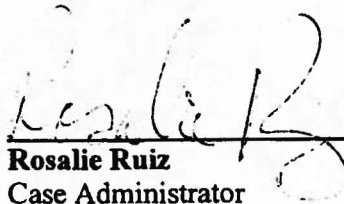
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES M. PARSA
JAMES M PARSA & ASSOCIATES PLC
3200 PARK CENTER DR STE 1300
COSTA MESA, CA 92626

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

KRISTIN L. RITSEMA, Enforcement, Los Angeles

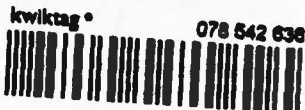
I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 17, 2009.



Rosalie Ruiz
Case Administrator
State Bar Court

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Exhibit C
(State Bar Disciplinary Records for James Parsa in Case 09-C-12545)



FILED

AUG 31 2009

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
KRISTIN L. RITSEMA, No. 149966
SUPERVISING TRIAL COUNSEL
1149 South Hill Street
Los Angeles, California 90015-2299
Telephone: (213) 765-1000

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

IN THE MATTER OF THE	)	Case No. 09-C-12545
CONVICTION OF:)	
	)	Transmittal of Records of Conviction of Attorney (Bus. & Prof.
JAMES MAZI PARSA,	)	Code §§ 6101-6102; Cal. Rules of Court, rule 9.5 et seq.)
No. 153389,)	
	)	[ ] Felony;
	)	[X] Crime(s) involved moral turpitude;
A Member of the State Bar.	)	[ ] Probable cause to believe the crime(s) involved moral
	)	turpitude;
	)	[ ] Crime(s) which may or may not involve moral turpitude or
	)	other misconduct warranting discipline;
	)	[X] Transmittal of Notice of Finality of Conviction.

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

- [X] A. Pursuant to the provisions of Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5 et seq., the Office of the Chief Trial Counsel transmits a certified copy of the records of conviction of the following member of the State Bar for such consideration and action as the Court deems appropriate.
- [] B. Notice of Appeal
- [X] C. Evidence of Finality of Conviction (Notice of Lack of Appeal)
- [] D. Other

Name of Member: JAMES MAZI PARSADate member admitted to practice law in California: June 14, 1991Member's Address of Record: 3200 Park Center Drive, Suite 1300
Costa Mesa, CA 92626

2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: May 17, 2001

Convicting court: Superior Court of California, County of Orange

Case number(s): NB00HM06291

Crime(s) of which convicted and classification(s): Violations of Penal Code § 261.5 (Unlawful Sexual Intercourse with Person under 18 Years of Age), 2 counts, misdemeanors which involve moral turpitude analogous to *In re Lesansky* (2001) 25 Cal. 4th 11 and *In re Safran* (1976) 18 Cal. 3d 134.

☒ 3. Compliance with Rule 9.20. (Applicable only if checked.)

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 9.20, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 9.20 within 40 days of the effective date of said order, showing the member's compliance with the provisions of rule 9.20.


☐ 4. Other information to assist the State Bar Court

DOCUMENTS TRANSMITTED:

Complaint filed on 09/01/00
General Misdemeanor Guilty Plea Form filed on 05/17/01
Sentence Recommendation Form - Misdemeanor
Certified copy of Docket certified on 07/22/09
Notice of Lack of Appeal dated 07/08/09

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: August 28, 2009

BY: 
KRISTIN L. RITSEMA
Supervising Trial Counsel

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Exhibit D
(Letter From Attorney General's Office to James Parsa)

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702
 LOS ANGELES, CA 90013

Public: (213) 897-2000
 Telephone: (213) 897-5548
 Facsimile: (213) 897-4951
 E-Mail: Benjamin.Diehl@doj.ca.gov

August 12, 2009

James M. Parsa & Associates PLC;
 Parsa Law Group
 3200 Park Center Dr Ste 1300
 Costa Mesa, CA 92626

RE: Substantiation of Advertising Claims

Dear Mr. Parsa:

I am writing regarding certain advertising for your mortgage loan modification business.

Under Business and Professions Code section 17508, the California Attorney General may require any person doing business in California to substantiate advertising claims, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact. This is a formal demand under section 17508 that, no later than 20 days from receipt of this letter, you provide evidence of the facts on which the following advertising claims listed below are based. In addition, after we receive your response, we may wish to arrange an in-person meeting with you to discuss the claims and evidence at issue. Failure to adequately substantiate the claims listed below may result in further action. See Business and Professions Code section 17508, subsection (c).

In your response, you should provide business records, studies, news accounts or other documents supporting each factual and/or comparative claim. You may also provide narrative responses; any documents you refer to in such responses should be included. For the claims listed below, I have noted the type of evidence this Office would consider necessary to fully and adequately substantiate the claim.

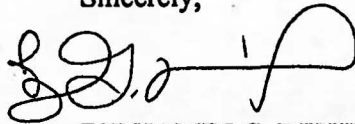
Claims To Be Substantiated:

- 1) On your website, your company provides testimonials and client success summaries of Mr. and Mrs. Martinez of Los Angeles, CA, Mr. and Mrs. Barrington of Moreno Valley, CA, Mr. Anderson of Santa Ana, CA, Dolores S. of Las Vegas, Nevada, Juan N. of Los Angeles, CA, Michael R. of Fontana, CA, Teresa V. of Rancho Cucamonga, CA, Antonio Q. of Anaheim, CA, Brenda L. of Los Angeles, CA, Conrad G. of Anaheim, CA, Reina M. of Sacramento, CA, Carlos R. of Chino Hills, CA, Charles W. of Fontana, CA, and Yoshi T. of Court Tracey, CA. Please provide the full name and address of each consumer, information showing the services your company provided to each consumer, who provided the services (including time spent by each person who worked on the file), and the result that your company obtained for each consumer.

- 2) On your website, your company states: "In Previous Loan Modifications or Home Mortgage Modifications, the Parsa Law Group Has Negotiated . . . Reduced, Fixed Interest Rates; Lower Monthly Mortgage Payments; Extension of Loan Term; Restructuring of Missed or Delinquent Payments; In Some Cases, Principal Balance Reduction; In Some Cases, Reduction or Short Pay Off Settlement of 2nd or 3rd Mortgages; [and] Lender Compliance with Terms of Making Home Affordable Program." Please substantiate these claims with the name and address of each consumer for whom you achieved one of these results. For each consumer, please provide information showing the services your company provided, who provided the services (including time spent by each person who worked on the file), and the result that your company obtained for each consumer.
- 3) On your website, you state: "Our attorneys are recognized in the industry as being insightful and innovative leaders in their respective areas of practice." Please substantiate this claim by providing the identity of each such attorney, including yourself, each attorney's area(s) of practice, and information showing his or her experience in the area(s) of practice identified.

Thank you in advance for your cooperation with these requests. As you are undoubtedly aware, California is facing an unprecedented mortgage loan crisis. In order to protect the public, this Office is taking a hard look at a variety of advertising claims promising relief for distressed homeowners, particularly where, as here, an upfront fee is required. I look forward to reviewing your responses and will contact you with any follow-up questions.

Sincerely,



BENJAMIN G. DIEHL
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

BD:mvg

SD2008800368
60446601.doc

DECLARATION OF SERVICE

In the Matter of Erin K. Baldwin (Parsa Law Group, APC v. Bad Biz Finder and Erin K. Baldwin—O.C. Sup. Ct. Nos. 30-2009-0011752

STATE OF CALIFORNIA)

)ss

COUNTY OF ORANGE)

Martin Schwarz declares that he is a citizen of the United States, a resident of Orange County, over the age of 18 years, not a party to the above-entitled action and has a business address at 14 Civic Center Plaza, Santa Ana, California 92701.

That on the 1st day of September, 2010, I served a copy of DEFENDANT'S REPLY/ANSWER TO THE ORDER TO SHOW CAUSE AND PLAINTIFF'S SUPPORTING AFFIDAVITS; MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF MARTIN F. SCHWARZ, AND EXHIBITS IN SUPPORT THEREOF, in the above-entitled action personally serving a copy of the above-entitled document by delivering by hand and leaving with the person hereinafter named a copy thereof:

Burkhalter, Kessler, Goodman & George, LLP
ATTN: Nicholas P. Kohan
2020 Main Street, Suite 600
Irvine, CA 92614

I declare under penalty of perjury that the foregoing is true and correct. Executed on 1st day of September, at Santa Ana, California.



MARTIN F. SCHWARZ
Orange County Public Defender's Office