

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
GEORGE JARROD HAZEL
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
(301) 344-0670
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July 28, 2014

RE: *Kimberlin v. National Bloggers Club et al.*

GJH-13-3059

LETTER ORDER

Dear Counsel:

This Letter Order addresses (1) Plaintiff Brett Kimberlin's ("Plaintiff") Request to File a Motion for a Preliminary Injunction, ECF No. 165; (2) Defendant Ace of Spades' correspondence regarding substituted service, ECF No. 166; and (3) Plaintiff's Request for Hearing Regarding Violations of the Case Management Order. ECF No. 167. For the reasons discussed below, the Court will DENY, in part, and GRANT, in part, Plaintiff's Request to File a Motion for Preliminary Injunction, ECF No. 165; GRANT Ace of Spades' request to file an opposition to Plaintiff's Motion for Substituted Service, ECF No. 166; and DENY Plaintiff's Request for Hearing Regarding Violations of the Case Management Order, ECF No. 167.

First, Plaintiff has requested that the Court grant him permission to file a Motion for Preliminary Injunction "to stop the harm caused by the Defendants' defamatory conduct and publications, which continues with daily publications and attacks" against him and his family. *See* ECF No. 165. Subject to the limitations discussed below, the Court will DENY, in part, and GRANT, in part, Plaintiff's request.

Plaintiff's Second Amended Complaint ("SAC") contains numerous causes of action against numerous defendants. *See* ECF No. 135. One of those claims is for defamation (*see id.* at ¶¶ 221-240) for which Plaintiff seeks monetary damages, as well as various forms of injunctive relief, including "[a]n order enjoining Defendants from engaging in future tortious conduct against Plaintiff"; "[a]n order requiring Defendants to remove any defamatory statements about swatting and other uncharged crimes by Plaintiff from blogs, book or media over which they have control"; and "a preliminary injunction . . . that bars Defendants from retaliating against Plaintiff in any way for bringing this action." *See id.* at 82. Plaintiff's SAC therefore seeks the exact same relief described in Plaintiff's Request to file a Motion for Preliminary Injunction – namely, the cessation and removal of defamatory online postings. At this late stage, the Court does not think it is appropriate for Plaintiff to file a Motion for Preliminary Injunction relating to conduct that pre-dates the filing of his SAC, since that conduct will be addressed through the ongoing litigation before the Court. *See e.g.*, ECF Nos. 136, 140, 147, 148, 149, 152, 156. Thus, to the extent Plaintiff wishes to file a Motion for Preliminary

Injunction that seeks to enjoin conduct addressed in the SAC, the Court will DENY Plaintiff's request.

Plaintiff has, however, described conduct that appears to post-date the SAC and, indeed, appears to be ongoing. As one example, Plaintiff claims that “[v]irtually every single day, Defendant Walker and Hoge post defamatory statements on their blogs and on Twitter and use titles with defamatory adjectives calling [him] a terrorist, forger, perjurer, pedophile, and other invectives.” ECF No. 165 at 1. Given the serious nature of this (and other) accusation(s) in Plaintiff's request, the Court will permit Plaintiff to file a Motion for Preliminary Injunction, subject to the following limitations.

First, Plaintiff's motion must be limited to the *specific* defendants identified in his request *i.e.*, defendants Walker, Hoge, McCain, Thomas, and Akbar. *See* ECF No. 165. Indeed, Plaintiff is reminded that just last week he represented to the Court that there were several defendants in this action who simply “got caught up in something they were not fully aware of.” ECF No. 153. The Court expects that these defendants will not be the subject of any Motion for Preliminary Injunction filed by Plaintiff.¹

Second, Plaintiff's motion must be limited to *specific* conduct that has occurred since the filing of his SAC on June 24, 2014 and must describe with sufficient detail the exact harm caused by each specific defendant and the irreparable harm sought to be prevented by way of immediate injunctive relief.

Third, Plaintiff's motion and accompanying memorandum may not exceed fifteen (15) pages, double spaced. *See* ECF No. 97 at 3. Plaintiff must file his motion by August 28, 2014. The defendants against whom the preliminary injunction is sought must file their oppositions to Plaintiff's motion by September 29, 2014. Oppositions to Plaintiff's motion may not exceed fifteen (15) pages, double spaced. *See id.* Plaintiff will be permitted to file a single omnibus reply not to exceed twenty-five (25) pages by October 29, 2014.

Fourth, Plaintiff's motion must strictly comply with the requirements of Fed. R. Civ. P. 11, including the requirements for signatures and other identifying information contained in Rule 11(a), as well as the requirements of 11(b). Failure to comply with Rule 11(b) could result in sanctions issued by the Court *sua sponte*. *See* Fed. R. Civ. P. 11(c)(3).

Next, the Court turns to Ace of Spades' correspondence regarding substituted service. *See* ECF No. 166. As per the Court's July 18, 2014 Letter Order, Plaintiff has sought to substitute service of Ace of Spades by serving Mr. Paul Levy, Ace of Spades' counsel. *See* ECF No. 162. Despite the Court's instruction to Plaintiff to file “a separate Motion for Substituted Service” (*id.* at 3), Plaintiff has filed a Request to Substitute Service. *See* ECF No. 164. Nevertheless, the Court will construe Plaintiff's “request” as a motion.

¹ Plaintiff is also reminded that the Court's July 18, 2014 Letter Order “encourage[d] Plaintiff to voluntarily dismiss those Defendants from this action” that were simply “caught up” in this suit. *See* ECF No. 162 at 3 fn. 2.

Ace of Spades has requested the opportunity to respond to Plaintiff's motion. *See* ECF No. 165. The Court will GRANT Ace of Spades' request. Ace of Spades must file its opposition to Plaintiff's motion by August 4, 2014. The opposition shall not exceed fifteen (15) pages, double spaced. *See* ECF No. 97. In turn, Plaintiff may file a reply by August 11, 2014. The reply shall not exceed fifteen (15) pages, double spaced. *See id.* To the extent Plaintiff's reply contains additional arguments not contained in his original motion, the Court may permit Ace of Spades to file a short sur-reply, not to exceed five (5) pages, double spaced by August 18, 2014.

Finally, Plaintiff has requested a hearing regarding purported violations of the Case Management Order ("CMO"). *See* ECF No. 167. Specifically, Plaintiff contends that several defendants have continued to defame him through postings made on various social media outlets, namely Twitter and YouTube. *Id.* According to Plaintiff, this conduct violates the CMO because it is "impertinent, scandalous, and [an] ad hominem attack[]" on Plaintiff. *Id.* The Court DENIES Plaintiff's request.

Not only has Plaintiff misquoted the language from the CMO, but Plaintiff has taken this language out of context.² When read in its *entirety*, the quoted language from the CMO reads: "**No motion, opposition, or reply** may contain any redundant, immaterial, impertinent, or scandalous matter, or any *ad hominem* attack on any party, any Judge or employee of this or any Court, or any other person." ECF No. 97 at 3 (emphasis added). Thus, the quoted language relied on by Plaintiff relates to content contained in *court filings e.g.*, motions, oppositions, and replies. The material Plaintiff complains of, however, was not contained in a court filing; instead, it was material posted on the Internet.

Lest there be any doubt, the CMO was not intended to moderate speech on the Internet. Its restrictions do not apply to petulant blog posts, tweets, Facebook status updates, YouTube postings, Instagram pictures, *or any other social media posting* that Plaintiff or any other party might find offensive.³ Nor was the CMO intended to be a guide to Internet civility; rather, it was intended "to govern filings in this case." ECF No. 88 at 5. Because Plaintiff's request does not concern filings in this case, it is "immaterial" and "impertinent," and therefore in violation of

² Given Plaintiff's checkered past with representations to the Court, Plaintiff is cautioned that when he makes a representation to the Court, it ought to be accurate, in terms of both content *and* context. *See e.g.*, ECF No. 102 at ¶ 3; ECF No. 122 at 3 (Judge Grimm's April 28, 2014 Letter Order characterizing Plaintiff's manipulation of summons as "clearly improper").

³ While the Court certainly does not condone the alleged actions of some of the defendants, it is not the Court's role to act as a moderator for Twitter or YouTube. Indeed, both websites have their own, well-established procedures for reporting abusive behavior. *See* Twitter's Policy for Reporting Abusive Behavior at: <https://support.twitter.com/articles/20169998-reporting-abusive-behavior#> and YouTube's Reporting and Enforcement Center at: <https://www.youtube.com/yt/policyandsafety/reporting.html>. The parties should use these less formal reporting mechanisms before burdening this Court, or any other court, with future requests concerning the appropriateness of social media postings. If these alternative solutions should not suffice, the Court is, of course, the appropriate forum to bring non-frivolous claims of defamation.

