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JAMES MCGIBNEY
VIAVIEW, INC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual, and VIAVIEW, INC, a corporation,)	Case No.: 5:14-cv-01059 BLF
Plaintiffs,)	DECLARATION OF ADAM STEINBAUGH IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANT THOMAS RETZLAFF’S MOTION TO STRIKE
vs.)	
THOMAS RETZLAFF, an individual, NEAL RAUHAUSER, an individual, LANE LIPTON, an individual, and DOES 1-5, individuals whose true names are not known,)	
Defendants.)	
)	

I, ADAM STEINBAUGH, declare the following under penalty of perjury:

1. I am the author of an eponymous blog on legal issues in technology, with a particular focus on so-called “revenge porn” or involuntary porn websites, which primarily exist to publish the nude photos of men and women without their consent. In addition to my own site, my work on this and other areas of legal journalism have been published or noted in *The Guardian*, Forbes.com, ArsTechnica.com, and various television and radio outlets.

2. In February 2013, I wrote about the operator of one such site, Hunter Taylor, who operated Texxxan.com, an involuntary porn site dedicated to women residing in southeast Texas. Shortly after public controversy over the site erupted, an individual identifying himself as “James Smith” or “Mr.

1 Texxxan” appeared online, as well as through a voice-distorted interview on Anderson Cooper’s television
2 program, claiming that he—and not Hunter Taylor—was the true operator of Texxxan.com.

3 3. On information and belief, Hunter Taylor has testified that he alone operated Texxxan.com
4 and that he was not “James Smith” or “Mr. Texxxan.”

5 4. On or about May 15, 2013, a user named “**Johnny Swift**” using the email address
6 “**mark14nx05y@hotmail.com**” and posting from the IP address **70.162.198.189**, which traces to Cox
7 Communications in Phoenix, Arizona, posted three comments on my blog, including on a post about James
8 McGibney’s company. A true and correct copy of a screenshot of my administrative system documenting
9 the posts by “Johnny Swift” is attached hereto within Exhibit 2.

10 5. Between February 19 and February 22, 2013, a user posting from the IP address
11 **72.201.185.236**, which traces to Cox Communications in Phoenix, Arizona, posted under three different
12 names on my blog. Based on the common IP address and the close proximity in time between posts, I
13 believe these three accounts and posts originated from the same computer and likely the same person.

- 14 a. The first post was by “**todd**” using the email address **t_retz@hotmail.com**, which, on
15 information and belief, is an email address used by Thomas Retzlaff to receive documents
16 filed in this case via the ECF system. The avatar used by “todd” was an image of a hooded
17 Klansman.
- 18 b. The second post was by “**Guest**”, who posted a comment in support of “todd”—*i.e.*, the
19 person behind the “Guest” account was using multiple accounts to appear to give support to
20 himself. The comment from “Guest” was critical of another poster who was criticizing
21 “James Smith.”
- 22 c. The third post was by “**the.klansman**” using the email address
23 **the.klansman@hotmail.com** posted a response supporting a previous comment posted by
24 “**James Smith**.”
- 25 d. A true and correct copy of a screenshot of my administrative system documenting the posts
26 originating from the 72.201.185.236 IP address is attached hereto within Exhibit 2.

27 6. When I challenged “James Smith” via email to produce evidence that he was the true
28 operator of Texxxan.com, “Smith” was unable to do so. Based on information that Thomas Retzlaff was
“James Smith” and “Mr. Texxxan,” I began working on an article documenting how he had fooled media
outlets.

1 7. “James Smith” claimed to be an American living in Namibia, and demonstrated an
2 obsession with the attorney (John Morgan) and private investigator (Philip Klein) retained by victims of
3 Texxxan.com.

4 8. On or about October 23, 2013, I posted on Twitter about an individual who had commented
5 on my blog, on a post about revenge porn site operator Craig Brittain. Late that night, my website received
6 a visit originating from the link in that tweet. The visitor’s IP address originated from a Cox IP address in
7 Phoenix, Arizona. My website received few other hits that evening, and no other visits that evening
8 originated from the post on Twitter.

9 9. Within approximately half an hour of the Cox IP visit, I received an email from “James
10 Smith”, who referred to the comment linked in the tweet (*i.e.*, the comment visited that evening by the Cox
11 IP address in Phoenix) and apparently believed that the tweet referred to him and evidenced my intent to
12 write about his true identity. “James Smith” wrote, *inter alia*:

13 “Think twice, funny guy, about what you post. You are reachable, your
14 whereabouts known, and you have a lot more to lose. I am not the guy who
15 posted a comment on a months old post about Brittain. Taking investigative
16 tips from Klein & Morgan will only cause you personal problems that you
17 don’t need.

18 [...]

19 “To quote Heisenberg [the protagonist of television show ‘Breaking Bad’], “if
20 you don’t know who I am, then maybe your best course would be to tread
21 lightly.” There are many levels of meaning to that statement. I suggest you
22 take it to heart, Adam.”

23 10. Based on the IP address, the timing of the visit and the e-mail from “James Smith,” and the
24 content of the email from “Smith,” I believe that “James Smith” was not in Namibia as he claimed, but in
25 Phoenix. Based on, *inter alia*, evidence referenced in Mr. McGibney’s declaration, the fact that each of the
26 visits to my blog resulted from IP addresses originating from Cox Communications in Phoenix, as well as
27 on my review of the language used by Thomas Retzlaff in his various legal pleadings¹, which is strikingly
28 similar to that of “James Smith,” the email address used by Mr. Retzlaff on my blog and on ECF/PACER,
and the repeated, substantially-uniform criticisms of John Morgan and Philip Klein, I believe that Thomas
Retzlaff is “James Smith”, “the klansman”, “todd”, and “Guest.”

11 11. “James Smith” denied that the foregoing email was intended to be a threat, and attempted to
12 clarify that it was not *Smith* who would harm me, but another person in Phoenix who I had written about—
13 and “Smith” informed me exactly how long it would take someone in Phoenix to reach my “exact front

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27 ¹ For example, Retzlaff’s legal pleadings have repeatedly used words like “bogus” and “to use a legal term”, which are
28 similar to language used by “James Smith” in his emails to me. Similar statements are routinely used by the author of the
blog at issue here.

1 door” in Los Angeles—because “Smith” was merely concerned for *my* safety. I did not find “Smith”’s
2 explanation credible (as his email was clearly warning me not to write about *him*) and, concerned for my
3 safety, opted not to publish an article about “James Smith.”

4 12. Although I repeatedly told “James Smith” that I wanted nothing more to do with him and
5 that he should stop emailing me, he ignored my request and continued to email me.

6 13. True and correct copies of portions of my correspondence with “James Smith” are
7 collectively attached hereto within Exhibit 2. I have removed repetitive pages (*i.e.*, those quoting earlier
8 portions of the correspondence which are already included as original emails), as well as the photograph of
9 a victim of involuntary porn.

10 I declare under penalty of perjury that the foregoing is true and correct to the best of my
11 knowledge. Executed in Beverly Hills, California on this 9th day of October 2014.

12 _____/s/ Adam Steinbaugh_____

13 Adam Steinbaugh
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