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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JAMES OLIVER ROMINE JR. Plaintiff **v.** JAMES NICHOLAS STANTON Defendant		Case No.: CV-16-00604-PHX-JJT **SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION / AMENDED MOTION IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS ORIGINAL COMPLAINT**

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION / AMENDED MOTION IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS ORIGINAL COMPLAINT

The Plaintiff submits this Motion in Support of The Plaintiff's Amended Motion in Response to The Defendant's Motion to Dismiss. This Motion in Support is in five parts and provides supporting analysis and facts to the material presented in the Motion mentioned above.

CASES

STATEMENT OF FACT REGARDING LACK OF STANDING

The Plaintiff asserts that just as 'scruff face' is used to describe Mr. Ventura in Ventura v. Kyle, 9F. Supp. 3d 1115 - Federal Court D. Minn. 2014 and Sullivan of New York Times Co. v. Sullivan, 376 US 254 - Supreme Court 1964 is only named by title. These were sufficient references to tie The Plaintiffs in the above two cases to their entities/titles just as The Plaintiff's Trade Names should supply such reference. These references could have been avoided and simply stated as Digital Homicide Studios

LLC. The Plaintiff's name was specifically used to defame The Plaintiff directly. The logic behind this is simple as The Plaintiff has already encountered the problem with trying to continue business. Within a month of forming a new business name and applying The Plaintiff's name as required to that documentation The Plaintiff will once again be attacked by The Defendant's subscribers and eventually The Defendant. This has in fact already happened with Every Click Counts Games and Micro Strategic Designs. The Plaintiff will be continually harassed until forced out of business by The Defendant and The Defendant's subscribers. The Plaintiff asserts the damage has not just been done to Digital Homicide Studios, The Defendant's usage of The Plaintiff's good name has affected ALL ability to do business by The Plaintiff. As such there must be relief and justice provided by due process for The Plaintiff. The damage was not done to The Plaintiff for being a manager of Digital Homicide Studios while it was attacked, this was the reason why a lawsuit was not filed a year ago when four false statements against Digital Homicide Studios were stated. The Plaintiff did not have the resources for a lawyer nor any idea how to proceed and The Defendant had not sufficiently used The Plaintiff's name in the defamatory statements. The damage from The Article and Tweets were caused by The Defendant's unnecessary usage of The Plaintiff's good name to include The Plaintiff in that damage.

STATEMENT OF FACT REGARDING PERSONAL JURISDICTION

As per Keeton v. Hustler Magazine, Inc., 465 US 770 - Supreme Court 1984 it is stated in That Court's evaluation of Milliken v. Meyer, 311 U.S. 457, 463 [(1940)], International Shoe Co. v Washington, 326 U.S. at 316 and World-Wide Volkswagen Corp. v. Woodson, 444 U.S., at 297-298 that "The victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has "certain minimum contacts . . . such that the maintenance of the suit does not offend `traditional notions of fair play and substantial". There has been no response by The Defendant in regards to the subscription service as there is sufficient minimum contacts related to it for jurisdiction.

It is also stated "Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine." No specific targeting of New Hampshire was made yet jurisdiction was granted due to sufficient systematic and continuous contacts with that State.

As stated in Brainerd v. Governors of the University of Alberta, 873 F. 2d 1257 "An alternative forum exists, but Arizona has a strong interest in protecting its residents from torts that cause injury within the state, and in providing a forum for relief. See Sinatra, 854 F.2d at 1200; Lake, 817 F.2d at 1423. Arizona has an interest in addition to the injury to Brainerd. If the defamation occurred, the false statements were imparted to the listeners and readers in Arizona, who were also injured. See Keeton v.

Hustler Magazine, Inc., 465 U.S. 770, 776, 104 S.Ct. 1473, 1479, 79 L.Ed.2d 790 (1984)." The Plaintiff asserts as in the Motion in Response to The Defendant's Motion to Dismiss that it is Stated that The State of Arizona will assert personal jurisdiction to the maximum level provided by The Constitution. The Plaintiff knows at least one and possibly up to four previous co-workers who are aware of The Defendant's statements in The Article and this has affected The Plaintiff's reputation directly in Arizona.

STATEMENT OF FACT IN REGARDS TO FAILURE TO STATE A CLAIM

The Defenses response to The Statement of claim existing within The Complaint is insufficient as The Statement exists in the format provided within The Pro Se guide obtained on the US Federal District Courts website. There was a mistaken reference in The Motion in Response to The Defendant's Motion to Dismiss. 8(a2) Statement of Claim is contained under Jurisdiction and Venue items 2 and 3 and items 1 and 2 of the Complaint section. The Plaintiff was aware of the requirements and believed the format used was sufficient.

STATEMENT OF FACT REGARDING DEFENSES IMPROPER ASSUMPTION OF THEFT

The Defendant states that "In Fact, Plaintiff admits that the artwork is not original artwork, stating in the Complaint, "The initial Slaughtering Grounds art was not taken from this site [linked by defendant]. It was a free upload to a wallpaper site and was a derivative work, which when this was discovered that the artist did not have

full rights to put it up for free, it was immediately removed." This statement shows lack of perspective on the actual events that took place. No one, including The Defendant, actually asked for commentary as to what happened in regards to that image. The Plaintiff's partner downloaded the Image and later The Plaintiff setup the store page. The Plaintiff had asked The Plaintiff's partner and The Plaintiff's partner stated that it was free to use. The Plaintiff's partner is not a Information Technology experienced individual and did not understand non-commercial licensing of images for desktop wallpaper usage. When The Plaintiff's partner saw free to use he believed it meant free to use. This was a license misunderstanding on The Plaintiff's partner's side. As soon as it was discovered that there was error and that the copyright had actually been stripped by a third party and that the source was a wallpaper site The Plaintiff removed the image. It was this incident that led to The Plaintiff and The Plaintiff's partner to begin subscribing to Shutterstock in large subscription quantities.

For theft to be properly found intent is required as stated in the definition "In common usage, theft is the taking of another person's property without that person's permission or consent with the **intent** to deprive the rightful owner of it." Just as The defense has immediately assumed wallpaper meant theft so would all believe The Defendant's statements about this incident on his Youtube Channel. There was no intent but there was never any effort to verify by anyone publishing insufficient facts about the problem. The Plaintiff is unsure which is a worse issue be it the accident itself or the fact that The Defendant did not verify intent before publishing the

statements in regards to the accident. An accident was turned into a disaster with intent to profit and destroy. This one incident has been the basis for hundreds of accusations of theft when there was literally only one accident involved. To have one accident be the basis repeated false accusations of theft by The Plaintiff at the hands of The Defendant and his subscribers is just as improper as arresting someone for something they did not do because they were a partner with someone who unknowingly did something previously with no intent. One recent Youtube comment about The Plaintiff and The Plaintiff's partner stated : "and the irony of them bitching about copyright infringement is so tasty since they built a career on STEALING". The Plaintiff can no longer count the number of false accusations.

In Conclusion, there has been no intent of wrongdoing, no actual wrongdoing, and no effort by The Defendant to verify facts in communication directly to The Plaintiff. Since this incident is directly related to the doing business as Digital Homicide it is only provided as evidence that one accident is the basis for hundreds of theft accusations and that over $30 thousand dollars worth of receipts are available. There was an enormous amount of stress during the time that this accident happened and communication was not the best between The Plaintiff and The Plaintiff's partner. A 7 month programming effort had failed and caused a scramble to produce a new game.

The Statement that The Defense proposes "The Plaintiff has admitted the artwork was not original" is using an improper reading of the entire passage and improper

retraction. "Initially I suggested Digital Homicide just took the image from a Deviantart artist without permission" This shows that the actual statement made and then edited was also false. There is a period between 'was' and 'you can see'. The Defense is adding the "you can see the original imagery here" as if it is part of the same sentence. The Statement "It's also worth noting that Galactic Hitman's artwork has been taken from elsewhere, just like the initial art for The Slaughtering Grounds was." is false on two parts on it's own. Galactic Hitman's art was from Shutterstock. The Slaughtering Grounds image was from a wallpaper site. The Galactic Hitman image was purchased and The Slaughtering Grounds box art was believed to be free to use. The reason Count 1 needs separated out into 3 Counts is that The Retraction adds additional context and meaning to the initial statement that had been edited after being seen by an undeterminable amount of individuals. The statement in the "Note:" section specifically defines the statement as being related to Deviant artist as where the "elsewhere" is and neither image was from that site. A proper retraction would have left the original text where it was unedited, added the note section, and restated what was actually supposed to be stated and a new article with equal coverage would have been applied with the false statements clarified. The Plaintiff asserts the edit could have deleted important libelous fact in regards to The Plaintiff that was exposed to the public and then covered up.

CORRECTION STATEMENT BY DEFENSE IN REGARDS TO JURISDICTION CHALLENGE IN VENTURA v KYLE

There was challenge to Jurisdiction/Venue in the Ventura v Kyle case approximately a year after case began, after Kyle passed. That request for change was denied although this could be due to how far the case had progressed rather than actual jurisdictional evaluation. The Plaintiff could not find the definitive document determining on what the decision had been based upon.

STATEMENT OF FACT REGARDING PATREON

NOT BEING A BUSINESS PARTNER

The following statement from Patreon.com's terms of service, where the subscriber makes in excess of $10,000 per month in subscription based payments, supports that these funds are direct payments to The Defendant from customers "23 No Agency - No independent contractor, agency, partnership, joint venture, employer-employee or franchiser-franchisee relationship is intended or created by this Agreement." The Plaintiff asserts this shows direct business relationship and The Defendant's subscribers even if they are receiving free daily content it is still a daily solicitation within The State of Arizona for systematic contacts for monetary support.

RESPECTFULLY SUBMITTED this 14 day of May 2016

By: _____

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Sworn to and subscribed before
me this 14 day of May 2016.

_____
NOTARY PUBLIC

Evelyn Garcia
Notary Public
Yuma County, Arizona
My Comm. Expires 10-08-16

Attachment D1