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5 SELF-REPRESENTED

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 DONGXIAO YUE,

11 Plaintiff,

12 v.

13 GAOGAO HAN, an individual,
14 HANSHAN.CO, HANSHAN.INFO
15 and DOES 1-10

16 Defendants.
17

Case No. C15-3463-HSG

**PLAINTIFF'S CASE MANAGEMENT
STATEMENT**

Date: July 19, 2016

Time: 2:00 PM

Courtroom: Court Room 10, 19th Floor

Judge: The Honorable Haywood S. Gilliam, Jr.

18 Plaintiff submits this CASE MANAGEMENT STATEMENT pursuant to the Standing Order of
19 the presiding judge and Civil Local Rule 16-9.
20

21 **1. Jurisdiction & Service**

22 This Court has subject matter jurisdiction over this matter because the case claims for
23 copyright infringement founded upon the Copyright Act at 17 U.S.C. §§ 101 *et seq.*, and false
24 designation of origin and false advertisement founded upon the Lanham Act, 15 U.S.C. §§ 1051
25 *et seq.* This Court has supplemental jurisdiction over the defamation and state unfair competition
26 claims as they arise out of and relate directly to Defendants' conduct in violation of federal law.
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1 The court has personal jurisdiction over the defendants because they directed their actions against
2 the state of California and their actions had effects in California.

3 On February 5, 2016, Chief Magistrate Judge found that Defendants had been properly
4 served, by mail under the New Jersey Rules, or by email under the California rules (noting that
5 Plaintiff "received confirmation that at least one of the emails he sent was opened"). After
6 Defendants failed to timely answer the complaint, Plaintiff requested entry of default. The Clerk
7 of Court entered default against all Defendants on March 1, 2016.
8

9 Subsequently, Defendant Han appeared and motioned to set aside default and to dismiss
10 the case for lack of personal jurisdiction. Plaintiff agreed to set aside default as to Han. The Court
11 found that personal jurisdiction over Han is proper and ordered that Han to be served again at his
12 email address registered with the Court's ECF system. Plaintiff served Han at his new email
13 address. Han has filed an answer, and asserted counterclaims of defamation, unfair competition
14 and vexatious behavior and frivolous litigation against Plaintiff.
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16 17 **2. Facts**

18 In 2012, Plaintiff created a program called Tube.JS, which provided enhanced
19 functionality for his website at zhenzhubay.com ("ZZB"). Defendant Han was an active user of
20 ZZB. Plaintiff wrote a blog article discussing the features of Tube.JS, and Han voted a "flowe"
21 emoticon under the blog. In 2014, Han established a competing website at Hanshan.Co and copied
22 Tube.JS for use on Hanshan.Co. Plaintiff notified Hanshan.Co about the infringement. Han, acting
23 as the administrator of Hanshan.Co, kept attacking Plaintiff with false statements calculated to
24 injure Plaintiff's professional career and reputation, despite Plaintiff's repeated request that Han
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1 stop such attacks. Plaintiff even registered on Hanshan.Co to dissuade Han from continuing the
2 attacks. Han blocked Plaintiff's account on Hanshan, and continued his defamatory attacks.

3 **3. Legal Issues**

4 Plaintiff expects the following legal issues:

- 5 • Whether Han should be sanctioned for making many false statements in his sworn
6 declarations;
- 7 • Whether Han asserted valid counterclaims against Plaintiff.
8

9 **4. Motions**

10 Plaintiff expect to file the following motions

- 11 • Motion to dismiss Han's counterclaims;
- 12 • Motion for default judgment against Hanshan.Co and Hanshan.Info;
- 13 • Motion for summary judgment.
14

15 **5. Amendment of Pleadings**

16 There were a few IDs who posted defamatory statement against Plaintiff may amend the
17 complaint when the persons behind these IDs are identified.
18

19 **6. Evidence Preservation**

20 Plaintiff has preserved evidence relevant to the issues reasonably evident in this action.
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22 **7. Disclosures**

23 Plaintiff has served his initial disclosures on Han.

24 **8. Discovery**

25 No discovery has been taken to date. Plaintiff's proposed discovery plan and descriptions
26 of the scope of discovery appear below.
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1) **FRCP 26(f)(3)(A)**: Plaintiff does not seek any changes in the timing, form, or requirement for disclosures under Rule 26(a) and will make initial disclosures on July 12, 2016.

2) **FRCP 26(f)(3)(B)**: Plaintiff will seek discovery on at least the following topics:

- How Defendants copied and adapted Tube.JS for use on Hanshan.Co;
- How Tube.JS software was used Hanshan.Co;
- Likelihood of confusion caused by Han's use of the Tube.JS while holding out as his own;
- Han's knowledge of the alleged infringement or its disregard of Plaintiff's rights;
- Han's profits attributable to the alleged copyright infringement;
- Han's code allegedly used to replace Tube.JS;
- Han's attacks on Plaintiff online and offline;
- How others are misled by Han's statements about Plaintiff;
- Han's counterclaims;
- Hans's defenses.

Plaintiff intends to serve document requests, written interrogatories, and requests for admission on Plaintiff pursuant to Rules 33, 34, and 36 regarding the above topics. Plaintiff intends to depose Han, and other witnesses as document discovery reveal the responsible persons. Plaintiff reserves the right to propound additional written discovery as it deems necessary. Plaintiff anticipates completion of fact discovery by April 19, 2017 and reserves the right to proffer and conduct expert discovery. Plaintiff proposes the parties adhere to the discovery limits set by the federal rules, and preserve the right to seek court approval of additional discovery.

3) **FRCP 26(f)(3)(C)**: The parties have discussed electronically-stored information (“ESI”) and have agreed to preserve all ESI that may be relevant to this matter. The parties will negotiate specific issues regarding the scope of search and production when there are specific discovery requests to be addressed.

1 4) **FRCP 26(f)(3)(D)**: Each party will produce a privilege log for any privileged materials
2 that are withheld from a production. The privilege logs will list the sender and recipients of a
3 given communication, the subject line, and the basis for the claim of privilege.

4
5 **9. Class Actions**

6 Not applicable.

7 **10. Related Cases**

8 There is no related case.

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10 **11. Relief sought**

- 11 • That Defendants be held liable willful infringement of Plaintiff's copyrights;
- 12 • That Defendants be preliminarily, and thereafter permanently, enjoined from
13 infringing Plaintiff's copyrights;
- 14 • That Plaintiff be awarded its actual damages according to proof for Defendants'
15 acts of copyright infringement;
- 16 • That Defendants be ordered to disgorge their direct or indirect profits or gains
17 attributable to the infringement of Plaintiff's copyrights;
- 18 • That Plaintiff be awarded statutory damages pursuant to 17 U.S.C. § 504(c)
19 when statutory damages are appropriate and desirable;
- 20 • That Plaintiff recover its reasonable attorneys' fees pursuant to any applicable
21 laws and/or rules;
- 22 • That Plaintiff recover his costs of this suit, including expert witness costs,
23 pursuant to 17 U.S.C. § 505 and any other applicable laws and/or rules;
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- That Defendants be held liable for false designation of origin and unfair competition against Plaintiff in violation of 15 U.S.C. § 1125(a);
- That Defendants be required to pay Plaintiff such damages as Plaintiff sustained, or will sustain, as a result of Defendants' false designation of origin, and account for all gains, profits, and advantages derived by Defendants, and that such damages be trebled as provided by 15 U.S.C. § 1117;
- That Defendants be held liable for false advertisement and unfair competition against Plaintiff in violation of 15 U.S.C. § 1125(a);
- That Defendants Han and HANSHAN be required to pay Plaintiff such damages as Plaintiff sustained, or will sustain, as a result of Defendants' false advertisement and unfair competition, and account for all gains, profits, and advantages derived by Defendants, and that such damages be trebled as provided by 15 U.S.C. § 1117;
- That the Court adjudge this to be an exceptional case and require Defendants pay Plaintiff the cost of this action, as provided by 15 U.S.C. § 1117;
- That Defendants, and each of them, be held liable for defamation and/or defamation per se, and that Defendants defamed Plaintiff with malice, oppression and/or fraud;
- That Plaintiff be awarded damages according to proof of defamation; That Plaintiff be awarded exemplary and/or punitive damages for Defendants' defamation;

- That Defendants HAN and HANSHAN be held liable for unfair competition in violation of California Business & Professions Code § 17200 *et seq.*, as alleged herein, and be enjoined from engaging in any further such acts of unfair competition.

12. Settlement and ADR

The parties has agreed to participate in the ENE process. An Early Neutral has already been appointed and the parties will have conferred with her on July 13, 2016 to arrange the early neutral evaluation.

13. Consent to Magistrate Judge For All Purposes

Plaintiff has consented to a magistrate judge. Defendant Han has declined to proceed before a Magistrate judge.

14. 14. Other Reference

None known at this point.

15. Narrowing of Issues

Han has admitted copying the Tube.JS. Plaintiff will work in good faith to entertain reasonable stipulations of fact and related summaries as a trial date nears.

16. Expedited Trial Procedure

Plaintiff does not seek an expedited schedule.

17. Scheduling

1. Plaintiff proposes the following case schedule, subject to the Court's availability:

Event	Proposed Date
Deadline to amend pleadings	December 1, 2016

1	Close of fact discovery	April 19, 2017
2	Deadline to disclose proposed expert witnesses	April 1, 2017
3	Opening expert reports due	May 20, 2017
4	Rebuttal expert reports due	June 10, 2017
5	Close of expert discovery	July 1, 2017
6	Deadline to file motions for summary judgment	July 31, 2017
7	Hearing on motions for summary judgment	September 7, 2017, 2:00PM, or at the Court's convenience
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9		
10	Final pretrial conference	November 7, 2017
11	Trial	November 18, 2017

12 18. Trial

13 Plaintiff demanded jury trial. Plaintiff expects the trial to last four days.

14 19. Disclosure of Non-party Interested Entities or Persons

15 Plaintiff has filed this disclosure.

16 20. Professional Conduct

17 Plaintiff has reviewed the relevant guidelines.

18 21. Other

19 None known at this point.

20 Dated: July 11, 2016

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25 _____ /S/

26 DONGXIAO YUE (*Pro Se*)