UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WILLIAM SHEEHAN,
Plaintiff

v.

KING COUNTY, EXPERIAN aka TRW, et al.,
Defendants

NO. C97-1360WD

ORDER ON EXPERIAN'S MOTION FOR PRELIMINARY INJUNCTION, PLAINTIFF'S MOTION TO VACATE TRO AND EXPERIAN'S MOTION FOR FINDING OF CONTEMPT

Defendant-counterclaimant Experian Information Solutions, Inc. ("Experian"), in its amended answer, asserts counterclaims for injunctive relief against plaintiff William A. Sheehan, III, alleging defamation, commercial disparagement, interference with a lawful business, negligence, and willful and wanton misconduct. Jurisdiction as to the counterclaims is based upon 28 U.S.C. § 1367(a). The counterclaims arise from plaintiff's having published certain material on his Internet web site. Experian has moved for a preliminary injunction enjoining plaintiff from engaging in the following conduct during the pendency of this case:

Posting on the web site found at *http://billsheehan.com* or any other web site, any false or defamatory statements about Experian, its employees or agents, or any other language specifically calculated to induce others to harass, threaten or attack Experian, its employees or agents, including but not limited to their social security numbers, home phone numbers and maps to their homes.

Oral argument on this and other motions was heard in open court on July 6, 1998. All arguments presented, and the briefs filed (including an amicus curiae brief by the American Civil Liberties Union of Washington), have been fully considered.

The motion for a preliminary injunction is directed to two types of statements: those claimed to be defamatory, and those that reveal personal information about Experian's employees and lawyers. It will be assumed, for purposes of the motions now decided, that Experian has standing to seek injunctive relief as to both types of statements.

To obtain a preliminary injunction, the moving party must show either (1) a combination of a strong chance of success on the merits and the possibility of irreparable harm, or (2) the existence of serious questions going to the merits and a balance of hardships tipping sharply in its favor. *Bernard v. Air Line Pilots Ass'n. Intern., AFL-CIO*, 873 F.2d 213,

217 (9th Cir. 1989). These are not two distinct tests, but opposite ends of a continuum in which the showing of harm varies inversely with the showing of meritoriousness. *Republic of the Philippines v. Marcos,* 862 F.2d 1355. 1362 (9th Cir. 1988) (en banc), *cert. denied,* 490 U.S. 1035 (1989).

Beyond the standard preliminary injunction test, an additional factor is present here. Under the First Amendment guarantee of freedom of speech, a distinction is made between damages awards following trial (in defamation cases, for example) and prior restraints on speech. Restraining orders and injunctions "are classic examples of prior restraints" and as such are presumed to be unconstitutional. *Alexander v. United States,* 509 U.S. 544.550 (1993). *See also Vance v. Universal Amusement Co.,* 445 U.S. 308, 316 n.13 (1980) (*citing Bantam Books v. Sullivan,* 372 U.S. 58, 70 (1963)); *New York Times Co. v. United States,* 403 U.S. 713.714 (1971). The First Amendment does not tolerate even temporary suppression of speech that might ultimately be found to be protected. *See Vance,* 445 U.S. at 316, n.13. Thus, a court will not enjoin speech that might be, but has not yet been, found defamatory. *See generally, Near v. Minnesota,* 283 U.S. 697 (1931).

A narrow exception allows prohibition of speech that "is directed to inciting or producing imminent lawless action and is likely to induce or produce such action." *Brandenburg v. Ohio,* 395 U.S. 440, 447 (1969). The Supreme Court has made clear that the exception does not permit courts to suppress speech that amounts only to a generalized advocacy of illegal action. *See, e.g., Hess v. Indiana,* 416 U.S. 105, 107 (1973); *Terminiello v. City of Chicago,* 337 U.S. 1, 3 (1949); *Bond v. Floyd,* 385 U.S. 116, 113 (1966); *Kingsley Int'l Pictures Corp. v. Regents of University of N.Y.,* 360 U.S. 684, 689 (1959); *cf. Planned Parenthood v. American Coalition,* 945 F. Supp. 1355,1371 (D. Or. 1996).

The Internet is an arena of free speech. *See Reno v. American Civil Liberties Union,* 117 5. Ct. 2329, 2334 (1997). Accordingly, the motion for a preliminary injunction must be decided with First Amendment protection in mind.

The record shows that the plaintiff's web site has contained grievances against government officials, credit reporting agencies, and debt collection services; scurrilous expressions of opinion (e.g., referring to Experian as "criminally insane" and to named persons as "assholes," "jerkoffs," and "scumbags"); and other allegations that are claimed to be defamatory. It has also contained information about credit agency employees and attorneys (including home addresses, street maps, home telephone numbers, fax numbers, and social security numbers); as to this category, plaintiff declares that he obtained the information lawfully from public information sources such as the Washington Secretary of State and other Internet sites.

Plaintiff has stated that the purpose of his web site is to hold the credit companies "accountable." He argues that the addresses and telephone numbers would make it easier for others aggrieved by credit reports to serve process. With regard to one attorney, he has printed the words, in quotation marks, "please medicate these guys!" But the web site has not suggested that readers take any specific action, or that they put the information to any particular use. There is no showing that lawless action was either asked for or

imminent. In fact, information of this nature has been available on plaintiff's web site since early 1997, and there is no evidence that anyone has ever been harassed, approached, or contacted by a person who viewed the site.

The First Amendment is renowned for protecting the speech we deplore as thoroughly as the speech we admire. *See, e.g., Noto v. United States,* 367 U.S. 290, 298 (1961). Plaintiffs verbal pyrotechnics have surely been offensive, but they have had a theme - his belief (whether false or overblown does not matter) that he and others are victims of credit reporting agencies. Offensive speech - even if it "stirs people to anger" - is ordinarily protected. *Terminiello,* 337 U.S. at 4.

Closely in point is *Organization for a Better Austin v. Keefe,* 402 U.S. 415 (1971), which involved a preliminary injunction against the distribution of leaflets by an organization that criticized the business methods of a real estate broker. The leaflets were meant to let "his neighbors know what he was doing to us," gave the broker's home telephone number, and asked readers to call him at home. The Supreme Court dissolved the preliminary injunction as an unconstitutional prior restraint, rejecting a claim that the broker's interest in privacy outweighed the public interest in peaceful distribution of the leaflets. *Id.* at 417-19.

The Internet is a modern version of the leaflets distributed in *Keefe.* In the absence of incitement to imminent unlawful action, the motion for a preliminary injunction must be denied.

On June 10, 1998, the court ruled on Experian's motion for a temporary restraining order by denying its motion to restrain "any false or defamatory statements about Experian, its employees or agents," but granting the motion (pending further order of the court) as to "ny language specifically calculated to induce others to harass, threaten or attack Experian, its employees or agents, including, but not limited to, their social security numbers, home phone numbers, and maps to their homes." For the reasons given above, the latter portion of the June 10 order must now be vacated because there is no evidence that plaintiff has published anything that could be deemed an incitement to imminent unlawful action. The court's statement at the June 10 hearing that "there is no other apparent reason for publishing" these materials must also be amended. The burden is not upon the plaintiff to show a reason for his communications, but upon the party seeking injunctive relief to show that speech can be enjoined under an exception to First Amendment protection; here, at least at the present stage, that has not been done. Accordingly, plaintiff's motion (inferred from his opposition papers) to vacate the temporary restraining order is granted, and that order is now vacated.

There remains Experian's motion for a finding of contempt of the June 10 restraining order. Plaintiff asserts that he complied with the order and should not be blamed for information about Experian's employees and/or attorneys having become available on other web sites. There has not been a sufficient factual showing to justify a finding of contempt and, in any event, the restraining order is now vacated.

For the reasons stated, Experian's motion for a preliminary injunction is denied, plaintiff's motion to dissolve the temporary restraining order is granted, and Experian's motion for a finding of contempt is denied.

The clerk is directed to send copies of this order to all counsel of record.

Dated: July 17, 1998.

William L. Dwyer
United States District Judge