

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89109
Tel: (702) 862-3300 Fax: (702) 737-7705

1 ARIEL E. STERN, ESQ.
Nevada Bar # 8276
2 JONES VARGAS
3773 Howard Hughes Parkway
3 Third Floor South
Las Vegas, Nevada 89109
4 Telephone: (702) 862-3300
Facsimile: (702) 737-7705
5 ATTORNEYS FOR DEFENDANT

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SOFTWARE DEVELOPMENT AND
INVESTMENT OF NEVADA, d/b/a TRAFFIC-
POWER.COM,

Plaintiff,

vs.

AARON WALL, an individual, d/b/a SEO
BOOK.COM; and DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO. CV-S-05-1109-RHL-LRL

MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, TO DISMISS FOR
LACK OF PERSONAL
JURISDICTION

Defendant Aaron Wall, d/b/a SEObook.com (“Wall”), moves this Court pursuant to Fed.R.Civ.P. 56 for summary judgment. In the alternative, Wall moves this Court pursuant to Fed.R.Civ.P. 12(b)(2) for dismissal of this action for lack of personal jurisdiction.

I.
INTRODUCTION

This case raises the issue of whether the federal Communications Decency Act of 1996 shields “bloggers” from liability for information posted on the Internet by third parties. Wall is a “blogger” who operates a “blog” on the Internet website “SeoBook.com.” A “blog” (a contraction of “web” and “log”) is an Internet website that allows the person who owns and operates it (commonly known as a “blogger”) to post news, opinions or other information on the Internet. A blog is essentially an on-line diary kept by the blogger on the Internet that can be read by visitors

1 to the website on which the blog is maintained. A blog may cover many subjects or be restricted
2 to specific subject matters such as sports, law or politics. The owner/operator of the blog has the
3 option of allowing his/her readers to post responses to the information posted either by the blogger
4 or by another reader. Thus, information and opinions can be freely exchanged between multiple
5 parties on a blog and a blog serves as a forum for "electronic conversations" among readers.

6 In this case, Wall owns and operates a blog on the Internet website "SeoBook.com"
7 (hereafter, the "Blog"). Wall regularly posts information and opinions. Wall has configured the
8 Blog so that readers can post their own opinions on the Blog, either in response to information that
9 Wall posted or in response to comments posted by another reader. Wall does not have any control
10 over the content of information posted on the Blog by the Blog's readers, although Wall can edit
11 and/or remove readers' posts after they have been posted (and after they have been available to the
12 public on the Internet for some time). Wall limits the subject matter of the Blog to "search engine
13 optimization," which refers to the business of enhancing website design so that a website is more
14 likely to be located by an Internet search engine such as Yahoo® or Google™.¹ Search engine
15 optimization confers a competitive advantage to a website over a rival website that is not
16 optimized.

17 Software Development and Investment of Nevada, d/b/a Traffic-Power.com ("Plaintiff")
18 purports to be in the search engine optimization business. Plaintiff accuses Wall of defamation
19 and violation of the Uniform Trade Secrets Act, NRS 600A.010 et seq. Plaintiff appears to allege
20 that some of its employees and/or former employees published trade secrets on the Blog. Plaintiff
21 also complains that defamatory information was published on the Blog by unspecified persons.
22 Plaintiff therefore seeks to impose liability on Wall for information posted on the Blog by
23 unidentified third parties. As will be demonstrated below, Wall is immune from such liability
24 under the federal Communications Decency Act of 1996. Summary judgment on these claims is

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27 ¹ For example, an Internet search of the term "law school" on Google™ results in a listing of the following
28 institutions' websites in the following order: (1) the Law School Admission Council, (2) Harvard Law School, (3)
Cornell Law School, (4) Emory Law School and (5) Brooklyn Law School. UNLV's Boyd School of Law is the
172nd website listed. Effective optimization of the Boyd Law School's website would enable it to be listed earlier on
Google's™ results page.

1 therefore appropriate. Furthermore, Plaintiff's remaining claims, if any, are stated in terms so
2 vague that they fail to provide Wall with notice of the nature of the claims asserted against him.
3 Any such remaining claims should therefore be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) for
4 failure to state a claim upon which relief can be granted.

5 **II.**

6 **STATEMENT OF UNDISPUTED FACTS REQUIRED BY LOCAL RULE 56-1**

7 1. Wall is an individual who resides in, and is a citizen of, the Commonwealth of
8 Pennsylvania. See Wall Affidavit, Exh. A, ¶ 2.

9 2. Wall owns and operates the Blog. See Exh. A, ¶ 3.

10 3. The Blog is an Internet website that that allows Wall to post opinions and
11 information on the Internet. See Exh. A, ¶ 4.

12 4. Wall allows readers of the Blog to post information on the Internet through the
13 Blog. See Exh. A, ¶ 4.

14 5. Wall has chosen to limit the subject matter of information that is posted on the Blog
15 to the search engine optimization industry. See Exh. A, ¶ 5.

16 6. "Search engine optimization" refers to the practice of enhancing website design so
17 that a website is more likely to be located by an Internet search engine such as Yahoo® or
18 Google™. See Exh. A, ¶ 5.

19 7. Plaintiff is in the search engine optimization business. See Complaint, ¶ 1.

20 8. The Blog is an Internet website that allows Internet users other than Wall to access
21 a computer server. In addition to allowing others to access the Blog, Wall himself uses the Blog
22 by posting comments on it. See Exh. A, ¶ 6.

23 9. Wall does not have, nor has he ever had, access to any trade secrets belonging to
24 Plaintiff. See Exh. A, ¶ 7.

25 10. Wall has not published any trade secret belonging to Plaintiff on the Blog. See
26 Exh. A, ¶ 8.

27 11. Wall did not publish any statements on the Blog that can be construed as
28 defamatory to Plaintiff. See Exh. A, ¶ 9.

1 12. Plaintiff's counsel sent Wall a demand letter prior to the commencement of this
2 action. The letter demanded that Wall remove comments defamatory to Plaintiff from the Blog.
3 In responding to the letter, Wall contacted Plaintiff's counsel to inquire as to what statements
4 made by him were defamatory to Plaintiff. Plaintiff's counsel refused to provide Wall with the
5 requested information. See Exh. A, ¶ 10.

6 13. Wall does not have any property, dealings with, or business in Nevada. See Exh.
7 A, ¶ 11.

8 III.

9 LEGAL ARGUMENT

10 A. This Motion for Summary Judgment Is Procedurally Appropriate

11 "A party against whom a claim . . . is asserted . . . may, at any time, move with or without
12 supporting affidavits for a summary judgment in the party's favor as to all or any part thereof."
13 Fed.R.Civ.P. 56(b). This motion for summary judgment is therefore properly before the Court.

14 B. Standard for Summary Judgment

15 The standard for granting summary judgment is a familiar one. "Summary judgment is
16 proper when 'the pleadings, depositions, answers to interrogatories, and admissions on file,
17 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
18 that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(c).'" Trustees
19 of the Construction Industry and Laborers Health and Welfare Trust v. Summit Landscape
20 Companies, Inc., 309 F.Supp.2d 1228, 1234 (D. Nev. 2004). "Once the moving party satisfies the
21 requirements of Rule 56, the burden shifts to the party resisting the motion to 'set forth specific
22 facts showing that there is a genuine issue for trial.' Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
23 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Celetox Corp. v. Catrett, 477 U.S. 317, 325, 106
24 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The non-moving party 'may not rely on denials in the
25 pleadings but must produce specific evidence, through affidavits or admissible discovery material,
26 to show that the dispute exists,' Bhan v. NME Hosp., Inc., 929 F.2d 1404 (9th Cir. 1991), and
27 'must do more than simply show that there is some metaphysical doubt as to the material facts.'
28 Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538

1 (1986)." Id. "An issue is 'genuine' only if there is a sufficient evidentiary basis on which a
2 reasonable fact finder could find for the nonmoving party, and a dispute is 'material' only if it could
3 affect the outcome of the suit under the governing law. Anderson, 477 U.S. at 248-49, 106 S.Ct.
4 2505; Matsushita Elec., 475 U.S. at 587, 106 S.Ct. 1348, 89 L.Ed.2d 538." Id.

5 In this case, 47 U.S.C. § 230 immunizes Wall from any liability deriving from information
6 posted on the Blog by third parties. Accordingly, Plaintiff cannot prevail on its claim for
7 misappropriation of trade secrets. Also, Plaintiff cannot prevail on its claim for defamation to the
8 extent that the defamation claim derives from information posted on the Blog by any person other
9 than Wall. Moreover, Plaintiff's defamation claim, to the extent that it derives from statements
10 published on the Blog by Wall himself, should be dismissed for failure to state a claim because it
11 is stated in terms so vague that it fails to provide fair notice of the claim. Finally, Plaintiff's
12 claims for injunctive relief and for punitive damages fail a matter of law because they derive from
13 the misappropriation of trade secrets and defamation claims. In short, Wall is entitled to judgment
14 as a matter of law and/or dismissal on all of Plaintiff's claims.

15 **C. Wall Has Immunity From Liability For Information Published On The Blog By**
16 **Third Parties Pursuant To 47 U.S.C. § 230**

17 Section 230 of Title 47 of the United States Code preempts state law causes of action that
18 are inconsistent with its provisions. See Zeran v. America Online, Inc., 958 F.Supp. 1124, 1133
19 (E.D. Va. 1993), aff'd 129 F.3d 327 (4th Cir. 1997), cert. denied 524 U.S. 937, 118 S.Ct. 2341,
20 141 L.Ed.2d 712 (1998). Wall has immunity under 47 U.S.C. § 230 from all of Plaintiff's claims
21 that arise out of information posted on the Blog by a Doe Defendant or by any other third party.
22 Wall is therefore entitled to summary judgment on Plaintiff's cause of action for misappropriation
23 of trade secrets because any trade secrets that may have been posted on the Blog were posted by
24 third parties; Wall did not post any trade secrets belonging to Plaintiff on the Blog. In fact,
25 Plaintiff does not allege that Wall published any trade secrets and asserts its claim for
26 misappropriation of trade secrets solely against the Doe Defendants. See Complaint, ¶¶ 7, 14, 22.
27 Wall is also entitled to summary judgment on Plaintiff's cause of action for defamation to the
28

1 extent that Plaintiff's defamation claim derives from information posted on the Blog by any person
2 other than Wall.

3 **1. Providers And Users Of Interactive Computer Services Are Immune From**
4 **State Law Claims Under 47 U.S.C. § 230 If Such Claims Derive From**
5 **Information Provided By Third Parties**

6 The federal Communications Decency Act of 1996 (the "Act") grants Wall immunity from
7 civil liability stemming from the publication by a third party of misappropriated trade secrets
8 and/or defamatory statements on the Blog. The Act provides in pertinent part as follows:

9 **"(c) Protection for 'Good Samaritan' Blocking and Screening of Offensive**
10 **Material**

11 **(1) Treatment of Publisher or Speaker.** No provider or user of an
12 interactive computer service shall be treated as the publisher or speaker of any
13 information provided by another information content provider.

14 **(e) Effect on Other Laws**

15 **(3) State Law** Nothing in this section shall be construed to prevent any
16 State from enforcing any State law that is consistent with this section. No cause
17 of action may be brought and no liability may be imposed under any State or local
18 law that is inconsistent with this section."

19 See Communications Decency Act of 1996 § 230, 47 U.S.C. § 230(c)(1),(e)(3).² Section 230(c)(1)
20 "set limitations on liability under state law for postings on the Internet and other computer
21 networks." Batzel v. Smith, 333 F.3d 1018, 1026 (9th Cir. 2003). "Specifically, 47 U.S.C. §
22 230(c)(1) overrides the traditional treatment of publishers, distributors and speakers under
23 statutory and common law. As a matter of policy, 'Congress decided not to treat providers of
24 interactive computer services like other information providers such as newspapers, magazines or
25 television and radio stations, all of which may be held liable for publishing or distributing obscene
26 or defamatory material written or prepared by others.'" Id., quoting Blumenthal v. Drudge, 992
27 F.Supp. 44, 29 (D.D.C. 1998). A critical consideration in applying Section 230 of the Act is the
28 "concern that lawsuits could threaten the 'freedom of speech in the new and burgeoning Internet

² Unless otherwise noted, all further statutory references are to 47 U.S.C. § 230.

1 medium.” Id. at 1027, quoting Zeran v. America Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997).
2 “Section 230 was enacted, in part, to maintain the robust nature of Internet communications, and
3 accordingly, to keep government interference in the medium to a minimum.” Zeran, 129 F.3d at
4 330. Consistent with the Congressional intent of maintaining a robust climate for Internet
5 communication and pursuant to Ninth Circuit case law, Section 230 of the Act immunizes Wall
6 from liability stemming from statements posted on the Blog by third parties.

7 **2. Wall Is A Provider And User Of An Interactive Computer Service Under**
8 **47.U.S.C. § 230(f)(2)**

9 Wall is a provider and user of an “interactive computer service” under the Act. The Act
10 defines an “interactive computer service” as “any information service, system, or access software
11 provider that provides or enables computer access by multiple users to a computer server,
12 including specifically a service or system that provides access to the Internet and such systems
13 operated or services offered by libraries or educational institutions.” 47 U.S.C. § 230(f)(2). This
14 definition covers any service or system as long as the service or system allows multiple users to
15 access a computer server. See Batzel, 333 F.3d at 1030. Websites, including the Blog, qualify as
16 interactive computer services under the Act because they allow users to access computer servers.
17 See Carafano v. Metrosplash.com, Inc., 207 F.Supp.2d 1055, 1066 (C.D. Cal. 2002), aff’d 339
18 F.3d 1119 (9th Cir. 2003) (holding that a website operator qualifies as a provider of an interactive
19 computer service under 47. U.S.C. § 230). See also Schneider v. Amazon.com, Inc., 108
20 Wash.App. 254, 31 P.3d 37, 40 (2001) (holding that a website that enables visitors to comment
21 about authors and their work provides an information service that necessarily enables access by
22 multiple users to a server and consequently brings the website within the definition of interactive
23 computer service pursuant to 47 U.S.C. § 230(f)(2)). In this case, the Blog allows visitors to
24 comment on the search engine optimization field and thus provides an interactive information
25 service that necessarily allows such visitors to access the Blog’s server. The Blog is therefore an
26 interactive computer service under 47 U.S.C. § 230(f)(2). Wall is therefore a provider of an
27 interactive computer service under 47 U.S.C. § 230(c)(1).

1 Wall is also a user of an interactive computer service. The Blog is made available on the
2 Internet through DreamHost Web Hosting, which provides the server utilized by the Blog. See
3 Exh. A, ¶ 6. In fact, Wall is a user of an interactive computer service merely by virtue of operating
4 the Blog; in order to make the Blog’s website available, Wall “*must* access the Internet through
5 some form of ‘interactive computer service.’” Batzel, 333 F.3d at 1031 (emphasis in original).

6 Since Wall is both a provider and a user of an interactive computer service, Wall is
7 immune from liability to Plaintiff on account of any information posted on the Blog by another
8 person.

9 **3. Wall Is Immune From Liability For Any Information Posted On The Blog By**
10 **Another Person**

11 As a provider and user of an interactive computer service, Wall has immunity under the
12 Act from liability for any information posted on the Blog by “*another* information content
13 provider.” 47 U.S.C. § 230(c)(1) (emphasis added). An “information content provider” is defined
14 as “any person or entity that is responsible, in whole or in part, for the creation or development of
15 information provided through the Internet or any other interactive computer service.” 47 U.S.C. §
16 230(f)(3). In light of the Act’s stated policy of fostering open communication on the Internet, the
17 Ninth Circuit has “treated § 230(c) immunity as quite robust, adopting a relatively expansive
18 definition of ‘interactive computer service’ and a relatively restricted definition of ‘information
19 content provider.’ Under the statutory scheme, an ‘interactive computer service’ qualifies for
20 immunity so long as it does not also function as an ‘information content provider’ for the portion
21 of the statement or publication at issue.” Carafano, 339 F.3d at 1123. Consistent with the narrow
22 construction of the definition of ‘information content provider,’ an interactive computer service
23 that exercises some degree of editorial control nevertheless has immunity if the principal substance
24 of the tortiously published information was provided by another person. The Batzel “decision
25 joined the consensus developing across other courts of appeals that § 230(c) provides broad
26 immunity for publishing content provided *primarily* by third parties.” Id. (citations omitted)
27 (emphasis added). “Under § 230(c), therefore, so long as a third party willingly provides the
28 *essential* published content, the interactive service provider receives full immunity *regardless of*

1 *the specific editing or selection process.*” *Id.* at 1124 (emphasis added). In fact, a provider of an
2 interactive computer service does not even have a duty to remove injurious information published
3 by another information content provider. *See, e.g. Novak v. Overture Services, Inc.*, 309
4 F.Supp.2d 446, 453 (E.D.N.Y. 2004). Since Wall is not an information content provider with
5 respect to any information posted on the Blog by another person, Plaintiff is precluded by the Act
6 from pursuing any state cause of action against Wall for any statement posted on the Blog by
7 another person.

8 4. **Wall Is Entitled To Summary Judgment On All Claims For Which Plaintiff**
9 **Seeks To Establish Liability On The Basis Of Information Published On The**
10 **Blog By Third Parties**

11 Plaintiff does not allege that Wall posted any misappropriated trade secrets on the Blog.
12 Instead, Plaintiff alleges that Doe Defendants posted the allegedly misappropriated information.
13 *See* Complaint, ¶¶ 7, 14, 22. In fact, Wall did not post any trade secrets belonging to Plaintiff on
14 the Blog. *See* Exh. A, ¶ 8. Accordingly, Wall is not an information content provider with respect
15 to any trade secrets and is thus immune from liability to Plaintiff for any misappropriation of trade
16 secrets.

17 Plaintiff’s defamation claim is vague and unspecific. Plaintiff does not identify what
18 defamatory information was published on the Blog, nor does Plaintiff identify who posted the
19 allegedly defamatory information. *See* Complaint, ¶¶ 15-16, 26-27. Nevertheless, as Wall did not
20 publish any statements on the Blog that can be construed as defamatory to Plaintiff, Wall suspects
21 that Plaintiff intends to assert its defamation claim on the basis of information that was posted on
22 the Blog by other persons. Wall is not an information content provider with respect to any
23 defamatory statements published by third parties and is therefore immune from liability to Plaintiff
24 for any such statements.

25 Wall requests that the Court grant him summary judgment on Plaintiff’s claim for
26 misappropriation of trade secrets on the basis of his immunity under 47 U.S.C. § 230. Wall also
27 requests pursuant to 47 U.S.C. § 230 that the Court grant him summary judgment on Plaintiff’s
28 claim for defamation.

1 **D. Wall Is Entitled To Summary Judgment On Or, Alternatively, Dismissal Of,**
2 **Plaintiff's Defamation Claim**

3 As is established above, Plaintiff's claim for defamation against Wall fails as a matter of
4 law because it is preempted by 47 U.S.C. § 230. Plaintiff's defamation claim is also defective
5 because it fails to state a claim upon which relief can be granted. The sufficiency of Plaintiff's
6 Complaint is governed by Rule 8 of the Federal Rules of Civil Procedure. "The purpose of Rule
7 8(a) and (e), FRCP, is to give fair notice of the claim being asserted so as to permit the adverse
8 party the opportunity to file a responsive answer and prepare a defense." In re "Santa Barbara Like
9 it is Today" Copyright Infringement Litigation, 94 F.R.D. 105, 107-08 (D.Nev. 1982) (citations
10 omitted). Under the notice pleading standard, a complaint is insufficient if there are no specific
11 allegations of any factual basis given to support the cause of action asserted. Id. A court should
12 properly dismiss a complaint for failure to state a claim if the complaint lacks a cognizable legal
13 theory or *if the complaint does not enumerate sufficient facts under a cognizable claim.* See
14 Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984) (emphasis added).
15 Thus, a complaint asserting a cause of action for defamation that fails to specify or even generally
16 characterize (a) what alleged defamatory statements were made and (b) which party made such
17 statements falls well short of the liberal notice pleading standard. See, e.g., Williams v. State
18 Farm Insurance Co., 656 P.2d 966, 971 (Utah 1982) ("[a]n allegation of 'certain derogatory and
19 libelous statements' is insufficient; a complaint for defamation must set forth the 'language
20 complained of ... in words or words to that effect ...'" (citations omitted). See also Ersek v.
21 Township of Springfield, Delaware County, 822 F.Supp. 218, 223 (D. Penn. 1993), aff'd 102 F.3d
22 79 (3rd Cir. 1996) ("[a] complaint for defamation must, on its face, specifically identify what
23 allegedly defamatory statements were made and by whom and to whom").

24 While some courts have held that a defamation complaint need not state the specific words
25 that are alleged to be defamatory (see, e.g., Stabler v. New York Times Co., 569 F.Supp. 1131
26 (C.D Tex. 1983)), Fed.R.Civ.P. 8 requires that Plaintiff's Complaint, at a minimum, give sufficient
27 notice of the claim being asserted so that Wall can prepare a defense. In this case, Plaintiff's
28 defamation claim is entirely devoid of *any* information as to (a) what statements were made by

1 Wall, (b) the time, manner or content of any statements made by Wall, (c) why any statements
2 made by Wall were false and injurious and (d) why any statements made by Wall were
3 unprivileged. In fact, when Wall requested prior to the commencement of this action that counsel
4 for Plaintiff inform him what his allegedly defamatory statements were, Plaintiff's counsel refused
5 to identify the defamatory comments. See Exh. A, ¶ 10. Moreover, Wall did not publish any
6 information on the Blog that can be construed as defamatory to Plaintiff. Id. at ¶ 9. Plaintiff's
7 allegations are therefore wholly unsupported and, in light of Plaintiff's refusal to specify what
8 statements were defamatory, there is no evidence supporting Plaintiff's position. Wall therefore
9 submits that he is entitled to summary judgment. At a minimum, Plaintiff's defamation claim
10 should be dismissed for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6) because it is pled
11 in terms so vague that Wall has been (and will to continue to be) unable to prepare a defense.
12 Wall therefore requests that the Court grant him summary judgment on Plaintiff's defamation
13 claim to the extent that the claim derives from information published on the Blog by him.
14 Alternatively, Wall requests that the Court dismiss Plaintiff's defamation claim for failure to state
15 a claim upon which relief can be granted to the extent that the claim derives from information
16 published on the Blog by him.

17 **E. Wall Is Entitled To Summary Judgment On Plaintiff's Claims For Injunctive Relief**
18 **And For Punitive Damages**

19 Wall is entitled to summary judgment on Plaintiff's claim for an injunction because
20 Plaintiff lacks any rights that are enforceable against Wall. Plaintiff's claim for injunctive relief
21 relates to its claim for misappropriation of trade secrets. See Complaint, ¶ 31. As is described
22 above, however, 47 U.S.C. § 230 immunizes Wall from any and all liability to Plaintiff on
23 Plaintiff's misappropriation of trade secrets claim. Hence, Plaintiff's claim for injunctive relief
24 cannot succeed against Wall and Wall is therefore entitled to summary judgment thereon. Wall is
25 also entitled to summary judgment on Plaintiff's claim for punitive damages because, as is
26 demonstrated above, all of Plaintiff's claims against Wall fail as a matter of law.

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1 **F. Alternatively, The Court Should Dismiss This Action Because It Lacks Jurisdiction**
2 **Over Wall's Person**

3 Wall requests that the Court grant him summary judgment on Plaintiff's Complaint. In the
4 alternative, Wall requests that the Court dismiss this action pursuant to Fed.R.Civ.P. 12(b)(2) for
5 lack of personal jurisdiction.

6 Plaintiff bears the burden of establishing the Court's jurisdiction over Wall's person. Here,
7 there is no federal statute governing personal jurisdiction. Accordingly, personal jurisdiction is
8 analyzed under the law of the State of Nevada. See Fed.R.Civ.P. 4(k)(1)(A). This Court lacks
9 personal jurisdiction over Wall under Nevada law.

10 **1. Factual Circumstances Of Wall's Connection With Nevada**

11 Wall does not live in or regularly visit the State of Nevada. In addition, Wall does not own
12 any real property in the State of Nevada. See Exh. A, ¶ 11. Wall's only connection with the State
13 of Nevada is his occasional visits to Las Vegas as a tourist.

14 **2. The Exercise Of Personal Jurisdiction Consistent With Due Process**

15 A Nevada court may exercise personal jurisdiction over a nonresident defendant not found
16 within Nevada "on any basis not inconsistent with the constitution of this state or the Constitution
17 of the United States." See NRS § 14.065; see also Judas Priest v. District Court, 104 Nev. 424,
18 426, 760 P.2d 137, 138 (1988) (citing Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774
19 (1984)). Nevada's long-arm statute has been construed to extend to the outer reaches of due
20 process. See Certain-Teed Prods. v. District Court, 87 Nev. 18, 23, 479 P.2d 781, 784 (1971).
21 Because the Nevada long-arm statute is no more restrictive than the United States Constitution,
22 Nevada courts may exercise jurisdiction to the extent permitted by due process under the United
23 States Constitution. Id. Therefore, this Court may analyze whether its assertion of personal
24 jurisdiction over Wall is proper upon federal constitutional principles. Id.

25 In Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985),
26 the United States Supreme Court explained that "[t]he Due Process Clause protects an individual's
27 liberty interest in not being subject to the binding judgments of a forum with which he has
28 established no meaningful 'contacts, ties or relations.'" Id. at 471 (quoting International Shoe Co.

1 v. Washington, 326 U.S. 310, 319, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). For a state to assert
2 personal jurisdiction over a nonresident defendant, the defendant's contacts must be of such a
3 quality and quantity that "maintenance of the suit does not offend 'traditional notions of fair play
4 and substantial justice.'" Trump v. Eighth Judicial District Court of the State of Nevada, 109 Nev.
5 687, 698, 857 P.2d 748, 747 (quoting International Shoe, 326 U.S. at 316). The defendant's
6 relationship and activities with the forum state must also be of a nature that the defendant could
7 "reasonably anticipate being haled into court there." Galatz v. District Court, 100 Nev. 408, 413,
8 683 P.2d 26, 29 (1984); see also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297
9 (1980).

10 **3. General And Specific Personal Jurisdiction**

11 A Nevada Court may exercise personal jurisdiction over a non-resident defendant under the
12 theory of either general or specific jurisdiction. Trump, 109 Nev. at 699, 857 P.2d at 748. General
13 jurisdiction arises when the defendant's activities within the forum are so "continuous and
14 systematic" or "substantial" that the defendant may be deemed to be present in the forum. Id.

15 Specific jurisdiction may be established only where the cause of action arises from
16 defendant's contacts with the forum. Id. In order to exercise specific jurisdiction over a non-
17 resident defendant: (1) the defendant must purposefully avail himself of the privilege of serving
18 the market in the forum or of enjoying the protection of the laws of the forum, and (2) the cause of
19 action must arise from the purposeful contact with the forum or conduct targeting the forum.
20 MGM Grand, Inc. v. District Court, 107 Nev.65, 69, 807 P.2d 201, 203 (1991). The cause of
21 action against the non-resident defendant must have a specific and direct relationship with the
22 forum contacts which must be "significant and substantial" and cannot be "random, fortuitous or
23 attenuated." Munley v. District Court, 104 Nev. 492, 495-96, 761 P.2d 414, 416 (1988).

24 **4. Plaintiff Failed To Satisfy Its Burden Of Showing That This Court Has**
25 **Personal Jurisdiction Over Wall**

26 To obtain jurisdiction over a non-resident defendant, a plaintiff must show (1) that the
27 long-arm statute requirements have been met and (2) that due process is not offended by the
28 exercise of jurisdiction. Trump, 109 Nev. at 698, 857 P.2d at 747. The plaintiff bears the burden

1 of showing that jurisdiction is proper. Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990). In
2 the preliminary stages of litigation, this burden requires plaintiff to make a prima facie showing of
3 the facts that support the court's exercise of jurisdiction. Id. Furthermore, once the defendant
4 challenges the exercise of personal jurisdiction, the plaintiff bears the burden of showing that the
5 court has jurisdiction. Davis v. District Court, 97 Nev. 332, 337, 629 P.2d 1209, 1213 (1981),
6 cert. denied 454 U.S. 1049, 102 S.Ct. 592, 70 L.Ed.2d 585 (1981); Butcher's Union Local v. SDC
7 Investment, 788 F.2d 535, 538 (9th Cir. 1986).

8 Plaintiff admits that Wall is a resident of Pennsylvania (see Complaint at ¶ 2) and does not
9 state any facts that would support a finding of personal jurisdiction by a court in Nevada. The
10 Complaint does not discuss Nevada's long arm statute, let alone demonstrate that its requirements
11 have been satisfied. Additionally, Plaintiff fails to demonstrate that due process is not offended by
12 the exercise of personal jurisdiction over a natural person who is not alleged to have had any
13 contacts with Nevada. Plaintiff therefore fails to satisfy its burden of demonstrating that this Court
14 has personal jurisdiction over Wall.

15 **5. This Court Does Not Have General Jurisdiction Over Wall**

16 Wall does not reside in Nevada. Wall is a citizen and resident of the Commonwealth of
17 Pennsylvania. Under the standards outlined above, Plaintiff must show that Wall has substantial,
18 continuing and systematic relationships and contacts with Nevada such that he should reasonably
19 expect to be haled personally into court here. Trump, 109 Nev. at 699, 857 P.2d at 748.

20 Plaintiff has failed to meet its burden. The Complaint does not contain any allegations
21 that Wall has substantial, continuing or systematic contacts with Nevada necessary to sustain an
22 assertion of general personal jurisdiction over him. Wall 's relationships with Nevada is certainly
23 not of the nature that he could "reasonably anticipate being haled into court" here. World-Wide
24 Volkswagen, 444 U.S. at 299. In fact, Wall does not own property in Nevada, live in Nevada,
25 conducts business in Nevada, or have *any* connection with Nevada. See Exh. A, ¶ 11.

26 **7. This Court Does Not Have Specific Jurisdiction Over Wall**

27 The Ninth Circuit has developed a three-prong test to determine whether a court should
28 properly assert specific jurisdiction over a nonresident defendant:

- 1) The non-resident defendant must do some act or consummate some transaction within the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the protections and privileges of its laws;
- 2) The claim must be one which arises out of or results from the defendant's forum-related activities; and
- 3) The exercise of jurisdiction must be reasonable.

Data Disc, Inc. v. Systems Tech. Assoc., Inc., 557 F.2d 1280, 1287 (9th Cir. 1977).

Under the first prong of the test, Plaintiff must show that Wall acted in such a way that he purposefully availed himself of the privilege of conducting business in Nevada. Id. As stated above, Plaintiff has failed to plead *any* transaction or contacts by which Wall has availed himself of Nevada's laws. The third prong of the specific jurisdiction test has also not been satisfied. The exercise of personal jurisdiction over Wall in this case would not be reasonable. See Trump, 109 Nev. at 701, 857 P.2d at 749. Wall has no connection to Nevada.

Under the three-prong Data Disc test, this Court cannot assert specific jurisdiction over Wall. Accordingly, if the Court is inclined to deny Wall's Motion for Summary Judgment, then Wall respectfully requests that, as an alternative remedy, the Court dismiss this action pursuant to Fed.R.Civ.P. 12(b)(2) for lack of personal jurisdiction.

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IV.
CONCLUSION

Based on the foregoing, Wall requests that the Court grant him summary judgment on Plaintiff's claims for misappropriation of trade secrets, injunctive relief and punitive damages. Wall further requests that the Court grant him summary judgment on the entirety of Plaintiff's defamation claim or, in the alternative, that the Court grant him summary judgment on Plaintiff's defamation claim to the extent that the defamation claim derives from information published on the Blog by third parties and that any remaining components of the defamation claim be dismissed for failure to state a claim upon which relief can be granted. If the Court is inclined to deny summary judgment and/or dismissal for failure to state a claim upon which relief can be granted, Wall alternatively requests that the Court dismiss Plaintiff's action for lack of personal jurisdiction.

DATED this 9th day of October, 2005.

JONES VARGAS

By: 

ARIEL E. STERN, ESQ.
Nevada Bar # 8276
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, NV 89109
Telephone: (702) 862-3300
Facsimile: (702) 737-7705
ATTORNEYS FOR DEFENDANT

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89109
Tel: (702) 862-3300 Fax: (702) 737-7705

CERTIFICATE OF SERVICE

1
2 I certify that I am an employee of Jones Vargas, and that on this date, pursuant to NRC
3 5(b), I am serving a true copy of the attached MOTION FOR SUMMARY JUDGMENT OR, IN
4 THE ALTERNATIVE, TO DISMISS FOR LACK OF PERSONAL JURISDICTION on the party(s)
5 set forth below by:

6

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices

7
8

Certified Mail, Return Receipt Requested

9

Via Facsimile (Fax)

10

Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

11
12

Federal Express (or other overnight delivery)

addressed as follows:

13 Max D. Spilka, Esq.
14 8330 W. Sahara Ave., Suite 290
15 Las Vegas, NV 89117

16 DATED this 6th day of October, 2005.

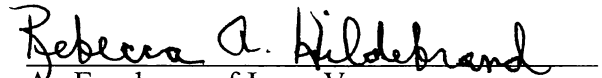
17 
18 An Employee of Jones Vargas

EXHIBIT A

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89109
Tel: (702) 862-3300 Fax: (702) 737-7705

1 ARIEL E. STERN, ESQ.
Nevada Bar # 8276
2 JONES VARGAS
3773 Howard Hughes Parkway
3 Third Floor South
Las Vegas, Nevada 89109
4 Telephone: (702) 862-3300
Facsimile: (702) 737-7705
5 ATTORNEYS FOR DEFENDANT

6
7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 SOFTWARE DEVELOPMENT AND
11 INVESTMENT OF NEVADA, d/b/a TRAFFIC-
POWER.COM,

CASE NO. CV-S-05-1109-RHL-LRL
AFFIDAVIT OF AARON WALL

12 Plaintiff,

13 vs.

14 AARON WALL, an individual, d/b/a SEO
BOOK.COM; and DOES I through X; and ROE
15 CORPORATIONS I through X, inclusive,

16 Defendants.

17 COMMONWEALTH OF PENNSYLVANIA)
18) :ss
19 COUNTY OF CENTRE)

20 AARON WALL, being first duly sworn, deposes and states:

- 21 1. I am over the age of 18 and have personal knowledge of the facts set forth herein.
- 22 2. I reside in Centre County, Pennsylvania. I am a citizen of the Commonwealth of
23 Pennsylvania.
- 24 3. I am the owner and operator of the Internet website "SeoBook.com" (the "Blog").
- 25 4. The Blog is a website that that allows me to post opinions and information on the
26 Internet. Readers of the Blog regularly post responses to my comments and to the comments of
27 other readers of the Blog.
- 28 5. The subject matter discussed on the Blog is search engine optimization. "Search

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89109
Tel: (702) 862-3300 Fax: (702) 737-7705

1 engine optimization” refers to the business of enhancing website design so that a website is more
2 likely to be located by an Internet search engine such as Yahoo® or Google.® I generally do not
3 edit comments posted on the Blog by readers, although I delete comments that are not germane to
4 search engine optimization.

5 6. The Blog is a website that is made available on the Internet through a computer
6 server. DreamHost Web Hosting provides the server for the Blog. I use the server provided by
7 DreamHost Web Hosting to operate the Blog. In addition, readers of the Blog use the server to
8 access the Blog and post comments on the Blog.

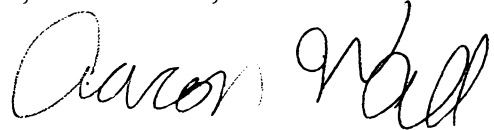
9 7. I do not have, nor have I ever had, access to any trade secrets belonging to Software
10 Development and Investment of Nevada d/b/a Traffic-Power.com (“Plaintiff”).

11 8. I have not published any trade secrets belonging to Plaintiff on the Blog.

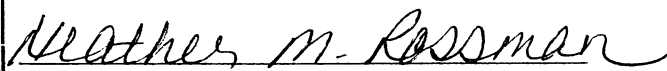
12 9. I have not published any statements or information on the Blog that could be
13 considered defamatory to Plaintiff.

14 10. In August 2005, I received a letter from Max Spilka, Plaintiff’s counsel, indicating
15 that I had defamed Plaintiff. See Spilka Letter, Exh. 1. Upon receipt of the letter, I contacted Mr.
16 Spilka and inquired as to what statements of mine allegedly defamed Plaintiff. Mr. Spilka refused
17 to tell me what statements of mine Plaintiff deemed to be defamatory. Instead, Mr. Spilka told me
18 that the defamatory statements were too numerous to relate. I remain unaware of any statements
19 that are defamatory to Plaintiff that I published on the Blog.

20 11. I do not have any property, dealings with, or business in, the State of Nevada.

21
22 
23 AARON WALL

24 Subscribed and sworn to before me
25 this 5th day of October, 2005.

26
27 
28 NOTARY PUBLIC

NOTARIAL SEAL
HEATHER M. ROSSMAN, NOTARY PUBLIC
COLLEGE TOWNSHIP, CENTRE COUNTY
MY COMMISSION EXPIRES MAY 19, 2007

EXHIBIT 1

MAX D. SPILKA, CHTD.
ATTORNEY AT LAW
8330 WEST SAHARA AVENUE, SUITE 220
LAS VEGAS, NEVADA 89117
TELEPHONE (702) 933-5400
FAX (702) 227-0799

June 10, 2005

*(Via Certified Mail #7005 0390 0001 2059 5176
and U. S. Mail)*

Aaron Wall
SEO Book.com
144 Dahlia Drive
State College, PA 16803

Re: Software Development and Investment of Nevada dba Traffic-Power.com ("Traffic Power")

Dear Mr. Wall:

This office represents the above-named Traffic-Power and related companies. It has come to our attention that on a website you control, namely www.SEO Book.com, proprietary and confidential information related to Traffic Power's business has been published. The published information violates the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and is subject to certain contracts between Traffic-Power and its former and/or current employees. The published information has been pirated from Traffic Power and you have obtained the information illegally, all of which you knew or should have known.

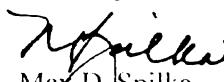
You are to cease and desist immediately from the same or any similar activity. In the event you fail to do so, Traffic Power is prepared to initiate litigation to obtain an injunction to enforce its rights. In addition to obtaining an injunction, Traffic Power intends to seek redress for any legal damages sustained, which damages could exceed the sum of \$1,000,000.00.

Finally, consistent with recent court rulings you may now be obligated to disclose the source(s) of your information. Accordingly, within ten (10) days of this letter, you are to do the following:

1. Provide a list of the sources of your information complete with name, address, and telephone number; and,
2. Remove from www.SEO Book.com website all information relating to Traffic-Power.

Your failure to do so will result in initiating the aforementioned litigation.

Govern yourself accordingly,


Max D. Spilka

MDS/kd
cc: Traffic-Power