

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) JONATHAN LEWANDOWSKI,	DEFENDANTS MARMARIO LAVANDEIRA dba, PEREZ.HILTON COM, dba, PEREZ HILTON,
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(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Timothy McGonigle (CA Bar 115979) 233 Wilshire Boulevard, Suite 700 Santa Monica, CA 90401 /310-478-7110	Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input checked="" type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ 75,000 (excess amount)

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. §1332(a)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL CLAIMS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: CV09-05100

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California, or Foreign Country
	Plaintiff is a resident of the State of Georgia, County of Fulton.

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California, or Foreign Country
Defendant Mario Armondo Lavandeira, Jr. is a resident of Los Angeles County, California	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California, or Foreign Country
Los Angeles County, California	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): *T. M. ...* Date June 28, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIW/W	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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13 Attorneys for Plaintiff
14 Jonathan Lewandowski

FILED
2009 JUL 15 AM 10:03
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY FAX

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 CV09-05100 DDP (JEM)

18 JONATHAN LEWANDOWSKI,

Case No.

19 Plaintiff,

PLAINTIFF'S COMPLAINT

20 v.

DEMAND FOR JURY TRIAL

21 MARIO LAVANDEIRA dba,
22 PEREZ.HILTON.COM, dba,
23 PEREZ HILTON,

24 Defendants.

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27 For his Complaint, Plaintiff, by and through counsel, states the
28 following:

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THE PARTIES

1. Plaintiff Jonathan Lewandowski is an individual and is now, and at all relevant times was, a resident and citizen of the State of Georgia.

2. Defendant is a resident and citizen of Los Angeles County, State of California doing business as perezhilton.com.

3. Upon information and belief, Defendant Mario Lavandeira, Jr. writes a blog under the pseudonym Perez Hilton. A blog (an abridgment of the term web log) is a website with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse chronological order. "Blog" can also be used as a verb, meaning to maintain or add content to a blog.

4. Upon information and belief and at all times relevant to this Complaint, defendants were the agents and employees of their co-defendants, and in doing the things alleged in this Complaint were acting within the course and scope of that agency and employment.

JURISDICTION

5. This United States District Court has original jurisdiction of this case under 28 U.S.C. §1332(a) as amended. Section 1332(a) provides, in pertinent part:

1 (a) The district courts shall have original jurisdiction of all civil
2 actions where the matter in controversy exceeds the sum or value of
3 \$75,000, exclusive of interest and costs, and is between (1) citizens of
4 different states
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6 6. Defendants are citizens of the State of California.
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8 7. Plaintiff is a citizen of the State of Georgia with a true, fixed,
9 and permanent home at 222 14th St., Apt 101, Atlanta, GA 30309.
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11 8. This lawsuit is a controversy between citizens of different
12 states. *See* 28 U.S.C. §1332(a).
13

14 9. The amount in controversy in this matter exceeds the \$75,000
15 sum or value sufficient to invoke the jurisdiction of this Court, exclusive of
16 interest and costs.
17

18 10. Thus, diversity principles bring this case properly before this
19 Court.
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24 **FACTUAL ALLEGATIONS**

25 11. At all times relevant to this Complaint, Defendants owned and
26 operated the celebrity gossip website and blog, perezhilton.com.
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1 12. As part of perezhilton.com, Lavandeira posts gossip items
2 about musicians, actors and celebrities.

3 13. As part of perezhilton.com, Lavandeira posts tabloid
4 photographs over which he has added his own captions or “doodles.”
5

6 14. As part of perezhilton.com, Lavandeira often “outs” closeted,
7 homosexual celebrities by publically disclosing otherwise private
8 information. Outing refers to “taking someone out of the closet” - that is,
9 publicizing that someone is a homosexual. The term usually refers to any
10 publicizing of a person’s homosexuality without their consent, or to
11 publicizing of a person’s homosexuality without their consent, or to
12 situations where those doing the outing support gay rights and object to what
13 they see as the target’s hypocrisy, i.e., the target’s desire to keep their
14 homosexuality private.
15

16 15. On or about April 8, 2008, Lavandeira filed a lawsuit against
17 Lewandowski in the Superior Court of California, entitled *Lavandeira v.*
18 *Lewandowski*, Los Angeles Superior Court case no. BC388760
19

20 16. On or about May 9, 2008, Lewandowski removed the lawsuit to
21 the United States District Court for the Central District of California; the
22 case then captioned *Lavandeira v. Lewandowski*, case no. CV-08-3074
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GHK, pending before Judge George H. King.

1 17. Shortly after the case was removed to Federal Court, the parties
2 engaged in settlement discussions and, on or about, August 19, 2008, agreed
3 to settle the lawsuit pending the drafting and execution of a formal, written
4 settlement agreement. (See the August 19, 2008, Notice of Settlement,
5 attached as Exhibit A)
6

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8 18. On or about September 18, 2008, the parties entered into a
9 written Settlement Agreement and Mutual Release (the "Agreement"). (See
10 the September 18, 2008, Settlement Agreement and Mutual Release attached
11 as Exhibit B)
12

13 19. As part of the Agreement, the parties agreed that:
14
15 the Parties *shall cease and desist any verbal or written mention of each*
16 *other's* legal names, stage names, nicknames, trade names, fictitious
17 business names, or any other alias, either by direct reference or by innuendo,
18 including, without limitation ... *The Parties shall also refrain from*
19 *generating, publishing, communicating, or disseminating to any individual*
20 *or entity any verbal or written reference, comment, remark, or discussion*
21 *which relates in any way to each other. This section applies to all private*
22 *and public forums and all forms of media, including, without limitation,*
23 *television, radio, newspapers, magazines, books, CDs, DVDs, and Internet*
24 *postings and blogs.* (Exhibit B, p. 1, ¶1)(emphasis added)
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1 20. As part of the Agreement, the parties also agreed to liquidated
2 damages for any breach of the foregoing provision:

3 Liquidated Damages. The Parties acknowledge and agree that
4 each breach of Section 1 or Section 2 would cause irreparable
5 damage, including, without limitation, reputational damage, to the
6 non-breaching party, but that it could be impracticable and difficult to
7 quantify actual damages that such party would sustain

8 Accordingly, the Parties stipulate and agree that ... for each instance
9 of breach of this Agreement by Lavandeira, Lavandeira shall pay to
10 ... [Lewandowski] liquidated damages in the amount of One Hundred
11 Thousand Dollars (\$100,000.00). The Parties waive their right to
12 contest this liquidated damages provision on the basis that it is an
13 unenforceable penalty or illegal or conscionable in any manner. The
14 Parties acknowledge and agree that this Agreement has been entered
15 into in consideration for and of this liquidated damages provision.

16 (Exhibit B, p. 2, ¶3)(emphasis added) Indeed, it was *Lavandeira that*
17 *insisted on this liquidated damages provision.*

18 21. This absolute ban against the parties' mentioning each other
19 was to ensure that they had "bought their peace." Indeed, the fact that all
20 mentions of each other, whether benign or injurious, were barred was meant
21 to avoid the parties' having to debate the seriousness or impact of any
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1 individual mention and having to debate whether not such mention
2 warranted taking action. In other words the parties agreed to a "bright line"
3 test: any mention was a violation of the parties' settlement agreement.
4

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6 22. On or about February 3, 2009, Lewandowski became aware of a
7 blog entry on perezhilton.com, mentioning Lewandowski. (See the screen
8 shot of the blog entry attached as Exhibit C).
9

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11 23. On or about February 13, 2009, Lewandowski's counsel wrote
12 Lavandeira's counsel regarding this violation of the Agreement and
13 requesting that Lavandeira remove the blog entry from his website. (See the
14 February 13, 2009, Letter from Lewandowski's Counsel to Lavandeira's
15 Counsel attached as Exhibit D)
16

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18 24. On or about March 13, 2009, and after numerous attempts to
19 contact Lavandeira's counsel by phone, Lewandowski's counsel again wrote
20 Lavandeira's counsel regarding violation of the Agreement and requesting
21 that Lavandeira remove the blog entry from his website. (See the March 13,
22 2009, Letter from Lewandowski's Counsel to Lavandeira's Counsel attached
23 as Exhibit E).
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26 25. On or about April 3, 2009, Lavandeira's counsel finally
27 responded to Lewandowski's correspondence. (See the April 3, 2009, Letter
28

1 from Lavandeira's Counsel to Lewandowski's Counsel attached as Exhibit
2 F). Unfortunately, rather than engage in a reasonable discussion of the
3 matter, Lavandeira refused to remove the blog entry and even threatened to
4 file an anti-SLAPP lawsuit.
5

6
7 26. On April 6 and May 15, 2009, Lewandowski's counsel again
8 wrote Lavandeira's counsel in separate attempts to resolve this matter short
9 of litigation. (See the April 6 and May 15, 2009, Letters attached as Exhibits
10 G and H, respectively). Again, however, Lavandeira refused to engage in
11 any meaningful settlement discussion.
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15 27. As of the date of filing of this Complaint, defendants have
16 refused to remove the blog entry from perezhilton.com.
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18 **COUNT I.**

19 **(Breach of Contract Against All Defendants)**
20

21 28. Lewandowski reasserts and realleges by reference all the prior
22 allegations contained in his Complaint as if herein fully set forth.
23

24 29. On or about September 18, 2008, the parties entered into the
25 Agreement.
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1 47. Defendants breached their duties and contractual obligations to
2 Lewandowski by mentioning Lewandowski in a February 3, 2009, blog
3 entry on perezhilton.com.
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6 48. Defendants have refused repeated requests by Lewandowski to
7 remove the blog entry from perezhilton.com.
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9 49. There is a substantial likelihood that Lewandowski will prevail
10 on the merits of his claims as set forth in the Complaint.
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12 50. Lewandowski has continued, and will continue, to suffer
13 irreparable injury if a preliminary injunction is not granted and Defendants
14 are permitted to continue running the blog entry on perezhilton.com.
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17 51. Third parties will not be unjustifiably harmed if the injunction
18 is granted.
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21 52. The public interest will be served by granting a preliminary
22 injunction.
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25 53. As a direct and proximate result of Defendants' acts and
26 omissions as set forth above, Lewandowski should be granted a preliminary
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1 injunction enjoining Defendants from mentioning Lewandowski on
2 perezhilton.com.
3

4 WHEREFORE, Lewandowski demands judgment against Defendants,
5 and each of them, for the following:
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7 a. A liquidated damages award of \$100,000.00 for each violation
8 of Paragraph 3 of the Parties' Settlement Agreement and Mutual Release, of
9 \$100,000;
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12 b. An award of compensatory damages in an amount in excess of
13 the Court's jurisdictional amount for all personal and economic harms
14 suffered by Lewandowski as a result of Defendants' conduct;
15

16 c. An award of exemplary and punitive damages as permitted by
17 law;
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19 d. An award of attorneys' fees and costs of the suit incurred herein
20 as permitted by law;
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22 e. A preliminary injunction as set forth in this Complaint; and

23 f. An award of such other and further relief as the court may deem
24 proper and just.
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Respectfully submitted,

Dated: June 28, 2009

By: 

BRIAN SPITZ (0068816)
JOHN M. HEFFERNAN (0067354)
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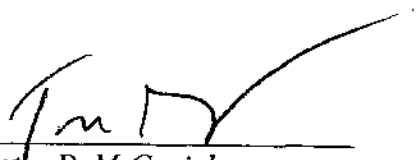
Attorneys for Plaintiff

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JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable of right by a jury.

Dated: June 28, 2009

By: 

Timothy D. McGonigle
Attorney for Plaintiff