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RANDAZZA LEGAL GROUP 6525 W. Warm Springs Road, Suite 100 Las Vegas, NV 89118 Telephone: 888-667-1113 Facsimile: 305-437-7662 www.Randazza.com ecf@randazza.com

#### DISTRICT COURT CLARK COUNTY, NEVADA

JAMES McGIBNEY, an individual,

Plaintiff,

VS.

HUNTER MOORE, an individual,

Marc J. Randazza (Nev. Bar No. 12265)

Ronald D. Green (Nev. Bar No. 7360)
J. Malcolm DeVoy IV (Nev. Bar. No. 11950)

Defendant.

Case No. A- 12-667156-C Dept. No.

COMPLAINT XXI V

- ACTION IN TORT
- ARBITRATION EXEMPTION CLAIMED
- JURY TRIAL DEMANDED

#### **COMPLAINT**

#### I. Introduction

 $"No \ good \ deed \ goes \ unpunished"-Oscar \ Wilde$ 

- 1. Plaintiff James McGibney ("McGibney" or "Plaintiff") files this lawsuit against Defendant Hunter Moore ("Moore," or "Defendant"), in response to Moore's malicious and false claims that McGibney is a "pedophile" and possesses child pornography.
- 2. Throughout 2011 and for the beginning of 2012, Moore ran a "<u>revenge porn</u>" website called <u>Is Anyone Up</u> ("IAU"). The business model was simple Moore posted nude photos of people, without their consent, and without regard to their age or privacy rights.
  - 3. IAU was available through the domain name <isanyoneup.com>.

- 4. With the apt tagline "Pure Evil," IAU quickly became a controversial repository for salacious images. Spurned ex-lovers who had compromising photos of their former partners, and hackers who unlawfully accessed strangers' e-mail and cellular phone accounts to obtain compromising images, became a significant source of the IAU's content.
- 5. These individuals forwarded their victim's nude images to Moore via e-mail.

  Moore would then organize the images, accompanied with a screen capture of the individual's Facebook or Twitter account to corroborate his or her identity, and publish the images on IAU. This business model made IAU a source of national outrage.
- 6. In April 2012, McGibney sought to put an end to Moore's unlawful and unethical conduct. He considered a number of ways to do so, but determined that simply purchasing the <isanyoneup.com> domain name from Moore, so that he could immediately shutter the site, would be the most expeditious way to put an end to Moore's continued attacks on unwitting men, women, boys, and girls. McGibney's purchase was solely for the <isanyoneup.com> domain name and did not include any of the underlying content found on IAU.
- 7. On April 19, 2012, following McGibney's purchase of the domain name, <isanyoneup.com> re-directed visitors to BullyVille, one of McGibney's Internet properties, where Moore wrote a letter explaining the sale of the <isanyoneup.com> domain name. IAU was no more.
- 8. Moore himself issued public statements that he was "turning over a new leaf" and putting this kind of conduct behind him.
- 9. Despite these events, Moore has used the interactive microblogging platform, Twitter, to engage in new, focused attacks on McGibney and his family. Specifically, without basis or explanation, Moore accused McGibney of a) possessing child pornography, b) failing to report such content to the National Center for Missing and Exploited Children and FBI, c) sexually abusing underprivileged children, and d) being a pedophile. Simultaneously, Moore publicly threatened to rape McGibney's wife.

10. McGibney, confronted with this series of events and an adversary who will say literally anything to smear his reputation and business, is left with no viable recourse to clear his name other than a judicial decree that Moore's statements are defamatory.

#### II. Jurisdiction and Venue

- 11. Plaintiff has alleged damages in excess of \$10,000 and resides within Clark County, Nevada.
- 12. Moore is a resident of California, but has been in regular contact with McGibney and has published defamatory statements about McGibney while knowing McGibney resided in Clark County.
- 13. As seen in Exhibits A and B, Moore knew his statements at issue in this suit were directed at McGibney and into Clark County.
- 14. Moore has significant and extensive business contacts within Clark County, including the use of a Las Vegas-based attorney for legal representation in connection with IAU, and his numerous compensated appearances in promotion of IAU between January and July 2012 at Las Vegas venues including Mandalay Bay and the Harmon Theater.

http://blogs.villagevoice.com/runninscared/2012/04/bullyville\_isanyoneup.php (*last accessed* Aug. 18, 2012).

<sup>&</sup>lt;sup>1</sup> Kashmir Hill, *Revenge Porn With a Facebook Twist*, Forbes (July 6, 2011), http://www.forbes.com/sites/kashmirhill/2011/07/06/revenge-porn-with-a-facebook-twist/ (*last accessed* Aug. 17, 2012).

<sup>&</sup>lt;sup>2</sup> Is Anyone Up Party at Mandalay Bay (NSFW), LA Weekly (2012), http://www.laweekly.com/slideshow/is-anyone-up-party-at-mandalay-bay-nsfw-35986339/#1 (last accessed Aug. 18, 2012) (photographs of Moore in Las Vegas during January 2012); Andrea Domanick, Despicable Me: Q&A With Is Anyone Up?'s Hunter Moore, Las Vegas Sun (Jan. 20, 2012), http://www.lasvegassun.com/news/2012/jan/20/is-anyone-up-hunter-moore/ (last accessed Aug. 18, 2012); Hunter Moore, IAU Forever Naked Tour + Filming for Hunter Moore's Show, Is-Anyone-Up (2012), http://is-anyone-up.tumblr.com/post/23976438228/iau-forever-naked-tour-filming-for-hunter-moores (last accessed Aug. 18, 2012) (listing July 5, 2012 tour date in Las Vegas, Nevada); Additionally, Moore's April 19, 2012 farewell letter posted to BullyVille acknowledged that he had thrown and attended parties promoting IAU in Las Vegas, Nevada. Camille Dodero, Bullyville Has Taken Over Hunter Moore's IsAnyoneUp? (Updated), Village Voice Blog (Apr. 19, 2012),

15. Based on Moore's activities and underlying contacts with Clark County, this Court's exercise of personal jurisdiction over him is reasonable and appropriate.

#### III. Parties

#### A. The Plaintiff

- 16. McGibney is a resident of Clark County, Nevada and President of ViaView, Incorporated. ViaView owns and operates a number of popular and highly trafficked Internet properties, including BullyVille, found at <bullyville.com>, CheaterVille, found at <cheaterville.com>, among others.
- 17. On or about April 17, 2012, at McGibney's direction, ViaView, Inc., purchased the domain name <isanyoneup.com> from Hunter Moore. McGibney and ViaView, Inc. did not purchase, license, access, or in any way obtain any content, images, user submissions or other data comprising the IAU website.
- 18. Similarly, neither McGibney nor ViaView, Inc. ever had access to, control over, possession of, or any level of direct interaction with the materials on IAU. All that McGibney and ViaView obtained from Moore was the domain name <isanyoneup.com>, which was redirected to BullyVille on April 19, 2012.

#### B. The Defendant

- 19. Moore is a resident of Sacramento, California and former operator of IAU. Recently, he has taken steps to resurrect IAU, branding it as "IAU2."
- 20. Moore is active on many online social media services, including Facebook, Tumblr and Twitter. On Twitter, Moore manages the accounts "@huntermoore," found at <twitter.com/huntermoore>, and "@is anyone up," found at <twitter.com/is anyone up>.
- 21. In an April 2012, the New York City-based <u>Village Voice</u> profiled Moore, where he described IAU and his personal significance on the Internet: "I'm *actually* fucking people over. It's *real* people who you can actually basically reach, and be in contact with."
- 22. Moore actively promoted IAU and continues to promote its return, but denies all responsibility for the site's consequences stating that "I don't see how I'm supposed to be

sorry." Moore also brags of his cavalier response to demand letters sent by IAU victims' attorneys, claiming "all I reply back with is 'LOL,' and then I never hear back from them again."

23. Moore is also comfortable with IAU's significant popularity among minors. As Moore told the <u>Village Voice</u>: "To be perfectly honest, I think it's fucking awesome that people want to be on my site when they turn 18."

## IV. Factual Allegations Common to All Claims

#### A. The History of Moore and IAU

- 24. In 2011, Moore created IAU as a repository for nude images that individuals sent to him in order to embarrass unwitting victims.
- 25. People would e-mail Moore photos of nude and semi-nude men and women that they either took themselves or, more commonly, had privately obtained from the photographed subject during the course of a relationship or extracted from a victim's hacked e-mail or cell phone account.
- 26. Images in these latter categories photos sent to ex-boyfriends or ex-girlfriends, or stolen through hacking were sent to Moore without the permission of the depicted individuals. In turn, Moore published and distributed these images on IAU without permission of the individuals depicted in those photographs and without obtaining any records as required by 18 U.S.C. § 2257.
- 27. While operating IAU, Moore mocked and ignored legal demands made by the site's victims. As the site grew, so too did the legal threats it faced; in late 2011, Facebook, Inc. threatened to sue Moore and IAU for using screenshots of Facebook profiles to provide personally identifying information for the men and women whose nude photos appeared on IAU.<sup>3</sup>
- 28. Moore received many user submissions for the website that contained or depicted illegal child pornography.

<sup>&</sup>lt;sup>3</sup> Kashmir Hill, Facebook Goes After IsAnyoneUp, A Porn Site That Features Its Users' Profiles, Forbes (Dec. 9, 2011), http://www.forbes.com/sites/kashmirhill/2011/12/09/facebook-goes-after-porn-site-that-features-its-users-profiles/ (last accessed Aug. 18, 2012).

- 29. In May 2012, Moore confirmed to the <u>Village Voice</u> that the FBI was investigating him in connection with IAU.
- 30. In confirming that the FBI's investigation was underway, Moore demanded that Village Voice reporter Camille Dodero identify how she learned of the probe. Specifically, Moore stated:

I will literally fucking buy a first-class fucking plane ticket right now, eat an amazing meal, buy a gun in New York, and fucking kill whoever said that.<sup>4</sup>

#### B. Moore Sells The <IsAnyoneUp.com> Domain Name to McGibney

- 31. As the head officer of ViaView, Inc., which depends on its many Internet properties, McGibney closely monitored Moore's behavior throughout 2011 and 2012.
- 32. During this time, McGibney communicated with Moore, and tried to lead him to see the error of his ways. McGibney fundamentally disagreed with Moore and IAU's disregard for the victims of his involuntary pornography campaign. McGibney believed that he could convince Moore to cease, where others had failed, by educating him and appealing to his better nature.
- 33. Simultaneously, McGibney seriously feared that Moore's behavior would lead to harmful legal precedent that would weaken, if not destroy entirely, the precious legal immunities that websites driven by user-generated content such as Twitter, CheaterVille, and Facebook depend upon for their continued existence.<sup>5</sup>
- 34. In April 2012, McGibney directed ViaView, Inc., to buy the <isanyoneup.com>domain name from Moore, resulting in IAU's shuttering.

<sup>&</sup>lt;sup>4</sup> Camille Dodero, "Gary Jones" Wants Your Nudes: Is One Hacker Behind Man of the "Revenge Porn" Photos That Were Posted on Hunter Moore's Is Anyone Up?, Village Voice (May 16, 2012), http://www.villagevoice.com/2012-05-16/news/hacker-is-anyone-up-hunter-moore-fbi/4/ (last accessed Aug. 18, 2012) (emphasis added).

<sup>&</sup>lt;sup>5</sup> See, e.g., 17 U.S.C. § 512 (the Digital Millennium Copyright Act); 42 U.S.C. § 230 (Section 230 of the Communications Decency Act).

35. Moore agreed to the deal. On April 19, 2012, all traffic to the domain name <isanyoneup.com> was redirected to the BullyVille website, a ViaView website dedicated to helping the victims of bullying; the content that made up the IAU website was no longer available online.

#### C. Moore Attacks McGibney and His Family

- 36. Once IAU was no longer active, Moore's "15 minutes of fame" seemed to be at an end. Moore did not react well to his newfound irrelevancy, and found it impossible to reinvent himself in order to create any semblance of sustainable celebrity.
- 37. Only four months after McGibney allowed Moore to retire his Internet notoriety with grace, Moore abruptly turned on McGibney.
- 38. On August 18, 2012, Moore used his personal Twitter account, @huntermoore, to baselessly accuse McGibney identifying him through BullyVille's Twitter account, @bullyville of child molestation and possession of child pornography (Exhibit A at 1-2).
- 39. Moore attempted to draw the attention of Internet gossip publication <u>Gawker</u> to his allegations by adding its Twitter account, @gawker, to his first tweet attacking McGibney: "hey @gawker you write about me every chance you get let me tell you what james [McGibney] from @bullyville does to underage kids and their nudes." (Exhibit A at 1)
- 40. Moore then continued with two successive Twitter posts, or "tweets," about McGibney, stating: "hey @bullyville remember when you cried on the phone and were worried about getting kicked off your board because you kept all the underage" and continuing with "nudes form [sic] iau on your hard drive and when the fbi investigated me you thought they'd take you down for child porn." (Exhibit A at 1)
- 41. Continuing his onslaught, Moore commanded McGibney, "aye james @bullyville get some little kids dick out of your mouth and let me fuck your wife," and then inquired "how are you going to help stop bullying when you're a pedophile and go to china to rent children from families with no money @bullyville". (Exhibit A at 2)

- 42. Unsatisfied, Moore went on to call McGibney a "scam artist," and falsely claimed McGibney owed him additional money. <sup>6</sup> (Exhibit A at 3)
- 43. Moore further threatened to rape McGibney's wife when he was next in Las Vegas, writing "when I'm in vegas to fuck @carolinelizbeth I'm going to fuck james form [sic] @bullyville's wife for the money he owes me," and, almost immediately thereafter, "hey you have my word as a marine I'm going to fuck your wife @bullyville." (Exhibit A at 3)
- 44. Moore had not had enough of defaming McGibney from his personal Twitter account, @huntermoore, and promptly continued his campaign using the Is Anyone Up Twitter account, @is\_anyone\_up. From that account, Moore made additional defamatory remarks about McGibney (Exhibit B).
- 45. Using the @is\_anyone\_up Twitter account, Moore wrote: "the guy who bought the isanyoneup.com domain @bullyville saved all the underage pictures on his hard drive. and [sic] wouldn't report them." (Exhibit B at 1)
- 46. Parodying the BullyVille brand, Moore tweeted: "that nigga @bullyville is a pedo. he bullied little kids [sic] dicks into his mouth." (Exhibit B at 2)
- 47. Finally, Moore offered an incentive for others to spread his false and harmful remarks about McGibney throughout Twitter: "If you tweet #bullyvilleisranbyapedophile I'll send you a free tank top or wrist band". (Exhibit B at 3)

#### V. First Cause of Action: Defamation Per Se

- 48. Plaintiff realleges each and every preceding paragraph and incorporates them by reference as if set forth herein.
- 49. Moore's numerous statements from the @huntermoore and @is\_anyone\_up
  Twitter accounts, about McGibney being a pedophile, engaging in acts of child abuse, and
  possessing illegal content obtained from IAU, are false, harmful, and clearly identify McGibney
  as their intended victim.

<sup>&</sup>lt;sup>6</sup> McGibney acknowledges that "scam artist" is non-actionable rhetorical hyperbole; this statement does not form the basis of any specific claim of defamation independent of the specific claim that McGibney has not satisfied his debts.

- 50. Neither McGibney nor ViaView, Inc. ever had possession, control, title, or even access to any of the materials that had been submitted to or published on IAU, and thus could not have stored them.
- 51. Moore made these statements intentionally, and with the specific malicious intent to harm McGibney's reputation with accusations of child abuse, pedophilia, and possession of illegal child pornography obtained from Moore.
- 52. Moore made these statements with actual malice: He knew these statements were false at the time he made them, or made them with reckless disregard for the truth.
- 53. Moore's statements, directly linking McGibney to BullyVille, were made to damage McGibney in his business. Therefore, McGibney's damages are presumed.
- 54. In addition to presumed damages, McGibney has suffered reputational harm within his business and the broader community because of Moore's false, harmful and gratuitous Internet attacks, as detailed above and seen in Exhibits A and B.

#### VI. Second Cause of Action: False Light

- 55. Plaintiff realleges each and every preceding paragraph and incorporates them by reference as if set forth herein.
- 56. In the course of McGibney running his lawful businesses, and attempting to remove one of the most problematic sites from the Internet before it could do further harm to its victims and the legal rights of the user-generated website community, Moore portrayed him to more than 160,000 people falsely as a child abuser and pedophile who had broken numerous federal laws.
- 57. Moore's statements detailed above and found in Exhibits A and B, accusing McGibney of a) possessing child pornography, b) refusing to report such unlawful materials to the proper authorities, c) abusing children, and d) being a pedophile, are categorically false.
- 58. Moore made these false statements with actual malice: He knew these statements were false at the time he made them, or made them with reckless disregard for the truth.

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# VIII. Jury Trial Demanded

Plaintiff demands a jury trial on all claims.

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Respectfully Submitted,

RANDAZZA LEGAL GROUP

Marc J. Randazza Ronald D. Green J. Malcolm DeVoy

Attorneys for Plaintiff James McGibney

# EXHIBIT A



Hunter Moore

1883

nudes form lau on your hard drive and when the fbi investigated me you thought they'd take you down for child porn.

Expand



Hunter Moore

hey @bullyville remember when you cried on the phone and were worried about getting kicked off your board because you kept all the underage

Expand



Hunter Moore

33

hey @gawker you write about me every chance you get let me tell you what james from @bullyville does to underage kids and their nudes
Expand



## Hunter Moore Charles

-00 S

how are you going to help stop bullying when you're a pedophile and go to china to rent children from families with no money @bullyville Expand



## Hunter Moore

1830

i get people to eat shit and put arachnids in their vagina's, my children will do horrible homble things to you @bullyville Expand

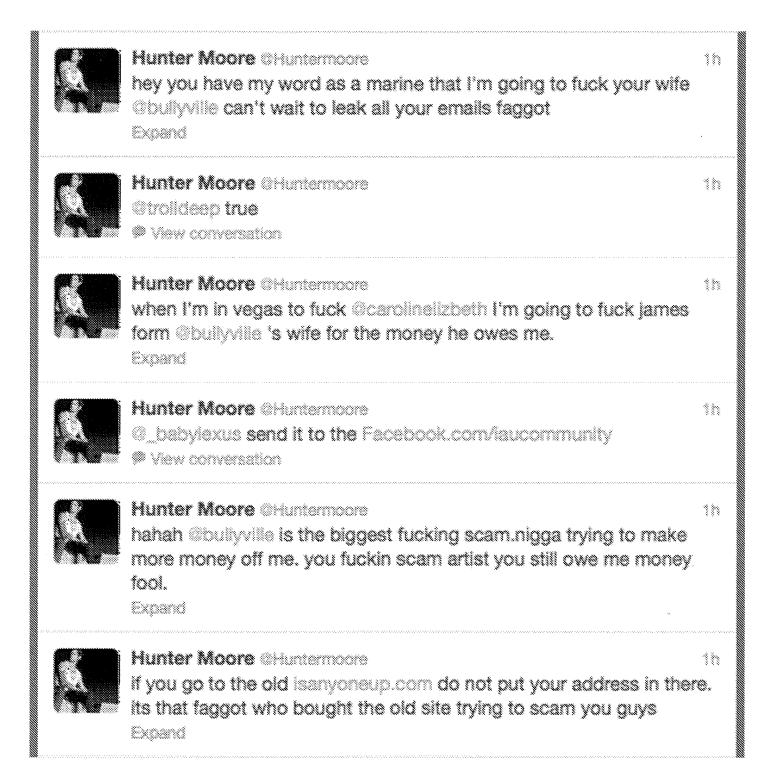


# Hunter Moore Statements

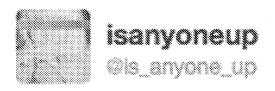
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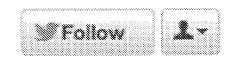
aye james @bullyville get some little kids dick out of your mouth and let me fuck your wife.

Expand



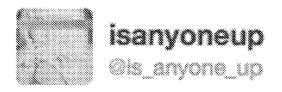
# EXHIBIT B





the guy who bought the isanyoneup.com domain @bullyville saved all the underage pictures on his hard drive, and wouldn't report them.

Reply % Retweet M Favorite





that nigga @bullyville is a pedo. he bullied little kids dicks into his mouth.

🧥 Reply 🛣 Retweet 🔌 Favorite





# If you tweet #bullyvilleisranbyapedophile I'll send you a free tank top or wrist band

♠ Reply \$\mathbb{X}\$ Retireet \$\mathbb{M}\$ Favorite