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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN DOE NO. 117,
Plaintiff,
- vs -
BRYAN SINGER and
GARY GODDARD,
Defendants.

) **Case No. LA CV14-03530-DDP (AJWx)**
) **DEFENDANT BRYAN SINGER'S**
) **NOTICE OF MOTION AND MOTION**
) **FOR AN ORDER REQUIRING**
) **PLAINTIFF JOHN DOE NO. 117 TO**
) **FILE AN UNDERTAKING TO**
) **SECURE AN AWARD OF COSTS;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES**

[Declaration of Andrew B. Brettler and
Proposed Order filed concurrently
herewith]

Date: August 18, 2014
Time: 10:00 a.m.
Judge: Hon. Dean D. Pregerson
Courtroom: 3 (2nd Floor)

Complaint Filed: May 7, 2014
Trial Date: None

1 **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on August 18, 2014, at 10:00 a.m. in
4 Courtroom 3 (2nd Floor) of the United States District Court for the Central District
5 of California, located at 312 North Spring Street, Los Angeles, California 90012,
6 before the Honorable Dean D. Pregerson, there will be a hearing on the Motion of
7 Defendant Bryan Singer (“Singer”) to require Plaintiff John Doe No. 117 (“Doe”)
8 to file an undertaking in the amount of \$300,000 to secure an award of costs.

9 This Motion is made pursuant to California Code of Civil Procedure section
10 1030 on the grounds that Doe is a resident of the United Kingdom, and there is at
11 least a “reasonable possibility” that Singer will defeat the specious claims that Doe
12 alleged in his Complaint. Singer satisfies the “reasonable possibility” standard
13 given that Doe lacks capacity to sue under a fictitious name, there is no factual
14 support for any of Doe’s claims against Singer; and Doe cannot plead a viable
15 cause of action against Singer. In light of the anticipated costs that Singer will be
16 forced to incur caused by the international nature of this action, the request for an
17 undertaking is warranted.

18 This Motion is made following the conference of counsel pursuant to L.R.
19 7-3, which took place on May 14, 2014. This Motion is based upon this Notice,
20 the attached Memorandum of Points and Authorities, the accompanying
21 Declaration of Andrew B. Brettler, and the Proposed Order.

22
23 DATED: July 3, 2014

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
PAUL N. SORRELL
ANDREW B. BRETTLER

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27 By: /s/ Andrew B. Brettler
 ANDREW B. BRETTLER
28 Attorneys for Defendant BRYAN SINGER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This lawsuit filed by an anonymous plaintiff is nothing more than a
5 frivolous action designed to exploit the celebrity status of Defendant Bryan Singer
6 (“Singer”) and shake him down for a quick and easy payday. In the Complaint,
7 Plaintiff “John Doe No. 117” (“Doe”) advances a spurious account about an
8 alleged encounter he had with Singer nearly a decade ago in the United Kingdom.
9 Even if Doe’s allegations had a shred of truth to them, he could not prevail on any
10 of his claims. First, without prior leave of Court, Doe is precluded from
11 proceeding in this action under a fictitious name, and there is no legitimate reason
12 for the Court to permit him to sue using a pseudonym. Second, even if Doe were
13 to sue in his legal name, there is at least a “reasonable possibility” that Singer will
14 prevail on each of causes of action asserted against him.

15 As set forth in Singer’s Motion To Dismiss, filed contemporaneously
16 herewith, Doe does not allege a viable cause of action under the Alien Tort
17 Statute, 28 U.S.C. § 1350 (Count IV), because there is no matter of consequence
18 impacting international affairs. Likewise, Doe cannot prevail on Count V of his
19 Complaint because Singer did not travel to the United Kingdom for the purpose of
20 engaging in any illicit sexual conduct with Doe. Indeed, there is no allegation that
21 Singer ever planned, arranged, or even contemplated a sexual encounter with Doe
22 prior to arriving in London to attend the premiere of his movie. Any alleged
23 encounter Singer may have had with Doe was merely incidental to the sole
24 purpose of Singer’s trip to the United Kingdom.

25 Similarly, Doe cannot prevail on Count VI of his Complaint because Singer
26 did not ever make arrangements to meet Doe in the United Kingdom or anywhere
27 else. Moreover, Doe was not a minor when he met Singer. Under UK law, Doe
28 was over the age of consent at the time of the alleged wrongful conduct. Further,

1 Doe's Sixth Cause of Action claim is time-barred under the applicable three-year
2 statute of limitations period established by UK law. Lastly, Doe will not prevail
3 on his claim for alleged "gender violence" (Count VII). Not only is this claim
4 barred by the applicable three-year statute of limitations, there is no indication
5 whatsoever that Singer's alleged conduct towards Doe was motivated by Doe's
6 gender.

7 Notwithstanding the merits of Singer's Motion To Dismiss, if the Court
8 permits Doe to proceed in this action, it should require him to file an undertaking
9 to secure costs that Singer will be entitled to recover as a prevailing party. The
10 Court is vested with the inherent authority to impose a cost bond requirement on
11 Doe, a citizen of the United Kingdom. Federal courts routinely apply state law in
12 ordering a plaintiff to post an undertaking. California Code of Civil Procedure
13 section 1030 provides that a defendant may move to compel an out-of-state
14 plaintiff to file an undertaking to secure an award of costs and fees upon showing
15 a "reasonable possibility" that he will defeat the plaintiff's claims. Here, Singer
16 can easily satisfy this liberal standard.

17 Given the international nature of this dispute, Singer's expected litigation
18 costs will be exorbitant. Dozens of percipient witnesses will need to be deposed
19 overseas and in California, and expert witnesses will need to be retained to opine
20 on Doe's outrageous claims and alleged damages. As such, Singer respectfully
21 requests that the Court order Doe to post a bond to secure costs recoverable by the
22 prevailing party in the amount of \$300,000.

23 II.

24 FACTUAL BACKGROUND

25 Following the highly publicized lawsuit filed by Michael F. Egan, III
26 ("Egan") against Singer in the U.S. District Court for the District of Hawaii (the
27 "Hawaii Action"), Egan's attorney filed this lawsuit on behalf of an anonymous
28 plaintiff, who alleges four causes of action against Singer for (i) violation of the

1 Law of Nations under the Alien Tort Statute, 28 U.S.C. § 1350 (Count IV); (ii)
2 violation of U.S. law prohibiting travel to a foreign country for the purpose of
3 engaging in illicit conduct with a minor (Count V); (iii) violation of the California
4 law prohibiting meeting with a minor to engage in lewd and lascivious behavior
5 (Count VI); and (iv) gender violence in violation of California law (Count VII).¹
6 Doe filed this lawsuit anonymously to mask his true identity and avoid the public
7 scrutiny that Egan faced after he filed the Hawaii action. However, Doe did not
8 receive permission from the Court to proceed under a fictitious name, nor would
9 the Court ever grant such permission in light of the facts here.

10 Doe is a 25 year old man. (Compl. ¶ 7.) He is a citizen and resident of the
11 United Kingdom. (Compl. ¶ 1.) Singer is a citizen and resident of California.
12 (Compl. ¶ 2.) In 2006, Singer traveled to London, England for the purpose of
13 attending the premiere of *Superman Returns*, a movie he directed. (Compl. ¶ 18.)
14 There he met Doe, who, at that time, was 17 years old—the age of majority and
15 consent in the United Kingdom. (Compl. ¶¶ 18–19.) Doe alleges that Singer
16 sexually abused him at a party at Singer’s hotel following the movie premiere.
17 (Compl. ¶¶ 20–21.) Doe now claims that he recently “became cognizant that he
18 suffered psychological and emotional injuries” as a result of Singer’s alleged
19 conduct nearly a decade ago. (Compl. ¶ 23.)

20 Doe’s allegations as set forth in his Complaint are entirely false and
21 especially lack credibility in light of Doe’s status as an anonymous plaintiff. The
22 purpose of Singer’s 2006 trip to London was, as Doe concedes, to attend the
23 premiere of his movie—not to meet Doe, or engage in any sexual conduct with
24 him. Even assuming *arguendo* that Singer and Doe had sexual relations in
25 London, such contact would have been entirely incidental to the purpose of
26

27
28 ¹ Doe asserted additional claims against Defendant Gary Goddard. Those
claims are not addressed in this Motion.

1 Singer's trip. And, under UK law, Doe was of the age of consent when he and
2 Singer allegedly engaged in consensual sex. (Compl. ¶ 18.)

3 Further, Doe asserted these outrageous claims against Singer on the heels of
4 Egan filing the similarly meritless Hawaii Action. Egan's credibility has since
5 been called into serious question in light of the inconsistent and conflicting
6 testimony he provided in a prior lawsuit involving related claims. More than a
7 dozen witnesses have come forward in Hawaii Action in support of Singer.
8 (Brettler Decl. ¶ 3.) Many of these witnesses have provided sworn declarations
9 testifying that neither Singer nor Egan were in Hawaii during the relevant time
10 period as alleged in Egan's complaint. (*Id.*) As a result, Singer has filed a motion
11 for summary judgment in the Hawaii Action, which is scheduled to be heard on
12 August 4, 2014. (*Id.*) Egan has already dismissed related actions that he filed
13 against other defendants in Hawaii federal court, thereby calling his credibility
14 into question even more. (*Id.*)

15 The specious claims asserted first by Egan and now by Doe are nothing
16 more than an attempt to extract money from Singer. They have no legal or factual
17 support. As a result, Singer files this Motion to secure costs against an out-of-
18 state plaintiff following the adjudication of the frivolous claims asserted herein.

19 III.

20 LEGAL STANDARD

21 While the Federal Rules of Civil Procedure do not contain a specific
22 provision governing security for costs, "the federal district courts have inherent
23 power to require plaintiff to post security for costs." *Simulnet E. Assoc. v.*
24 *Ramada Hotel Operating Co.*, 37 F.3d 573, 574 (9th Cir. 1994). In exercising this
25 inherent power, a district court typically applies the law of the forum state in
26 which the court sits. *Id.*; *Pittman v. Avish P'ship*, No. CV 10-1390, 2011 WL
27 9160942, at *1 (C.D. Cal. June 2, 2011).

28 ///

1 Here, the forum state’s statute regarding imposition of a cost bond is
2 California Code of Civil Procedure section 1030. Under the Code, a defendant
3 may move the court to issue a cost bond against a plaintiff who resides outside of
4 California, or is a foreign corporation. Cal. Civ. Proc. Code § 1030(a). “The
5 motion shall be made on the grounds that . . . there is a *reasonable possibility* that
6 the moving defendant will obtain judgment in the action or special proceeding. *Id.*
7 § 1030(b) (emphasis added).

8 “If the court, after hearing, determines that the grounds for the motion have
9 been established, the court shall order that the plaintiff file the undertaking in an
10 amount specified in the court’s order as security for costs” *Id.* § 1030(c). To
11 determine whether imposition of a cost bond is appropriate under section 1030,
12 courts in this Circuit consider the following factors: “(i) the degree of
13 probability/improbability of success on the merits, and the background and
14 purpose of the suit; (ii) the reasonable extent of the security to be posted . . .
15 viewed from the defendant’s perspective; and (iii) the reasonable extent of the
16 security to be posted . . . viewed from the nondomiciliary plaintiff’s perspective.”
17 *Simulnet*, 37 F.3d at 576 (citation omitted).

18 IV.

19 ARGUMENT

20 California state courts describe the purpose of section 1030 as a way to
21 assist California defendants to “secure costs in light of the difficulty of enforcing a
22 judgment for costs against a person [or entity] who is not within the court’s
23 jurisdiction.” *Shannon v. Sims Serv. Ctr.*, 164 Cal. App. 3d 907, 913, 210 Cal.
24 Rptr. 861 (1985). Here, the Court should exercise its inherent authority and order
25 the non-resident plaintiff to file an undertaking in the amount of \$300,000 to
26 secure the reimbursement of Singer’s recoverable costs. (Brettler Decl. ¶¶ 4–10.)
27 The requested bond is warranted and justified because (a) Doe is a citizen and
28 resident of the United Kingdom; (b) there is at least a “reasonable possibility” that

1 Singer will prevail on the merits; and (c) the amount of the requested security is
2 reasonable and fair from the perspectives of both parties.

3 **A. Doe Is an Out-of-State Plaintiff.**

4 It is undisputed that the first requirement of section 1030 is satisfied. Singer
5 is a “citizen and resident of the United Kingdom. (Compl. ¶ 1.)

6 **B. There Is at Least a “Reasonable Possibility” That Singer Will Prevail**
7 **on the Merits over Doe.**

8 For the Court to grant this Motion, Singer need only establish that he has a
9 “reasonable possibility” of defeating Doe’s claims. *See Gabriel Techs. Corp. v.*
10 *Qualcomm Inc.*, No. 08 CV 1992, 2010 WL 3718848, at *5 (S.D. Cal. Sept. 20,
11 2010) (citing *Kourtis v. Cameron*, 358 F. App’x 863, 866 (9th Cir. 2009)). This
12 “reasonable possibility” standard is a very low one, and one that Singer can easily
13 satisfy. *See Pittman*, 2011 WL 9160942, at *3 (commenting that to satisfy the
14 “reasonable possibility” standard a defendant is only required to show that it
15 “could win”—not that it necessarily will win); *see also Shannon*, 164 Cal. App. 3d
16 at 914 (holding that to satisfy the “reasonable possibility” standard, a defendant
17 need only present “the best evidence available to divine the *possible* outcome” of
18 trial) (emphasis added).

19 **1. Doe Lacks Capacity To Sue Using a Fictitious Name.**

20 As set forth in detail in Singer’s Motion To Dismiss, filed
21 contemporaneously herewith, Doe’s lawsuit must be thrown out because he lacks
22 the legal capacity to sue under a fictitious name. Rather than repeat the same
23 arguments in this Motion, Singer respectfully refers the Court to section II,
24 subsections A and B in Singer’s Motion To Dismiss.

25 **2. Doe’s Specious Claims Also Fail on Their Merits.**

26 Even if Doe were to amend his Complaint to sue using his legal name as
27 required, he could not prevail on the merits of any of his causes of action. There is
28 no factual or legal support for Doe’s claims against Singer, especially in light of

1 the stale nature of the claims and the fact that Doe was not a minor when he
 2 allegedly engaged in sexual conduct with Singer. Rather than repeat the
 3 arguments in this Motion, Singer respectfully refers the Court to sections III
 4 through VI, and all subsections thereof, in Singer’s Motion To Dismiss, filed
 5 contemporaneously herewith.

6 **C. Singer’s Request for a \$300,000 Bond Is Reasonable.**

7 “To arrive at a reasonable bond amount, the Court balances [a defendant’s]
 8 interest in securing its right to recover . . . costs with [the plaintiff’s] ability to post
 9 the bond.” *Pittman*, 2011 WL 9160942, at *9. Singer’s request for an undertaking
 10 of \$300,000 is appropriate because that amount is a fair estimate of the costs
 11 Singer will be entitled to recover as a “prevailing party” in this action.² The costs
 12 that Singer will incur in this action will be significant in light of the geographic
 13 distance between the parties and locations of the witnesses who will be called to
 14 testify at deposition and/or at trial. (Brettler Decl. ¶¶ 4–5.)

15 Specifically, Singer estimates its costs as follows: (i) \$10,000 for service of
 16 process and subpoenas (Brettler Decl. ¶ 6); (ii) \$30,000 for transportation and per
 17 diem expenses for depositions (*id.* ¶ 7); (iii) \$50,000 for deposition transcripts and
 18 videos (*id.* ¶ 8); (iv) \$200,000 for expert witness fees and expenses (*id.* ¶ 9); and
 19 (v) \$10,000 for pretrial filings and preparation of demonstratives for use at trial.
 20 (*id.* ¶ 10); *see also Gabriel Techs.*, 2010 WL 3718848, at *10–*13 (discussing the
 21 reasonableness of similar estimated costs in connection with defendant’s section
 22 1030 motion).

23
 24 ² Rule 54 of the Federal Rules of Civil Procedure “creates a presumption in
 25 favor of awarding costs to the prevailing party.” *Champion Produce, Inc. v. Ruby*
 26 *Robinson Co.*, 342 F.3d 1016, 1022 (9th Cir. 2003); *see also* Fed. R. Civ. P. 54.
 27 The Local Rules of this Court enumerate the categories of costs and fees that are
 28 recoverable by a prevailing party. *See generally* C.D. Cal. L.R. 54-3. Those
 categories include, but are not limited to, costs and fees for service of subpoenas
 (*id.* 54-3.2), costs and fees for preparing a reporter’s transcript (*id.* 54-3.4), costs
 associated with conducting depositions (*id.* 54-3.5), the payment of witness fees
 (*id.* 54-3.6), costs for making photocopies and other reproductions (*id.* 54-3.10),
 and costs for making and demonstratives for use at trial (*id.* 54-3.12).

1 The request for a \$300,000 bond also is reasonable from Doe’s perspective,
2 in that his costs are being advanced by counsel who has filed this action on a
3 contingency basis. (Brettler Decl. ¶ 11.) Requiring Doe to post a \$300,000 bond
4 would have no significant adverse economic impact on him or his counsel. *See*
5 *Gabriel Techs.*, 2010 WL 3718848, at *15 (requiring plaintiff to post an \$800,000
6 bond despite being nearly insolvent).

7 **D. The Court Should Stay This Action Until Costs Are Secured.**

8 To ensure that Singer can recover its litigation costs, the Court should stay
9 all further proceedings in Doe’s action until he deposits the requisite security. In
10 relevant part, the California Code of Civil Procedure provides:

11 further proceedings may be stayed in the discretion of
12 the court upon application to the court by the defendant
13 by noticed motion for the stay until 10 days after the
14 motion for the undertaking is denied or, if granted, until
15 10 days after the required undertaking has been filed and
16 the defendant has been served with a copy of the
17 undertaking

18 Cal. Civ. Proc. Code § 1030(e). Singer should not be forced to incur any expenses
19 related to the defense of Doe’s frivolous claims until such time that Doe secures
20 those costs by posting the requisite bond.

21 **V.**

22 **CONCLUSION**

23 The Court should order Doe to file an undertaking in the amount of
24 \$300,000 and stay the action until such time as he posts the requisite undertaking.

25 DATED: July 3, 2014

26 LAVELY & SINGER
27 PROFESSIONAL CORPORATION
28 MARTIN D. SINGER
PAUL N. SORRELL
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By: /s/ Andrew B. Brettler
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