

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL A. BERNATH,

Plaintiff,

v.

Case No: 2:15-cv-358-FtM-38CM

MARK CAMERON SEAVEY,

Defendant.

AMENDED¹ OPINION AND ORDER²

This matter comes before the Court on United States Magistrate Judge Carol Mirando's Report and Recommendation, which addresses Defendant American Legion's Memorandum on Requested Relief ([Doc. 232](#)); Defendant Mark Seavey's Memorandum on Damages ([Doc. 233](#)); and *pro se* Plaintiff Daniel Bernath's Motion to File Complaint in state court ([Doc. 260](#)).³ ([Doc. 270](#)). Judge Mirando's recommendations are twofold: (1) award Defendants injunctive and monetary damages because of Bernath's copyright

¹ The Court amends its Opinion and Order ([Doc. 296](#)) only to correct two typographical errors to the domain name "americanlegion" on the third and seventh pages. With the exception of those corrections, the Opinion and Order remains unchanged.

² Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

³ Although Bernath is currently incarcerated at Hampton Road Regional Jail in Virginia ([Doc. 283](#)), he has made several objections to the Report and Recommendation.

infringement, defamatory statements, and other actions; and (2) deny Bernath's motion to file new complaints against Defendants. ([Doc. 270 at 19-21](#)). Bernath has submitted over a dozen filings that the Court construes as objections to the Report and Recommendation.⁴ ([Doc. 273](#); [Doc. 275](#); [Doc. 277](#); [Doc. 278](#); [Doc. 280](#); [Doc. 281](#); [Doc. 282](#); [Doc. 285](#); [Doc. 287](#); [Doc. 288](#); [Doc. 289](#); [Doc. 290](#); [Doc. 291](#); [Doc. 292](#); [Doc. 293](#); [Doc. 294](#)). Defendants object only to Judge Miranda's recommendation to deny as moot their request for a nationwide pre-suit injunction against Bernath.⁵ ([Doc. 284](#)). The Report and Recommendation is ripe for review.

BACKGROUND

The full factual background is set forth in the Report and Recommendation ([Doc. 260](#)) and the Order granting summary judgment for Defendants ([Doc. 227](#)). Briefly, this matter involves claims and counterclaims for copyright infringement, intentional infliction of emotional distress, cybersquatting, and defamation. The Court granted Legion's and Seavey's motions for summary judgment on all claims and counterclaims and directed the parties to provide supplemental briefing on their requested damages. ([Doc. 227](#)).

Independent of summary judgment, the Court granted Defendants' motion to declare Bernath a vexatious litigant because of his excessive filings and repeated failures to comply with this Court's orders and procedural rules. ([Doc. 259](#)). In that vein, it

⁴ The Court need not restate the titles of Bernath's filings because the titles do not necessarily align with the relief sought.

⁵ Defendants' objection is alternative relief to Judge Miranda reconsidering her recommendation on a nationwide pre-suit injunction. ([Doc. 284](#)). To secure a swift decision and to conserve judicial resources, the Court will handle the alternative relief and address the matter as an objection to the Report and Recommendation.

imposed “a pre-filing injunction requiring Bernath to (a) obtain leave of court before filing any new actions in this Court or any court in Florida; and (b) attach to future complaints a list of all cases previously filed involving the same, similar, or related cause of action.” ([Doc. 259](#)). Since then, Bernath has requested to file new complaints against Legion and others in state court. ([Doc. 260](#)).

The Report and Recommendation addresses both Bernath’s motion to file new complaints and Defendants’ supplemental briefing on damages.⁶ It specifically recommends:

- issue a permanent injunction prohibiting Bernath from using, displaying, or publishing Legion’s emblem in any form or medium;
- issue a permanent injunction enjoining Bernath from registering or maintaining any domain name bearing “americanlegion” or the names of Legion’s employees or affiliates;
- order Bernath to transfer all of his domain names bearing Legion or affiliated names to Legion;
- issue a permanent injunction prohibiting Bernath from writing, publishing, or disseminating any defamatory material or defamatory information about Legion or any of its employees or affiliates in any medium;
- award Legion general damages of \$100,000.00, special damages of \$80,000.00, and punitive damages of \$100,000.00;
- award Legion attorneys’ fees and costs for \$384,820.00;
- award Seavey general damages of \$500,000.00 and special damages of \$135,000.00;
- award Seavey attorneys’ fees and costs for \$195,620.00;

⁶ The Report and Recommendation states, “Bernath has not responded to The Legion’s and Seavey’s memoranda on damages, creating an assumption their requested relief is not opposed.” ([Doc. 270 at 1-2](#)). Although Bernath filed a document titled, “Opposition to Summary Judgment Motion for damages by Mark Seavey Addition to Pin-Point rebuttal to Seavey affidavit,” ([Doc. 245](#)), a *de novo* review of that filing shows that it was non-responsive to the damages issue.

- issue a permanent injunction prohibiting Bernath from writing, publishing, displaying, or disseminating any material, writing or other information about Seavey in any medium;
- deny Bernath's Motion to File Complaint ([Doc. 260](#)); and
- issue an order to show cause why Bernath should not be held in civil contempt for violating the Court's pre-filing injunction order ([Doc. 259](#)).

STANDARD OF REVIEW

A district judge “may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge.” [28 U.S.C. § 636\(b\)\(1\)](#). The district judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* And “[t]he judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

DISCUSSION

The Report and Recommendation addresses Defendants' supplemental briefing on damages and Bernath's motion to file new complaints. The Court will address each in turn.

A. Damages: Permanent injunctions, attorneys' fees, costs, and other monetary awards

Because of Bernath's *pro se* status, the Court has liberally considered all of his post-Report and Recommendation filings. This was no small feat because Bernath's disjointed filings offer little information about the damages recommended. For instance, Bernath continues to deny committing copyright infringement and making defamatory statements about Defendants. He also claims to be an investigative journalist and somehow immune from his actions. Bernath reiterates that Defendants are trying to

murder him, tormenting his family, and invading his home. And he accuses the undersigned and Judge Mirando of bias and seeks recusal. Even the most favorable reading of his filings does not make them valid objections. With one exception, the Court adopts the Report and Recommendation on the permanent injunctions, attorneys' fees and costs awards, and monetary damages.

Judge Mirando recommends denying as moot Defendants' request for a nationwide pre-suit injunction against Bernath because the Court already granted such relief for cases in this Court and other Florida courts. Defendants object to this recommendation because it did not directly address their request for the all-forma, nationwide injunction. ([Doc. 284 at 3-4](#)). Although the Court understands Defendants' frustration with Bernath's vexatious filings, it will not exercise its discretion to extend the current pre-suit injunction nationwide. See [Martin-Trigona v. Shaw, 986 F.2d 1384, 1387 \(11th Cir. 1993\)](#) (stating courts have considerable discretion in fashioning such a pre-suit injunction). This Court faces heavy dockets and scarce resources.⁷ It cannot divert attention away from delivering justice to litigants in other pending cases to police Bernath's access to courts across the country. However, Bernath remains a vexatious litigant and the Court stands by its decision to declare him as such.

In short, the Court adopts the Report and Recommendation on the permanent injunctions, attorneys' fees and costs awards, and monetary damages, but it denies Defendants' request for nationwide pre-suit injunctive relief against Bernath.

⁷ The undersigned has been the only active district court judge in the Fort Myers division since June 2015 and will likely to be so for the near future. This means the undersigned's demanding trial calendar is rivaled only by its motions and case management obligations.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.