

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

REZA GANJAVI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 06 C 4189
	)	JURY TRIAL DEMANDED
JEREMY C. SMITH, CINDY SMITH,	)	
TODD TIPTON, WILLIAM D.	)	Judge Gettleman
JENNINGS, DELOITTE CONSULTING	)	
LLC, DELOITTE & TOUCHE USA LLP,	)	Magistrate Judge Denlow
DOES 1-10,	)	
	)	
Defendants.	)	

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**NOTICE OF FILING**

Pursuant to Fed. R. Civ. P. 15, Plaintiff, Reza Ganjavi, on September 11, 2006, caused to be filed with the Court his First Amended Complaint prior to service of any responsive pleadings, for the following reasons:

A. Through ongoing discovery in a related case, as referenced in the First Amended Complaint, Plaintiff has discovered the identity of additional Defendants, Todd Tipton and William D. Jennings, and basis for personal jurisdiction against said Defendants in this Court.

B. Plaintiffs have, through additional investigation, determined the identity of the proper Deloitte defendants and have, accordingly, named only the proper Deloitte defendants in the First Amended Complaint.

C. The First Amended Complaint has been revised to conform with local rules for this Court along with several miscellaneous typographical changes.

Dated: September 11, 2006

RESPECTFULLY SUBMITTED BY:

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Khoi Dang-Vu

Attorney for Plaintiff, REZA GANJAVI

A.R.D.C. Number 6271169

Law Offices of Khoi Dang-Vu, P.C.

1719 W. 18<sup>th</sup> Street

Chicago, Illinois 60608

Tel. (312) 492-1477

Fax (312) 455-9372

**CERTIFICATE OF SERVICE**

I, Khoi Dang-Vu, hereby certify that on \_\_\_\_\_, 2006, I caused the foregoing Notice of

Filing, together with the annexed First Amended Complaint to be served upon the Defendants and counsel listed in the attached Service List by postage pre-paid U.S. Mail and electronically.

Dated \_\_\_\_\_, 2006

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Khoi Dang-Vu

Attorney for Plaintiff, REZA GANJAVI

A.R.D.C. Number 6271169

Law Offices of Khoi Dang-Vu, P.C.

1719 W. 18<sup>th</sup> Street

Chicago, Illinois 60608

Tel. (312) 492-1477

Fax (312) 455-9372

SERVICE LIST

Jeremy C. Smith

605 W. Madison Street, Apt 4811

Chicago, Illinois 60661

Cindy Smith

605 W. Madison Street, Apt 4811

Chicago, Illinois 60661

Todd Tipton

4409 Aldrich Avenue S.,

Minneapolis, Minnesota 55419

William D. Jennings

1415 Babcock Road, Apt. 704

San Antonio, Texas 78201

Deloitte Consulting LLC

111 S. Wacker Drive,

Chicago, IL 60606-4301

Deloitte & Touche USA LLP

111 S. Wacker Drive

Chicago, IL 60606-4301

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**FIRST AMENDED COMPLAINT**

NOW COMES the Plaintiff, Reza Ganjavi, by and through his attorneys, Law Offices of Khoi Dang-Vu, P.C. And Khoi Dang-Vu, and, as against each of the Defendants named herein, respectfully complains, avers and alleges as follows:

**SUMMARY OF FACTS**

1. Plaintiff, Reza Ganjavi ([www.rezamusic.com](http://www.rezamusic.com)) is a record producer, classical musician, as well as an information technology and management consultant, who has produced some successful

Compact Disks (CD's) in the Classical Guitar genre (www.rezamusical.info contains hundreds of pages of bona fide listener comments about the CD's). Plaintiff's success in classical music despite his not fully academic music training, and his Middle Eastern origins attracted the envy and hostility of a very few individuals on the biggest online Classical Guitar community. The Defendants attacked the Plaintiff and his business in several vulgar, uncivil, profane, and highly damaging manners, apparently motivated by jealousy, prejudice, and causeless hatred, and they evidenced malice, fraud, oppression, calculated falsehoods, and disregard for the rights and safety of the Plaintiff. There are no issues raised here regarding pure expressions of opinions by anyone or privileged communications; the allegations relate to violations of the Plaintiff's rights and not mere expressions of likes and dislikes.

2. Violations committed by some or all of the Defendants (with Deloitte Consulting LLC and Deloitte & Touche USA LLP's (hereinafter collectively referred to as "Deloitte") vicarious liability and/or liability through negligent enablement in certain cases) include but are not limited to:
  - a) fraudulent use of Plaintiff's identity;
  - b) fraudulent publication of material using the Plaintiff's email address and name, including issuing racial slurs against African-Americans and persons of African descent, sympathizing with terrorist; explicitly threatening to kill a person, and directing obscenity at others;
  - c) setup of mock websites to damage Plaintiff's business and reputation;
  - d) publication of fictitious, forged, and altered material which were falsely attributed to the Plaintiff as the author;
  - e) publication of material which placed the Plaintiff in a highly offensive light;
  - f) publicly accusing the plaintiff of being a pedophile (which is absolutely false);
  - g) copying and publishing Plaintiff's work without his permission and without privilege;
  - h) violating Plaintiff's rights to attribution and integrity;
  - i) attempting to assassinate Plaintiff's character;
  - j) Using the Plaintiff's identity to publicize false, negative, scandalous, and damaging statements about the Plaintiff's products, artistic credibility, and reputation.
  - k) directly and indirectly collaborating with each other in committing the alleged acts;
  - l) and other acts which are explained hereinafter.

## **JURISDICTION AND VENUE**

3. This Court has Diversity Jurisdiction over this matter as all Defendants are citizens of different states than the Plaintiff, and the amount in controversy, including compensatory and punitive damages, is over \$75,000.
4. Federal question jurisdiction exists regarding causes of action based upon 17 U.S.C. 106A(a) [“Rights of certain authors to attribution and integrity”], and 15 U.S.C. § 1125 [“False designations of origin, false descriptions, and dilution”].
5. This Court has personal jurisdiction over Defendants Jeremy Smith, Cindy Smith, and Deloitte as they are domiciled in the State of Illinois.
6. This Court has personal jurisdiction over Defendants Todd Tipton and William Jennings as upon information and belief they both were fully aware of Defendant Jeremy Smith’s residence in the State of Illinois, and they had more than sufficient minimum contact with Defendant Jeremy Smith in the perpetration of actions alleged herein.
7. Venue is proper in this judicial district as several of the Defendants are domiciled in Chicago, Illinois.

#### **RELATED CASE**

8. Plaintiff previously filed suit against some of the defendants for the same or similar causes of action in the United States District Court in California (case no. CV 05-08619-DPP-(JWJx)). The Plaintiff was pro-se for the first few months.
9. The case involved an extensive discovery process using the court’s subpoena power which revealed many important facts including the name of Defendant Jeremy Smith whom up to then had tried to remain anonymous, and revelation of the source of many of the fraudulent and violating actions.
10. Plaintiff settled the matter with one of the defendants, Douglas Carlson who was dismissed from the case with prejudice. The settlement included a monetary payment, retraction of violating posts, and other terms and conditions. Douglas Carlson issued a public apology for statements he had made including some that “*were in response to postings that at the time I thought were done by Reza, and I now find out that someone had used Reza's name and email to make those postings fraudulently.*”
11. The remaining defendants were dismissed without prejudice due to lack of personal jurisdiction. One of the key reasons for this was that the Plaintiff has dual residency in California and in Switzerland and the Defendants argued that they were not aware of Plaintiff’s California residence

(of some full-time 15 years).

12. Defendant Jeremy C. Smith, was dismissed due to lack of personal jurisdiction on July 14, 2006. Defendants Todd Tipton and William Jennings were dismissed due to lack of personal jurisdiction on August 14, 2006.

### **PARTIES**

13. Plaintiff Reza Ganjavi (“Plaintiff”) is an individual who is a professional musician, record producer, and consultant with two Classical Guitar CDs which have done very well both in terms of sales within their genre (one was a best seller), and in terms of listener responses which are represented on some two hundred pages of voluntarily provided comments (available on [www.rezamusic.com](http://www.rezamusic.com) and [www.rezamusic.info](http://www.rezamusic.info)). Plaintiff also has a successful career as a management consultant / business analyst / project manager / software engineer. Aside from the study of music, the Plaintiff has an *MBA* from the *University of California*, and *magna-cum-laude* degrees in *Computer Science* and *Philosophy* from the *California State University*. Plaintiff believes his work stands for friendship, dialogue, peace, harmony, understanding, cooperation, cultural exchange, equality of all people, and other positive values. Plaintiff was born in Tehran, Iran, and moved to the USA at age 15. His address in the USA is: 2331 Westwood Boulevard #152, Los Angeles, CA 90064-2109. He has posted on the classical guitar newsgroup only using his real name.
14. Upon information and belief, Defendant Jeremy C. Smith (collectively with Defendant Cindy Smith, “Smiths”) is an individual, reportedly a musician, and a professional such as a consultant or an accountant, who is currently employed at Deloitte in Chicago, and resides at 605 W. Madison Street, Apt 4811, Chicago, Illinois 60661. Defendant Jeremy Smith fraudulently used the Plaintiff’s identity to publish on the Internet and Usenet libelous statements regarding the Plaintiff, and to make other dangerous statements including sympathizing with terrorists and directing racial slurs at African Americans and persons of African descent while posing the Plaintiff as the author of such statements. Furthermore, Defendant Jeremy Smith presented writings that the Plaintiff never wrote as Plaintiff’s writings, and committed other violations such as setting up of a forged website and using the Plaintiff’s copyrighted material without authorization. Defendant Jeremy Smith has issued false statements to companies and individuals engaged in trade with the Plaintiff and to companies and individuals potentially interested in engaging in trade with the Plaintiff, either in the field of



music, or in management consulting. Jeremy Smith (and sometimes together with Cindy Smith) has posted on the classical guitar newsgroup using numerous pseudonyms such as Tommy Grand and Howard.

15. Upon information and belief, Defendant Todd Tipton, also known as Timothy T. Tipton, (“Tipton”) is an individual, a musician, and maintains a website, <http://www.toddtipton.com>. Tipton currently teaches guitar and is a doctoral candidate at the University of Minnesota, School of Music at 100 Ferguson Hall, 2106 4<sup>th</sup> Street South, Minneapolis, Minnesota 55455. He resides at 4409 Aldrich Avenue S., Minneapolis, MN 55419. Tipton published material which was fraudulently attributed to the Plaintiff as the author, has setup a forged website mocking Plaintiff’s registered websites, published libelous statements regarding the Plaintiff via the Internet and Usenet, including the newsgroup, rec.music.classical.guitar and other websites on the Internet accessed throughout the U.S. and the world. Tipton forged the Plaintiff’s identity by explicitly posing himself as the Plaintiff through the unauthorized use of Plaintiff’s email, password, and website URL, and used other nicknames and pseudonyms to commit a number of violations, including threatening another newsgroup member with murder (while posing the Plaintiff as the author of the statement). Tipton has issued false statements to companies and individuals engaged in trade with the Plaintiff and to companies and individuals potentially interested in engaging in trade with the Plaintiff. Todd Tipton has posted on the classical guitar newsgroup using numerous pseudonyms including Enemy Combatant, Rosa, John Ed Gore, and Stephen Wolfe.
16. Upon information and belief, Defendant William David Jennings (“Jennings”) is an individual, a musician, residing at 1415 Babcock Road, Apt. 704, San Antonio, Texas 78201. Jennings has published libelous statements regarding the Plaintiff via websites on the Internet and Usenet, including the newsgroup, rec.music.classical.guitar and other websites on the Internet accessed throughout the U.S., including the State of California. Jennings has issued false statements to companies and individuals engaged in trade with the Plaintiff and to companies and individuals potentially interested in engaging in trade with the Plaintiff. Jennings has at times forged Plaintiff’s identity and writings. William Jennings has posted on the classical guitar newsgroup using different pseudonyms such as Seadrifter, and Che' de Guy.
17. Upon information and belief, Defendant Cindy Smith (collectively with Defendant Jeremy Smith, “Smiths”) is an individual, and is married to Defendant Jeremy Smith, and resides at 605 W. Madison Street, Apt 4811, Chicago, Illinois 60661. She has acted in cooperation with Defendant

Jeremy Smith in carrying out some, if not all of the violations against the Plaintiff. Cindy Smith has posted on the classical guitar newsgroup using pseudonyms such as TommyGrandsBetterHalf and Asbestos Gourmet.

18. Upon information and belief, Defendants Deloitte Consulting LLC and Deloitte & Touche USA LLP (collectively, "Deloitte"), are the employers for Defendant Jeremy C. Smith. Deloitte and are located at 111 S. Wacker Drive, Chicago, IL 60606-4301. Deloitte provided time, tools, office space, computer, computer network, and internet access for Defendant Jeremy Smith in carrying out some of the alleged offenses against Plaintiff who is potentially a competitor of both Smith and Deloitte in the fields of music, and management consulting. It took several months between the time the violations were reported to Deloitte until they stopped Defendant Jeremy Smith from using their computers and networks in relationship to the Plaintiff, although it was indicated by Deloitte's technical staff that the source of the violations was identified immediately upon reporting.
19. Defendants Does 1-10 ("Doe Defendants") may have been responsible for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and in some fashion, have legal responsibility therefore. Plaintiff believes that information obtained in discovery will lead to the identification of the true name, citizenship, domicile, and residency of each Doe Defendant. When the exact nature and identity of such Doe Defendants and their responsibility for participation and contribution to the matters and things herein alleged are ascertained by Plaintiff, Plaintiff will amend this Complaint to set forth the same.

#### **INTERNET & USENET**

20. The violations occurred over the Internet through forged websites setup by defendants Smiths and Todd Tipton and through Usenet's rec.music.classical.guitar newsgroup, which is the largest online classical guitar community. Currently, the largest Usenet repository is maintained by Google. However there are other mirror sites and repositories that currently contain messages fraudulently attributed to the Plaintiff. Those messages are available to search engines and available worldwide to anyone who uses the Internet. The above newsgroup is actively read by hundreds of users around the world who subscribe to it through services such as Google, or merely through their client newsgroup software application (such as Thunderbird or Outlook Express). Far more people read the newsgroup postings than post to the newsgroup, and as such, it is difficult to estimate the exact number of users except that there are indications that the number is quite large. The archives are

used as reference material presently, and potentially for generations to come.

### **FIRST CAUSE OF ACTION**

(Forgery)

21. The averments set forth in all preceding paragraphs are incorporated herein by reference.
22. For the period from about October 15, 2004 to about September 13, 2005, the Defendants attempted to fraudulently assume, steal and misappropriate Plaintiff's identity in the manner described presently through unauthorized use of Plaintiff's name, email address, and password, in order to create and publish forged documents that were falsely attributed to the Plaintiff as the author.
23. There are several instances of evidence that the Defendants succeeded in their ability to defraud others and win their trust by making the documents appear genuine. Others relied on the material misrepresentations and forged documents in their dealings with Plaintiff. Defendants intentionally misrepresented material facts regarding Plaintiff, including Plaintiff's professional activities, in these forged documents. There were a number of severe, dangerous, and untrue allegations associated with the Plaintiff in the forged documents designed to assassinate the Plaintiff's character.
24. At all times relevant, numerous messages were published on the Internet and Usenet by Defendants who used the Plaintiff's name, email address and a password to present themselves as the Plaintiff: ["Reza Ganjavi (www.rezamus.com)" <ganjavi@dtc.ch>]. The Plaintiff did not write these messages. Inarguably, the combination of four identity features, *e.g.*, first name, last name, website URL, and email address very uniquely and unambiguously purport to identify the Plaintiff. Plaintiff has in the past used the same set of four identity features to publish material on the Internet. While there are many persons named "Reza" in the world, to the best knowledge of the Plaintiff there are no other "Reza Ganjavi's." and even if there were, technically it is improbable to have another "Reza Ganjavi" with the email address: "ganjavi@dtc.ch" and even more improbable to have anybody, with any name, who can claim to be the "Reza" referred to by "www.rezamus.com," as the Plaintiff is the sole and legal owner of this website URL. Therefore, using a combination of these identity features uniquely and unambiguously purport to identify the Plaintiff, and it is this combination of identity features, which the Defendants used to pose as the Plaintiff, and publish material with the Plaintiff posed as the author.
25. At all times relevant, there was no way for the Plaintiff to stop the recurrence of such violations, as

the Usenet/Internet does not provide such technical capability. Here, the Defendants intentionally and maliciously used the Plaintiff's identity, without the Plaintiff's authorization, to post messages that the Plaintiff had not written, unambiguously presenting the Plaintiff as the author. The Plaintiff asked the Defendants to stop assuming Plaintiff's identity and to retract their violations many times to no avail. Not only did the Defendants refuse to retract their statements, they intensified their attacks after Plaintiff's request for cessation of their fraudulent activity.

26. The messages that were fraudulently posted as being authored by the Plaintiff contained highly offensive material and violent content completely contrary to the Plaintiff's character, beliefs, and philosophy of life.
27. Most of the materials posted, with the Plaintiff fraudulently presented as the author, are too offensive to reproduce here in the body of this complaint, however, some ingredients include the following, which is merely a small example of numerous counts of violations. Upon information and belief:
  - a) Using the Plaintiff's identity, Smiths directed obscenity at the Plaintiff himself and posted highly defamatory material about the Plaintiff.
  - b) Using the Plaintiff's identity, Smiths scandalously supported terrorism -- something that is absolutely contrary to the Plaintiff's beliefs and moral values.
  - c) Using the Plaintiff's identity, Smiths directed racial slurs, including publicly publishing a message with the title: "THIS IS WHY BLACK PEOPLE ARE NIGGERS" containing a link to a picture of an African American person. This is absolutely and unquestionably against the Plaintiff's belief. Plaintiff has utmost respect and affection for African Americans and persons of African descent especially, as he does for fellow civil human beings of every race, ethnicity, country, gender, and religion. In addition, Plaintiff has many Black friends and fans and prospective customers who would be disgruntled and likely to disassociate from Plaintiff if they come upon such lies and insults purportedly written on behalf of the Plaintiff on the Internet.
  - d) Using the Plaintiff's identity, Smiths made other remarks exhibiting racial prejudice, for example, referring to the Plaintiff as a "sand Nigger" who would do extreme graphic and obscene, filthy, lewd sexual acts.
  - e) Using the Plaintiff's identity, Smiths made vulgar inappropriate sexual overtures, and sexual threats to others.
  - f) Using the Plaintiff's identity, Smiths made vulgar sexual insults and inappropriate and false

remarks towards the Plaintiff.

- g) Using the Plaintiff's identity, Smiths verbally attacked a civilized member of the community.
  - h) Using the Plaintiff's identity, Smiths falsely discarded and quashed writings that were actually written by the Plaintiff.
  - i) Using the Plaintiff's identity, Smiths altered and posted Plaintiff's copyrighted works without permission.
  - j) Using the Plaintiff's identity, Defendant Todd Tipton threatened to kill a person with use of extreme, graphic, and physical violence.
  - k) Using the Plaintiff's identity, Defendant Todd Tipton threatened and used obscene language on others.
  - l) Using the Plaintiff's identity, Defendant Todd Tipton publicized false, negative, scandalous, and damaging statements about the Plaintiff's products, artistic credibility, and reputation.
  - m) Defendant Todd Tipton published material fraudulently attributed to the Plaintiff as the author, which falsely alleged Plaintiff with horrible accusations such as being a pedophile.
  - n) Defendant William Jennings published material fraudulently attributed to the Plaintiff as the author.
28. The Plaintiff posted messages stating that Plaintiff did not write the aforementioned fraudulent messages. However, the Defendants would turn around; forge the Plaintiff's ID and post a message uniquely identifying the Plaintiff as the author, quashing the corrective message that the Plaintiff had actually just posted. The result was that a reader would believe that the Plaintiff did not write the corrective message.
29. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
30. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that Plaintiff's business, practice, and artistic reputation will be irreparably damaged otherwise. Monetary relief cannot completely remedy Plaintiff's damages.
31. Plaintiff has exhausted his administrative remedies.

## **SECOND CAUSE OF ACTION**

(17 U.S.C. § 106A: Attribution and Integrity Rights)

32. The averments set forth in all preceding paragraphs are incorporated herein by reference.
33. Plaintiff's website design and other works of visual art are protected by copyright laws and subject to protection by 17 U.S.C. § 106A(a) "attribution and integrity rights" as Plaintiff is the author of a work of visual art, including Plaintiff's websites, <http://www.rezamusic.com> and <http://www.rezaworld.com>. Plaintiff alleges that his rights to attribution and integrity were violated when Defendants Smiths and Tipton published websites attributed to the Plaintiff that closely resembled Plaintiff's website, with the intention of causing Plaintiff harm by using Plaintiff's name as the author of a work of visual art which Plaintiff did not create and using Plaintiff's name as the author of a work of visual art in the event of a distortion, mutilation, and other modifications of Plaintiff's work which was prejudicial to Plaintiff's honor and reputation.
34. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.

**THIRD CAUSE OF ACTION**

(False Presentation in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125)

35. The averments set forth in all preceding paragraphs are incorporated herein by reference.
36. On or about August 5, 2005, and on or about September 11 2005, it was brought to the Plaintiff's attention that Defendants Smiths and Tipton had set up mock websites strongly resembling the Plaintiff's registered websites in name, design, and content.
37. Defendants Jeremy Smith and Todd Tipton are potential competitors of Plaintiff in the area of classical guitar service and goods. Tipton and Smiths portrayed Plaintiff's goods and services to potential clients and audiences falsely, fraudulently, and maliciously, therefore misleading Plaintiff's potential clients of facts that were likely to cause confusion. Furthermore, Smiths deceptively affiliated Plaintiff to endorsement of sources of advertising presented on the fraudulently set up websites. Those websites were explicitly purported to be associated with the Plaintiff by name, description, pictures, and graphic design.
38. One mock website hosted on Yahoo/Geocities referred explicitly and unambiguously to the

Plaintiff and his website, by name, description, photo, and design. The mock website purported that Plaintiff endorsed products that the Plaintiff did not endorse. The websites directed insults and invectives at the Plaintiff and his products and services; disparaged his professional competence; and offended the Plaintiff's potential customers and audience. This website was setup and announced on the Usenet by Smiths who posed as the classical guitar discussion group's "Official Moderator <moderator@rmcg.com>".

39. The website also directed sexual slurs towards the Plaintiff and his business associates, implying that the Plaintiff was a homosexual, which he is not, and such allegations are dangerous because Plaintiff travels to Iran, where his relatives still reside. In Iran, homosexuality is a crime and is punished severely. Thus, posting this false allegation on the Internet is especially dangerous for Plaintiff and harmful to him even though Plaintiff is not homosexual.
40. The aforementioned mock site was announced to the Plaintiff on or about September 11, 2005, from the IP address [24.148.29.235] (belonging to Smiths). Smiths wrote: "You and I share similar interests and even look alike. [www.geocities.com/rezasworld](http://www.geocities.com/rezasworld)". On the same day the site was also announced publicly. The site's visit-counter indicated the site was visited by at least 99 visitors as of September 11, 2005. From the same IP address [24.148.29.235], on or about September 12, 2005, the Plaintiff received an email: "Care to negotiate a peace settlement?" but this one was from the IP address [167.219.0.140], which indicated the message was from Deloitte's network. On 13 April 2006, in response to a subpoena, Deloitte confirmed that the name of the responsible employee is Defendant Jeremy Smith. Defendant Jeremy Smith works for Deloitte and uses RCN as a home online service provider (shared with Defendant Cindy Smith). Plaintiff also has proof that Smiths have also used Giganews and Teranews newsgroup service providers to commit some of the violations anonymously.
41. On or about August 4, 2005, another mock site, hosted on Homestead, was publicly announced by Defendant Todd Tipton using Time Warner Cable / Roadrunner ISP. Todd Tipton's own website ([www.toddtipton.com](http://www.toddtipton.com)) is also hosted on Homestead. The mock site maliciously impersonated the Plaintiff, misrepresented the Plaintiff's beliefs, and insulted the Plaintiff, his family and friends.
42. These false presentations violated Section 43 of the Lanham Act, 15 U.S.C. § 1125, insofar as Plaintiff did not authorize, broker, sell, or otherwise license the right to use his name, common law trademarks, image, likeness, or professional reputation, to any of the Defendants. The Plaintiff requested the hosting companies to remove the mock websites. The sites were deleted after being

online for several days and attracting numerous visitors.

43. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
44. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

#### **FOURTH CAUSE OF ACTION**

(Invasion of Privacy: False Light)

45. The averments set forth in all preceding paragraphs are incorporated herein by reference.
46. Defendants published material, highly offensive in nature, in the context of replies to quotations which were falsely attributed to the Plaintiff as the author.

#### **Defendant Todd Tipton:**

47. Upon information and belief, on or about July 7, 2005, Defendant Todd Tipton published a statement, which the Plaintiff had not written, unambiguously attributing the statement to the Plaintiff as the author. The statement offended and insulted group members. Once caught, on or about August 7, 2005, Tipton emailed the Plaintiff and confessed to having setup the forged website hosted on Homestead as discussed hereinabove, and to the July 7, 2005's forged statement.
48. Using various screen names such as "Rosa", "John Ed Gore", and "Stephen Wolfe", Defendant Todd Tipton made appalling statements, which the Plaintiff had not written. These statements were published as Plaintiff's writing several times, uniquely and fraudulently identifying the Plaintiff as the author of quoted texts.

#### **Defendant William Jennings:**

49. Upon information and belief, William David Jennings has used multiple aliases to publish material that violated the Plaintiff's rights and placed the Plaintiff in a False Light. Jennings posted on, or about October 26, 2005, a message titled: "Pinging the Cyber troll Administrator: I'm walking out the door headed for Mexico where I'll eat a dead kid tonight". Jennings further encourages and



prompts the other Defendants, known in the Newsgroup as “Cyber Trolls” to presumably continue their unlawful acts.

50. On several occasions on or about December 20, 2004, Defendant William Jennings fraudulently presented writings, that the Plaintiff had not written, as having been authored by the Plaintiff, explicitly and uniquely identifying the Plaintiff by his first name, last name, email address and website URL. Defendant also negatively misrepresented the amount of sales of the Plaintiff’s CD’s.
51. At least on two instances, on or about December 28, 2004, Defendant William Jennings fraudulently presented writings, that the Plaintiff had not written, as having been authored by the Plaintiff, explicitly and uniquely identifying the Plaintiff by his first name, last name, email address and website URL. Defendants also attacked Plaintiff’s CD, falsely relating Plaintiff to “Pink Striped Pajamas Gang of Abu Ghraib”, “the gay scene in Tehran” and in one of the messages, Defendants made ethnic slurs, and lied about the functionality of certain links on the Plaintiff’s website that refer to music reviews.
52. On or about December 28, 2004 and on or about December 29, 2004, Defendant William Jennings fraudulently presented writings, that the Plaintiff had not written, as those of having been authored by the Plaintiff, explicitly and uniquely identifying the Plaintiff by his first name, last name, email address and website URL. Defendant also heavily attacked Plaintiff’s CD, comparing it to weapons of mass destruction.
53. On or about September 13, 2005, the Defendant William Jennings fraudulently presented writings, that the Plaintiff had not written, as having been authored by the Plaintiff, explicitly and uniquely identifying the Plaintiff by his first name, last name, email address and website URL. This message fraudulently presented the Plaintiff as having requested the Defendant to write a song for him, with lyrics included the hate lines: “I’d sooner see your neatly smoked carcass hanging on a meat hook in Hell.”
54. On or about October 31, 2005, Defendant William Jennings wrote a review about Plaintiff’s “In Friendship” CD. Jennings’ review went far beyond expressing mere critical opinions. He lied and misrepresented the CD as follows:
  - a) ‘I listened to Reza's CD one time. On the second repeat of Spanish Romance I began to cringe ...after hear 6 (SIX) repeats of the same song with different titles (which indicates a clear lack of creative distinction) "Spanish Romance" (with flute and guitar) is played yet again as "Sunset At The Alhambra"’. Fact is there is more difference between the variations than just the title.

The melodies of the lead instrument are different in every single piece.

b) “Reza's CD's are not sold in stores and have almost no distribution... occasionally sold in small Swiss music stores.” This is false as the Plaintiff’s CDs (1) are sold in stores and do have distribution, both physical and digital, (2) in Switzerland, the physical distribution includes large music stores.

55. On at least two instances each, on or about July 7, 2005, on or about July 8, 2005 and on or about October 31, 2005, the Defendant William Jennings fraudulently presented writings, that the Plaintiff had not written, as having been authored by the Plaintiff, explicitly and uniquely identifying the Plaintiff by his first name, last name, email address and website URL. These messages disparage the Plaintiff’s products, person, personality, education, skills, and the like.

Defendants Smith & Deloitte (vicariously):

56. Upon information and belief, Smiths have committed a large array of violations against the Plaintiff and put the Plaintiff in false light. These violations include fraudulent use of Plaintiff’s identity, impersonating the Plaintiff to publicly show sympathy with terrorism, using the Plaintiff’s identity to utter racial slurs against African Americans and persons of African descent, cyber-stalking the Plaintiff with fraudulent electronic communications, setting up a mock website, orchestrating attacks on Plaintiff’s products, publishing highly offensive material which were falsely attributed as authored by the Plaintiff, and other vulgar acts.

### **FIFTH CAUSE OF ACTION**

(Defamation Per Se, Libel & Slander)

57. The averments set forth in all preceding paragraphs are incorporated herein by reference.

58. Plaintiff claims that the Defendants’ actions have caused Plaintiff’s reputation to seriously suffer.

59. Said libel and slander as described in preceding paragraphs was certainly written statements, possibly also spoken statements, and certainly statements placed on the Internet.

60. Said statements were untrue, and were conveyed to third parties.

61. Said statements, were defamatory per se and also caused third parties to hate, dislike and avoid Plaintiff. The statements:

- a) were defamatory, and false to the Plaintiff's discredit;
- b) were understood as being of and concerning the Plaintiff;

- c) were understood as tending to harm the reputation of Plaintiff;
  - d) exposed the Plaintiff to hatred, ridicule, contempt, obloquy;
  - e) lowered him in the esteem of his fellows and caused him to be shunned;
  - f) injured him in respect to his business and profession;
  - g) imputed to him general disqualifications in those respects which his occupation peculiarly requires, e.g., ability to perform music;
  - h) created a great deal of mental anguish;
  - i) exposed the Plaintiff to grave danger, especially in international travel; and
  - j) were made with actual malice.
62. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
63. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

### **SIXTH CAUSE OF ACTION**

(Defamation, Libel & Slander)

64. The averments set forth in all preceding paragraphs are incorporated herein by reference.
65. Plaintiff claims that the Defendants' actions have caused Plaintiff's reputation to seriously suffer.
66. Said libel and slander as described in preceding paragraphs was certainly written statements, possibly also spoken statements, and certainly statements placed on the Internet.
67. Said statements were untrue, and were conveyed to third parties.
68. Said statements were defamatory and also caused third parties to hate, dislike and avoid Plaintiff.
- The statements:
- a) were defamatory, and false to the Plaintiff's discredit;
  - b) were understood as being of and concerning the Plaintiff;
  - c) were understood as tending to harm the reputation of Plaintiff;
  - d) exposed the Plaintiff to hatred, ridicule, contempt, obloquy;
  - e) lowered him in the esteem of his fellows and caused him to be shunned;

- f) injured him in respect to his business and profession;
  - g) imputed to him general disqualifications in those respects which his occupation peculiarly requires, e.g., ability to perform music;
  - h) created a great deal of mental anguish;
  - i) exposed the Plaintiff to grave danger, especially in international travel; and were made with actual malice.
69. On several occasions, Defendants disparaged Plaintiff's product on Amazon.com in an orchestrated fashion leaving highly defamatory and false reviews far exceeding the limits of their First Amendment rights. Smiths also directed profanity at anyone on the group who did not cooperate in attacking the Plaintiff.
70. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
71. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

### **SEVENTH CAUSE OF ACTION**

(Invasion of Privacy: Appropriation of Name or Likeness)

72. The averments set forth in all preceding paragraphs are incorporated herein by reference.
73. As demonstrated in the preceding paragraphs the Defendants have at all times relevant explicitly appropriated to their own use the name or likeness of the Plaintiff without the Plaintiff's authorization.
74. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
75. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

## **EIGHT CAUSE OF ACTION**

(Intentional Infliction of Emotional Distress)

76. The averments set forth in all preceding paragraphs are incorporated herein by reference.
77. As demonstrated in the preceding paragraphs the Defendants have demonstrated outrageous conduct with intention of causing or reckless disregard of the probability of causing emotional distress. Such conduct has caused the Plaintiff extreme suffering and severe emotional distress including highly unpleasant mental reactions such as nightmares, fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain and injury.
78. In addition to the actions described in the preceding paragraphs, Defendant Jeremy Smith stalked and harassed the Plaintiff with numerous crank emails posing as a potential customer and ultimately accusing the Plaintiff of having criminal intentions. Twelve emails from: "Billy Zantzingler <modelthry@yahoo.com>" IP address: [167.219.0.147] (Deloitte –sent during business hours) sought to engage Plaintiff in conversation and subsequently accused Plaintiff of defrauding him for not sending him a CD for the money he never paid and threatened to sue the Plaintiff. No payment and no proof for payment was ever made to Plaintiff.
79. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his business advantage, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
80. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

## **NINTH CAUSE OF ACTION**

(Negligent Infliction of Emotional Distress)

81. The averments set forth in all preceding paragraphs are incorporated herein by reference.
82. As demonstrated in the preceding paragraphs the Defendants' negligent acts of extreme misconduct have caused the Plaintiff extreme suffering and severe emotional distress including highly unpleasant mental reactions such as nightmares, fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain and injury.

83. As a result of the foregoing, and as a proximate cause thereof, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
84. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

### **TENTH CAUSE OF ACTION**

(Intentional Interference with Prospective Economic Advantage)

85. The averments set forth in all preceding paragraphs are incorporated herein by reference.
86. Plaintiff believes that Defendants Jeremy Smith, Todd Tipton, and William Jennings are classical guitarist who engage in similar business as the Plaintiff (e.g. performance and teaching) and that there is a prospective economic relationship as a result. They intentionally committed the aforementioned violations with awareness of that relationship in order to disrupt Plaintiff's business activity, and managed to do so.
87. As a result of the foregoing, Plaintiff has suffered injuries to his profession in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
88. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

### **ELEVENTH CAUSE OF ACTION**

(Unfair Competition)

89. The averments set forth in all preceding paragraphs are incorporated herein by reference.
90. Plaintiff believes Defendants Jeremy Smith, Todd Tipton, and William Jennings are classical guitarist who engage in similar business as the Plaintiff (e.g., musical performance and teaching) and as such the aforementioned violations were at least partly committed with the motive to hurt the Plaintiff's business unfairly.
91. As a result of the foregoing, Plaintiff has suffered injuries to his profession, in an amount to be

determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.

92. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.
93. Plaintiff is informed and believes, and on that basis alleges, that the Defendants' conduct as alleged in this Complaint involves the willful and intentional unlawful infringement of Plaintiff's own common law copyrighted materials and other unlawful acts, as described herein, for use in direct competition with Plaintiff to the benefit of the Defendants, the deception of the public, and the great detriment of Plaintiff and Plaintiff's websites, constitutes unlawful, unfair, and/or fraudulent business acts or practices in violation of Illinois common law and the Illinois Consumer Fraud and Deceptive Business Practices Act, IL ST CH 815 § 505/1 et seq., that has a substantial effect on commerce, resulting in Defendants' unjust enrichment. On information and belief, Defendants willfully intended to trade on the business goodwill of Plaintiff, Plaintiff websites, and Plaintiff's intellectual property, and to deceive the public and cause injury to Plaintiff through his acts of unfair competition as described herein.
94. On information and belief, Plaintiff alleges that the Defendants are continuing to engage in one or more acts of unfair competition involving the conduct alleged in this Complaint (and related conduct) to Plaintiff's substantial economic detriment, including willful and intentional unlawful infringement of Plaintiff's copyrighted materials, identity, likeness, and reputation for use in direct competition with Plaintiff and the deception of the public with the knowledge, aid, encouragement, and support of each other.
95. As a direct and proximate result of Defendants' unlawful acts as described herein, Plaintiff has suffered and will continue to suffer injury to Plaintiff's business, goodwill, and property for which it is entitled to restitution pursuant to Illinois common law and the Illinois Consumer Fraud and Deceptive Business Practices Act, IL ST CH 815 § 505/10(a).
96. Furthermore, Plaintiff has no adequate remedy at law to compel the Defendants to cease his wrongful acts, and therefore seeks injunctive relief. Unless the Court grants an injunction, Plaintiff will be compelled to prosecute a multiplicity of actions to remedy this continuing unfair, unlawful, and/or fraudulent conduct. Unless the Defendants are preliminarily and permanently enjoined from committing the unlawful acts described herein, Plaintiff will continue to suffer irreparable harm.

Plaintiff's damages are irreparable because it is extremely difficult to ascertain the amount of compensation that will afford Plaintiff adequate relief if Defendants are not enjoined at this time, in part because of the nature of intellectual property. Plaintiff is entitled, pursuant to Illinois common law and the Illinois Consumer Fraud and Deceptive Business Practices Act, IL ST CH 815 § 505/10(a), to injunctive relief in the form of a temporary restraining order, a preliminary injunction, and/or a permanent injunction restraining Defendants, their officers, agents, and employees, and all persons acting in concert with them, from engaging in any further such acts of unfair competition.

### **TWELFTH CAUSE OF ACTION**

(Infringement of Common Law Copyright)

97. The averments set forth in all preceding paragraphs are incorporated herein by reference.
98. Plaintiff is the owner of certain common law copyrights in connection with the design and contents of his websites, which include his writings, designs, photographs, and the like.
99. On numerous occasions, Defendants published Plaintiff's copyrighted writings, designs, photographs, etc., without authorization, in violation of law.
100. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.
101. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

### **THIRTEENTH CAUSE OF ACTION**

(Intentional Misrepresentation)

102. The averments set forth in all preceding paragraphs are incorporated herein by reference.
103. Writings that were not written by Plaintiff were explicitly attributed to the Plaintiff and published as such.
104. Writings that were written by Plaintiff were altered and published as Plaintiff's writings.
105. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of



trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.

106. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

#### **FOURTEENTH CAUSE OF ACTION**

(Negligent Misrepresentation)

107. The averments set forth in all preceding paragraphs are incorporated herein by reference.

108. Defendants made misrepresentations of past and existing facts, concealed facts, false promises, and intentionally failed to disclose facts regarding Plaintiff, as described herein, such that Defendants' representations were untrue.

109. Defendants made representations without any reasonable ground to believe that the statements were untrue.

110. Defendants intended to induce Plaintiff and others to rely upon Defendants' false statements.

111. As a result of the foregoing, Plaintiff has suffered injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court. In the alternative, Plaintiff prays for any applicable statutory damages for this cause of action.

112. Plaintiff will suffer immediate and irreparable harm if this Court does not order injunctive relief, in that his business, practice, and artistic reputation will be irreparably damaged. Monetary relief cannot completely remedy Plaintiff's damages.

#### **FIFTEENTH CAUSE OF ACTION**

(Vicarious Liability)

113. The averments set forth in all preceding paragraphs are incorporated herein by reference.

114. At all times relevant, Defendant, Jeremy Smith, was employed by Deloitte and acted during his hours of employment with Deloitte.

115. The acts attributed to Jeremy Smith herein took place during the course of Smith's employment with Deloitte and were within the scope of his employment with Deloitte.

116. Through the actions of its employee, Jeremy Smith, as alleged herein, Deloitte vicariously

caused Plaintiff to suffer injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court.

### **SIXTEENTH CAUSE OF ACTION**

(Negligent Enablement)

117. The averments set forth in all preceding paragraphs are incorporated herein by reference.
118. The alleged acts attributed to Jeremy Smith occurred during hours when Jeremy Smith was in the employment of Deloitte and some of the acts were committed using Deloitte's computers and network systems.
119. Plaintiff advised Deloitte of Smith's activities in September 2005, yet it took several months between the time the violations were reported to Deloitte until they stopped Defendant Jeremy Smith from using their computers and networks in relationship to the Plaintiff, although it was indicated by Deloitte's technical staff that the source of the violations was identified immediately upon reporting.
120. Deloitte had actual notice of Smith's activities and a duty to put a stop to those activities in a reasonable and timely manner. Deloitte waited months to have a manager address the problem although they were notified in writing that they need to put a stop to the problem immediately due to the urgent nature of the problem, and the problem had been explained to them in detail, and they were provided with electronic traces.
121. In failing to act on its duty to stop Smith's activities in a timely manner, Deloitte caused Plaintiff to suffer injuries to himself, his profession, his reputation, his career, his health, and his relationships, in an amount to be determined at time of trial, but within the jurisdictional limits of this Court.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. An award of actual damages fully compensating Plaintiff for all injuries he has suffered as a direct and proximate result of Defendants' deprivation of Plaintiff's liberty and rights, without due process of law;
2. Punitive and exemplary damages;

3. Reasonable attorney fees according to proof, pursuant to 17 U.S.C. § 505;
4. That Defendants, and each of them, be held liable for unfair competition in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, IL ST CH 815 § 505/1 et seq., as alleged herein;
5. For expedited discovery from Defendants on all issues arising out of or relating to the allegations of this Complaint, in order to prepare for a temporary restraining order or preliminary injunction hearing in this matter;
6. That Defendants' unlawful conduct as alleged herein be deemed a willful violation of Plaintiff's intellectual property rights;
7. That Plaintiff be awarded its actual compensatory damages according to proof;
8. That Plaintiff be awarded statutory damages;
9. That Defendants be ordered to disgorge any profits or gains in Defendants' possession attributable to the infringement of Plaintiff's copyrights or to Defendants' acts of unfair competition, and that Plaintiff be awarded restitution in connection therewith;
10. That the Court order an accounting of all of any gains, profits, and advantages realized by Defendants, or others acting in concert or participation with them, from their unlawful conduct, and that all such gains, profits, and advantages be deemed to be in constructive trust for the benefit of Plaintiff, at the sole cost and expense of Defendants, by means of an independent accountant;
11. Immediate issuance of a temporary restraining order, followed by a preliminary injunction, and ultimately by a permanent injunction preventing Defendants and their respective agents, employees and representatives from using Plaintiff's name on the Internet and Usenet;
12. That the Court order online services that are hosting fraudulent and defamatory articles composed by Defendants to remove such articles;
13. That Plaintiff recover its costs of this suit, including expert witness costs, pursuant to 17 U.S.C. § 505; and
14. Such other and further relief as the Court may deem just and proper.

DATED: September 11, 2006

RESPECTFULLY SUBMITTED BY:

Khoi Dang-Vu

Attorney for Plaintiff, REZA GANJAVI

A.R.D.C. Number 6271169

Law Offices of Khoi Dang-Vu, P.C.

1719 W. 18<sup>th</sup> Street

Chicago, Illinois 60608

Tel. (312) 492-1477

Fax (312) 455-9372

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all causes of action against all defendants.

DATED: September 9, 2006

RESPECTFULLY SUBMITTED BY:

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Khoi Dang-Vu

Attorney for Plaintiff, REZA GANJAVI

A.R.D.C. Number 6271169

Law Offices of Khoi Dang-Vu, P.C.

1719 W. 18<sup>th</sup> Street

Chicago, Illinois 60608

Tel. (312) 492-1477

Fax (312) 455-9372