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RO FOR CONGRESS, INC. and
ROHIT "RO" KHANNA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MIKE HONDA FOR CONGRESS, an
unincorporated political association,

Plaintiff,

v.

BRIAN PARVIZSHAHI, an individual, RO FOR
CONGRESS, INC., a California corporation,
ROHIT "RO" KHANNA, an individual, and
DOES 1 through 10,

Defendants.

) CASE NO.: 5:16-cv-05416-EJD
)
) **DEFENDANTS RO FOR**
) **CONGRESS, INC. AND ROHIT**
) **"RO" KHANNA'S MOTION TO**
) **CONTINUE HEARING DATE OF**
) **MOTION FOR PRELIMINARY**
) **INJUNCTION (Civ. L.R. 6-1(a), 6-**
) **3(a)) AND MEMORANDUM OF**
) **POINTS AND AUTHORITIES**
)
) Before: Honorable Edward J. Davila
)
) Complaint Filed: September 22, 2016

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on September 26, 2016, Defendants Rohit “Ro” Khanna and Ro for Congress, Inc. (the “Khanna Campaign”) will move this Court pursuant to Civil Local Rules 6-1(a) and 6-3(a) for a brief continuance of the briefing and hearing on Plaintiff’s Motion for a Preliminary Injunction (ECF No. 5) so that it is heard only after sufficient time for expedited discovery.

This motion is supported by the Memorandum of Points and Authorities, a proposed order, and the Declarations of Charles Graves and Michael Ambler. The Khanna Campaign is concurrently moving for expedited discovery.

Plaintiff declined to consent to the case being heard by Magistrate Judge Cousins so the October 19, 2016 hearing date on the preliminary injunction motion he set has been vacated. On September 26, 2016, this Court re-set the hearing on the motion for preliminary injunction to October 11, 2016 with opposition briefing due on October 3, 2016 and reply briefing due on October 5, 2016.

Counsel for the Khanna Campaign are available for oral argument on this motion at the Court’s convenience.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Khanna Campaign respectfully requests a continuance so that the briefing and hearing on the motion for a preliminary injunction filed by Plaintiff Mike Honda for Congress (“Honda” or the “Honda Campaign”) is held only after sufficient time to complete limited expedited discovery. This brief extension is necessary because Honda refuses to produce the targeted, minimal discovery necessary to conclusively prove that its allegations are not merely false – they are sanctionable.

In a clumsy attempt at an “October Surprise” (as well as to distract voters from its own ethical lapses), Honda makes flimsy accusations that it was grievously injured because a former staffer of the Khanna Campaign allegedly took email addresses of publicly-known donors from a Dropbox file and used them for political advertising emails. The alleged emails were taken and sent (according to the complaint) a year ago. A grand total of six email recipients were willing to sign supporting affidavits. None identified the slightest harm or inconvenience. Honda knew all the facts in its complaint by May 2016.

The Khanna Campaign has only just begun its investigation, but even a cursory review demonstrates that Honda’s papers are riddled with factual errors and false statements. For example, of the six declarants who state that they allegedly do not know how Mr. Khanna had their email addresses, at least one sought Mr. Khanna’s help in finding an internship (Gowani), two others actually solicited Mr. Khanna and/or his campaign for money (Minami through his Asian Law Caucus and Hasegawa), while another engaged in a lengthy discussion with Mr. Khanna, concluding it by admitting he would be a “promising” candidate for election.

Further, Mike Honda’s own declaration is demonstrably false; for example, he claims that he “never solicit[s] supporters of [his] opponent,” yet he has actively solicited Mr. Khanna’s supporters – a practice he continues to this day – and Honda’s papers explicitly reveal files entitled “Khanna Donors” which Honda continues to access. In short, Honda’s own papers (as well as his actions since filing) demonstrate not just that Honda’s claims have no merit, but that his action is done as a desperate ploy to avoid political defeat at the hands of the voters rather

1 than out of any concern for an alleged loss of intellectual property.

2 Honda admits that it learned all of the purported bases for its allegations by May 2016. It
3 chose to remain silent for four months. It did not even contact the Khanna campaign to request
4 an investigation or otherwise raise the issue. Only now, as Honda is facing defeat in the general
5 election did the Honda Campaign file this suit. Thereafter, it held a press conference before it
6 served the complaint, and started an email petition requesting that the *Mercury-News* withdraw
7 its endorsement of Ro Khanna rather than engage in a meet and confer over the scheduling of the
8 substantive issues raised by the complaint.

9 Underscoring this political gamesmanship, Honda purports to have suffered “irreparable
10 harm” in the form of embarrassment – not money, not real injury – premised on this handful of
11 standard-issue election emails sent last year. But the Honda Campaign held a press conference
12 before it even served its complaint to generate media coverage for the very events that are
13 supposedly so embarrassing.

14 A brief continuance is warranted for the following reasons:

15 • **No Ongoing Harm:** The status quo will not change if the hearing is continued for one
16 month. The Honda Campaign complains about emails sent in October 2015, and about a
17 Dropbox account to which access was closed in May 2016. The “irreparable” harms it trumpets
18 – supposed embarrassment and harms to reputation – are phrased as empty clichés, while one of
19 the declarants even gave Honda an additional donation after receiving the so-called “harassing
20 email.”

21 • **Honda’s Four-Month Delay in Filing Suit:** The Honda Campaign had every
22 allegation and fact in its moving papers in hand by May 31, 2016. Honda’s Campaign sat on its
23 hands and chose to do nothing with this information. Instead, only now, when Honda is on the
24 verge of losing the election, did it file suit. That four-month delay alone proves that there is no
25 irreparable harm, and that a brief continuance will not alter the status quo.

26 • **Voluntary Remediation:** The Khanna Campaign has taken voluntary remedial steps
27 that support a continuance. Defendant Parvizshahi has resigned from the Khanna Campaign.
28 The Khanna Campaign is creating a new email contact list only from sources it can immediately

1 verify, and it will use only that new contact list for the remainder of the campaign.

2 • **Abuse of Judicial Process:** The Honda Campaign is hiding behind the litigation
3 privilege to tell lies for political ends. This Court should not, and need not, countenance such
4 misconduct and need only defer this matter by less than a month to prevent such abuse.

5 • **Need for Expedited Discovery:** As set forth in the Khanna Campaign’s concurrently-
6 filed motion for expedited discovery, there are significant holes in the story the Honda Campaign
7 has spun – holes that narrowly-tailored expedited discovery can expose.

8 For these reasons, the Khanna Campaign respectfully a continuance of the hearing date.

9 **II. ARGUMENT**

10 **A. A Brief Continuance Creates No Interim Harm.**

11 A brief continuance of the hearing date and related briefing creates no harm; indeed,
12 Honda identifies no credible “irreparable harm” to begin with. Purported injuries to intangibles
13 such as reputation and goodwill can be rejected where they are asserted only as conclusory
14 speculation. *See Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir
15 1984) (claimed irreparable harms based on conclusory affidavit).

16 Honda complains about emails sent a year ago and presents no evidence that any
17 purportedly confidential information will be used before Election Day. By its own admission,
18 the data at issue is from 2014. Honda presents no evidence that any of the past emails caused
19 any tangible harm. It instead offers only empty speculation that maybe donors stopped giving to
20 Honda because they received an email in 2015 – an unprovable conjecture which assumes voters
21 do not make rational decisions based on facts about the candidates. *See* Declaration of Michael
22 Beckendorf ¶ 38; Declaration of Michael Honda ¶ 20 (“The data breach has compromised
23 my relationships with my donors[.]”). Yet the notion that receiving an email could harm anyone
24 by “harassment and intimidation” is absurd. *See id.* Similarly, while Mr. Honda contends in
25 conclusory form that the emails “personally embarrassed me and harmed my reputation,” this
26 hollow claim is belied by the press conference the Honda Campaign held on September 22 to
27 broadcast the allegations as widely as possible. *See* Honda Declaration ¶ 21.

B. The Honda Campaign’s Four-Month Delay in Filing Suit Demonstrates that a Brief Continuance Will Not Alter the Status Quo.

A plaintiff’s delay in seeking a preliminary injunction is evidence that the plaintiff did not really suffer irreparable harm, and alone can justify denying relief altogether. *See, e.g., Oakland Tribune, Inc.*, 762 F.2d at 1377 (“Plaintiff’s long delay before seeking a preliminary injunction implies lack of urgency and irreparable harm.”); *Polyportables LLC v. Edurequest Corp.*, 2016 U.S. Dist. LEXIS 120170, *12 (E.D. Cal. Sept. 6, 2016) (in trade secret case, plaintiff learned facts in February 2016 and was on definitive notice in June 2016, yet did not seek relief until August 31, 2016). This rule applies where there is a knowing, tactical delay for ulterior, extra-legal reasons. And that is exactly what happened here:

- First, the Honda Campaign admits that it knew on October 3, 2015 that sixteen individuals who are friends and supporters of Mike Honda had received emails from the Khanna Campaign. *See* Motion for Preliminary Injunction at 12:12-13.

- Second, the Honda Campaign admits that as of May 31, 2016 (1) it believed there was a “major data breach” and that the Khanna Campaign “had access to EVERYTHING last cycle”; (2) it believed that Mr. Parvizshahi had accessed the specific Dropbox files identified in its moving papers; (3) Honda had access to those files and had conducted an investigation into them, and terminated Mr. Parvizshahi’s access to them; (4) it knew that Mr. Parvizshahi worked for the Khanna Campaign; and (5) Mike Honda himself and at least ten others with the Honda Campaign were then aware of the situation. *See id.* at 14:21-17:20; Declarations of Michael T. Beckendorf ¶¶ 18-31; Robert Eberhardt ¶¶ 6-23 Madalene Xuan-Trang Mielke ¶¶ 38-40.

- Third, the Honda Campaign never contacted the Khanna Campaign between May 31, 2016 and September 21, 2016 – the day it filed the lawsuit and the motion – to request that any information be returned, seek facts, or otherwise seek resolution.

It is self-evident that the Honda Campaign’s objective in filing this motion was to maximize media attention, not to act quickly. A continuance will not alter the status quo.

C. The Khanna Campaign’s Voluntary Remedial Steps Moot The Dispute.

A short continuance is also warranted because the Khanna Campaign has taken voluntary

1 steps to moot this dispute, and remove any questions about its email campaigns before Election
2 Day. First, Defendant Parvizshahi has resigned from the Khanna Campaign.

3 Second, the Khanna Campaign is creating a new email contact list using exclusively (1)
4 contact lists it can immediately verify as those it purchased; and (2) contacts gathered from
5 Town Hall meetings and other similar sources. *See* Declaration of Michael Ambler. The
6 Khanna Campaign will use only this email contact list for the remainder of its efforts through
7 Election Day. *See id.* Thus, there is no risk that the Khanna Campaign will use any Honda
8 information going forward (if there was ever any such risk). This simple step moots any claimed
9 harm and warrants a brief continuance.

10 Finally, the Honda Campaign's transparent use of this lawsuit – and the litigation
11 privilege – for political ends should also give pause. There is no reason this Court should accept
12 a preliminary injunction hearing schedule that Honda selected solely for media coverage – an
13 external, outside-the-courthouse goal. A brief continuance does not affect the legal issues at
14 play, and would avoid the use of the courts for election-season theatrics.

15 **D. The Need for Expedited Discovery Also Warrants A Continuance.**

16 A continuance is also warranted because there is good cause for the Khanna Campaign to
17 seek specific, narrowly-tailored expedited discovery in order to present its best defenses
18 regarding significant holes in the Honda Campaign's moving papers. The proposed requests are
19 set forth in full in the Khanna Campaign's concurrently-filed motion for expedited discovery.

20 **III. CONCLUSION**

21 For these reasons, the Khanna Campaign respectfully requests that the Court order a
22 modest continuance of any hearing on the Honda Campaign's motion for a preliminary
23 injunction to allow time for expedited discovery and appropriate briefing for a hearing in or after
24 November 2016.

25 Dated: September 26, 2016

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

26 By: /s/ David J. Berger

27 David J. Berger
28 Attorneys for Defendants
RO FOR CONGRESS, INC. and
ROHIT "RO" KHANNA

CERTIFICATE OF SERVICE

I, David J. Berger, hereby certify that on September 26, 2016 the foregoing document was filed through the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ David J. Berger

David J. Berger

MIKE HONDA FOR CONGRESS, an)
unincorporated political association,)
)
Plaintiff,)
)
v.)
)
BRIAN PARVIZSHAHI, an individual, RO FOR)
CONGRESS, INC., a California corporation,)
ROHIT “RO” KHANNA, an individual, and)
DOES 1 through 10,)
)
Defendants.)

CASE NO.: 5:16-cv-05416-EJD

**[PROPOSED] ORDER GRANTING
DEFENDANTS RO FOR
CONGRESS, INC. AND ROHIT
“RO” KHANNA’S MOTION TO
CONTINUE HEARING DATE (Civ.
L.R. 6-1(a), 6-3(a))**

Before: Honorable Edward J. Davila

Complaint Filed: September 22, 2016

CASE NO. 5:16-CV-05416-EJD

[PROPOSED] ORDER

Defendants Ro for Congress, Inc.'s and Ro Khanna's Motion to Continue the Hearing Date for Plaintiff Mike Honda for Congress's Motion for a Preliminary Injunction came before this Court in the ordinary course. All appearances are noted in the record.

Having considered the papers filed in support of and in opposition to said motion, the argument of counsel, and for good cause shown, IT IS HEREBY ORDERED that the motion is GRANTED.

The hearing date for Plaintiff's motion for a preliminary injunction is continued to November ___, 2016, or such later date as necessary depending upon Plaintiff's production of the discovery as provided for in the Court's Order Granting Expedited Discovery. Defendants' may file any opposition brief(s) on the later of (1) November ___, 2016 or (2) 14 days before the hearing. Plaintiff may file any reply brief(s) on the later of (1) November ___, 2016 or (2) 7 days before the hearing.

Dated: _____

United States District Judge

CERTIFICATE OF SERVICE

I, David J. Berger, hereby certify that on September 26, 2016 the foregoing document was filed through the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ David J. Berger

David J. Berger