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9
 10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 BRUCE CRISPIN LEYSER,
 13 Plaintiff,

14 vs.

15 JAMIE MILES GOLD,
 16 Defendant.

Case No. 2:06-cv-01072-RJH-LRL

**DEFENDANT'S MOTION TO
 DISSOLVE PRELIMINARY
 INJUNCTION;
 AND REQUEST FOR IMMEDIATE
 HEARING**

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 19 Pursuant to Fed. R. Civ. P. 65, Defendant Jamie Miles Gold ("Gold"), through his
 20 respective counsel, the law firm of Snell & Wilmer LLP, respectfully submits this Motion to
 21 Dissolve Preliminary Injunction; and Request for Immediate Hearing.

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1 This Motion is based upon the attached Memorandum of Points and Authorities, the
2 papers and pleadings on file, and any oral argument this Court may entertain at the time of
3 hearing.

4 Dated: November __, 2006.

5
6 SNELL & WILMER, L.L.P.

7
8 By: 

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Sponsored by Bodog.net, Defendant Jamie Gold won the 2006 World Series of Poker ("WSOP") Tournament. Competing with 8,773 participants, Gold claimed the \$12 million first place winning share after almost two weeks of play. Plaintiff alleges that Gold promised to share the winnings. While Gold admits he made the promise, it was not supported by bargained-for consideration. It was nothing more than a promise to make a gift. With no legal obligation to do so, Gold still intended to honor his promise and share the winnings. Plaintiff, however, acted unreasonably and refused to recognize necessary expenses or provide protection to Gold for legitimate tax issues. Instead of continuing good faith negotiations, Plaintiff filed this litigation and drew media attention to it. Now that Plaintiff has shown his true colors by unnecessarily filing suit and attempting to discredit Gold's reputation in the media, Gold no longer intends to share his winnings.

Plaintiff secured an *ex parte* TRO freezing \$6 million of the WSOP winnings with the Rio. Gold later stipulated to a preliminary injunction conditioned on the ability to challenge later

1 the injunction. The \$6 million remains with the Rio where it earns no interest or return. Gold
2 now files this Motion seeking dissolution of the injunction.

3 It is settled that a preliminary injunction may *not* be granted unless the moving party can
4 show both (1) irreparable harm and (2) a likelihood of success on the merits. Plaintiff can show
5 neither. There is no irreparable harm because Plaintiff has an adequate remedy at law -- money
6 damages, which is the only relief he seeks in his Complaint. Similarly, Plaintiff cannot show a
7 likelihood of success on the merits. The oral promise was nothing more than an unenforceable
8 offer to make a gift. The injunction should be dissolved, and the funds distributed to Gold.

9 **II. PROCEDURAL HISTORY**

10 On August 21, 2006, Plaintiff filed an *Ex Parte* Application for Temporary Restraining
11 Order and/or Preliminary Injunction in state court seeking to freeze \$6 million of Mr. Gold's \$12
12 million prize. A TRO was entered the same day. On August 30, 2006, Defendant removed the
13 case to this Court. On September 5, 2006, the Court held a hearing on the entry of a Preliminary
14 Injunction. Defendant's counsel posed no objection to an entry of the Preliminary Injunction
15 provided Defendant could later challenge the entry after counsel had the opportunity to discuss
16 the matter with the client and review the documentation. This Court granted the Preliminary
17 Injunction adopting the language of the state court's TRO. This Court further ordered that
18 Defendant would have until September 15, 2006, to "provide notification to Plaintiff and to the
19 court of any challenge." On September, 15, 2006, Defendant filed a Notice of Intent to
20 Challenge. Defendant now files this Motion to support its challenge.

21 **III. STATEMENT OF FACTS**

22 **A. The Gold-Bodog Contract**

23 Defendant Jamie Miles Gold ("Gold" or "Defendant") is a television producer and
24 professional poker player. Bodog.net is an online poker educational site. On July 13, 2006, Gold
25 entered into an exclusive client services agreement with Riptown.com on behalf of Bodog. *See*
26 Bodog Contract attached as Ex. 1. Bodog contracted with Gold because of his poker skills and
27 prior tournament wins. *See* Bodog Website attached as Ex. 2. The contract required Gold to wear
28 its clothing and participate in several media events in exchange for receiving a \$10,000 buy-in to

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1 the World Series of Poker ("WSOP"). *See* Bodog Contract at "Services" P.1. In other words,
2 Bodog bought Gold a "seat" at the tournament. Despite allegations in Plaintiff's Complaint to the
3 contrary, the contract has no "requirement" that Gold secure celebrities to wear Bodog clothing
4 during the World Series of Poker. The contract contains an integration clause that makes this
5 point clear: it precludes any other "agreements, proposals or representations, written or oral."
6 The contract merely required Gold to participate in the tournament while wearing Bodog apparel.
7 The hope was that Gold would advance deep into the tournament and create exposure for his
8 sponsor. He did.

9 **B. The Gold-Leyser Relationship**

10 Gold and Plaintiff Bruce Crispin Leyser ("Leyser" or "Plaintiff"), met in July 2006. *See*
11 Gold Decl. at ¶ 6 attached as Ex. A. Specifically, they met through Leyser's wife, Jules. She met
12 Gold at a poker tournament and discovered that Gold was a principal in a TV production
13 company. Leyser, a British citizen, was looking to pitch certain reality TV show concepts. Gold
14 agreed to meet with Leyser.

15 In their initial meeting, Leyser discussed his various TV concepts. Plaintiff also discussed
16 possible employment with Gold's television production company. Apparently, Leyser had
17 serious financial problems. *See* Gold Decl. at ¶6. In fact, Leyser was unemployed and playing
18 poker online in an attempt to pay his rental obligations in California. *See* NPR interview attached
19 as Exhibit 3. Subsequently, Leyser forwarded his resume to Gold detailing his production
20 experience. *See* Leyser resume attached as Exhibit 4. Leyser also forwarded his reality TV
21 concepts by e-mail. *See* Leyser e-mails attached as Exhibit 5.

22 In a later meeting, Gold and Leyser discovered that they both shared a love for poker.
23 Leyser expressed a desire to play in the WSOP, but he did not have money to pay the \$10,000
24 entry fee. Gold informed Leyser about his relationship with Bodog. Gold informed Leyser that
25 Bodog was looking to secure celebrities to sponsor for the WSOP to wear the Bodog apparel.
26 Leyser stated that he could procure celebrities and asked whether Bodog would consider
27 sponsoring him in return. *See* Gold Decl. at ¶ 9. Specifically, Leyser stated that he had
28 relationships with "A-list" celebrities Matthew McConaughey and Matthew Perry, both of whom

1 would "likely" be interested in a WSOP sponsorship. *See Id.* Gold informed Plaintiff that Bodog
2 might agree if he could secure such celebrities, but he was not certain.

3 Gold believed that the Plaintiff's purpose for suggesting he could secure celebrities was
4 two-fold. First, he wanted to impress Gold in order to market his production ideas to Gold's
5 production company and potentially secure employment. *See Gold Decl.* at ¶10. Second, he
6 hoped to secure his own seat through Bodog. *See Id.* Gold made no promises or assurances that
7 Bodog would provide him a seat because he was unaware of what Bodog could or would agree to.
8 More importantly, Gold did not discuss sharing the proceeds from Gold's participation in the
9 WSOP -- let alone agree to do so in exchange for Plaintiff securing celebrities.

10 Plaintiff did not secure the stated celebrities. *See Gold Decl.* at ¶ 11. Instead, just prior to
11 the start of the WSOP, Leyser told Gold he could only secure two lesser-known celebrities,
12 Matthew Lillard and Dax Shepard. *See Id.* Plaintiff asked Gold whether he believed Bodog
13 would accept these celebrities and secure a seat for Plaintiff. Gold told Plaintiff that he knew,
14 based on the celebrity status of the two individuals, that Bodog would not sponsor him. Gold did,
15 however, offer to secure sponsorships for Lillard and Shepard, which he did. Plaintiff thereafter
16 expressed great disappointment in not being able to participate in the WSOP. Gold, feeling sorry
17 for Plaintiff, promised to share his winnings. It was only *after* Plaintiff secured Lillard and
18 Shepard -- and not in exchange for this alleged service -- that Gold expressed a desire to assist
19 Plaintiff by sharing a portion of any winnings. *See Gold Decl.* at ¶¶ 11-15. Gold's offer was
20 nothing more than a promise to make a gift, which he initially intended to honor.

21 **C. The WSOP Event and Plaintiff's Harassing Behavior**

22 At the WSOP, Gold started strong. He amassed a commanding chip lead starting on the
23 third day when he ended with \$3.7 million in chips. He went on to maintain his lead and ended
24 each subsequent day as the chip leader. Gold's performance was drawing media attention. It was
25 also drawing Plaintiff's attention. As Gold advanced, Plaintiff started to increase his attempted
26 contacts/communications with him. Gold wanted to focus on the business at hand -- playing the
27 best poker possible and advancing. Plaintiff, however, was more concerned with securing a daily
28 affirmation from Gold that he would fulfill his promise. Leyser or his wife called or text

1 messaged Gold every hour he played, while tracking his status online. *See* Gold Decl. at ¶ 17. To
2 confirm his interest, and after it appeared Gold would win money, Leyser and his wife traveled to
3 the WSOP and began to spread the word that Gold “owed” Leyser half of any winnings. *See*
4 Gold Decl. at ¶ 19. The speculation and innuendo swirled around the tournament. *See* Gold
5 Decl. at ¶ 20.

6 Plaintiff's harassing contacts hit a crescendo on the last day of the tournament. Gold stood
7 with a commanding \$8.88 million lead on his nearest competitor. He was assured to win no less
8 than \$1.2 million. Gold wanted to be left alone to rest and focus on the day's work. Plaintiff was
9 not satisfied and continued to hound Gold with calls. Finally, after incessant badgering and
10 continuous phone calls from Plaintiff, Gold left Plaintiff a voicemail message confirming his
11 intention to take care of Plaintiff and, in the process, hoping to remove Leyser as a distraction. At
12 the time of the call, Gold's main focus was concentrating on playing poker, limiting all outside
13 distractions, and winning the tournament. *See* Gold Decl. at ¶ 23. The message confirmed this
14 intent:

15
16 So please just be with me. I can't imagine you're going to have a
17 problem with it. I just don't want any stress about any money or
18 any of that shit going on today, or even after the end of the day. I'm
19 sure you're going to be fine; you're going to be very well taken care
20 of, absolutely fairly. We're just trying to handle this properly and
21 after now I don't even want to talk [the money] about it or think
22 about it.

23 *See* Plaintiff's Emergency Motion for Hearing on Motion for Preliminary Injunction at P. 7:11-
24 14.

25 Gold thereafter capitalized on his chip lead. The play at the final table lasted 14 hours, and
26 Gold eliminated the final eight opponents, earning the first place prize of \$12 million.

27 Immediately following Gold's win, Plaintiff continued to harass him. *See* Gold Decl. at ¶
28 24. This included a multitude of calls from Plaintiff, Plaintiff's attorneys, and other professionals.
See Id. Gold retained Sam Israel, a California tax attorney, to analyze the tax issues related to
disbursement of the prize money. *See* Israel Decl. attached as Exhibit B at ¶ 3. Almost

1 immediately, Israel was contacted by Mark Seif, a lawyer and professional poker player
2 representing Leyser, explaining how the Rio could distribute the funds directly to Leyser. *Id.* at ¶
3 9. Israel became concerned. Israel believed there were many issues related to a direct
4 distribution to Leyser including potential IRS audit risks and the inability of Gold to deduct
5 business expenses. *See Id.* Seif, however, was not concerned. Seif allegedly found an obscure
6 loophole that allowed Leyser to avoid taxes if he returned to the British Isles. *See* Israel Decl. at
7 ¶ 10, 11. In other words, once Leyser received any distribution of funds he intended to leave the
8 country without paying taxes. Seif continued demanding release of \$6 million to Leyser. When
9 Israel requested an indemnity agreement with Leyser or an escrow account to hold back funds for
10 taxes, in case Leyser left the country, it was rejected. *Id.* at ¶ 12.

11 Israel was contacted by another attorney and a tax accountant representing Leyser, who
12 also suggested that the Rio could transfer funds directly to Leyser. *See* Israel Decl. at ¶ 8, 13.
13 Again, neither of Leyser's professionals would agree to any indemnity agreement or hold back of
14 funds for purposes of tax liability, nor would they agree to provide a legal opinion that Gold
15 would not be taxed on any amounts paid to Leyser. *Id.* at ¶ 8. Instead, while attempting to
16 resolve the tax issue, Leyser filed the instant complaint.

17 In the end, Plaintiff refused anything other than \$6 million. *See* Gold Decl. at ¶ 26. In
18 other words, Plaintiff refused to accept that his gift should be reduced for any of the taxes or
19 expenses incurred by Gold in winning the \$12 million prize. *See Id.* In fact, Plaintiff did not
20 even want the customary tip the winner provides to the dealers at the final table to come out of his
21 "gift." *See* Gold Decl. at ¶ 27. The parties did not agree on a solution but continued to negotiate.
22 Much to Gold's surprise and disappointment -- and while Gold believed negotiations were
23 continuing in good faith -- Leyser rushed and filed this lawsuit with no prior notice to Gold. This,
24 while the entire \$12 million remained with the Rio so Gold could evaluate the tax implications.
25 The Preliminary Injunction that is now in place was ordered on September 13, 2006. Gold
26 collected \$6 million of his winnings; the remaining \$6 million is still in the custody of the Rio
27 Hotel & Casino. *See* Gold Decl. at ¶ 29. The money is accumulating no interest or other return.
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