

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**Case No.: 19-2201 8-CIV-OTAZO-REYES
Consent Case**

DAVID GUZMAN,

Plaintiff,

v.

NSI HOLDINGS LIMITED,

Defendant.

**DECLARATION OF LAURA ROBYN EDISON IN SUPPORT OF MOTION TO
DISMISS FIRST AMENDED COMPLAINT**

I, Laura Robyn Edison, hereby declare:

1. I am Director of Defendant NSI (Holdings) Limited (“NSI Holdings”). I make this Declaration in support of Defendant’s Motion to Dismiss the First Amended Complaint pursuant to Rule 12(b)(2) and (6).

2. I have been the Director of NSI Holdings since approximately 24 December 2014, and prior to this I was General Counsel of NSI Holdings since approximately 2012. In my role, I have personal knowledge of NSI Holdings’ business operations, and in particular with regards to its operation of the website UniformDating.com. In preparing this declaration, I relied on business records and personal knowledge of the facts set forth herein. Except as to those matters stated on information and belief (which I believe to be true), I have personal knowledge of the facts set forth in this declaration, and, if called and sworn as a witness, I could and would testify competently with respect thereto.

3. NSI Holdings is a private limited company organized under the laws of England. Its principal and registered office is located at 2, Angel Square, London, EC1V 1NY, England, United Kingdom. NSI Holdings also has an office in Edinburgh, Scotland.

4. The Complaint filed in this case was served on NSI Holdings on or about June 18, 2019, via the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, at its London, England, office.

5. NSI Holdings does not now have, and has never had, any office in Florida or anywhere in the United States.

6. All of NSI Holdings' employees reside in the United Kingdom. NSI Holdings does not now have, and has never had, any employees, representatives, agents, or consultants in Florida or in the United States.

7. NSI Holdings does not now lease or own, and has never leased or owned, any property in Florida or in the United States.

8. NSI Holdings has never paid taxes in Florida or in the United States.

9. NSI Holdings is not now, and has never been, licensed to do business in Florida or in the United States.

10. NSI Holdings does not currently have, nor has it ever had, a parent, subsidiary, joint venture, or other relationship with any enterprise in Florida or in the United States.

11. NSI Holdings does not now hold, nor has it ever held, any bank accounts in Florida or the United States.

12. NSI Holdings does not now, nor has it ever, solicited business via television or radio advertisements within Florida or the United States.

13. NSI Holdings does not now, nor has it ever, purchased advertising space in any newspaper

or magazine in Florida or in the United States.

14. NSI Holdings has a license to operate UniformDating.com.

15. NSI Holdings does not geographically target advertisements for UniformDating.com to Florida, nor has it ever done so.

16. None of NSI Holdings' servers are located in Florida or in the United States. Rather, they are located in Toronto, Canada.

17. From August 2018, through July 2019, Florida users of NSI Holdings' websites comprised 1.88% of total worldwide users.

18. From August 2018, through July 2019, Florida users accounted for merely 1.90% of the revenue generated worldwide from NSI Holdings' websites.

19. NSI Holdings' operations employees reside in the United Kingdom, and thus all of the witnesses likely to testify NSI Holdings' behalf reside in the United Kingdom. Technical support staff for NSI Holdings is located in Ukraine.

20. All of the tangible evidence relevant to this action is located in the United Kingdom.

21. Defending and participating in a trial in this lawsuit in Florida would severely disrupt the business of NSI Holdings and would impose an undue financial burden on NSI Holdings. For example, key management personnel would likely be witnesses in any trial, and thus would be away from key business operations in the event this litigation goes to trial. Additionally, travel between the United Kingdom and Florida is costly and burdensome. Indeed, NSI Holdings has already been unduly burdened by this lawsuit.

22. NSI Holdings has never filed a lawsuit in Florida.

23. NSI Holdings has never anticipated being haled into court in Florida.

24. Use of UniformDating.com is subject to its Terms of Use. All users must affirmatively

agree to the Terms of Use prior to using UniformDating.com.

25. A true and correct copy of the Terms of Use is attached to the concurrently filed Request for Judicial Notice (“RJN”) as **Exhibit 1**. I drafted these Terms of Use and have personal knowledge of them. Included in the Terms of Use is a Jurisdiction and Applicable Law clause, which provides that: “These terms of use and the documents referred to in them shall be governed and construed in accordance with English law. Any disputes relating to these terms of use, the documents referred to in them or the site of the Services will be subject to the exclusive jurisdiction of the English courts.” *See* RJN Ex. 1 at Section 10.B.

26. The Terms of Use also contains a section regarding NSI Holdings’ right to use user content, which reads, in relevant part: “By posting information or content including but not limited to . . . photographs to your profile pages or any public area . . ., you automatically grant, and you represent and warrant that you have the right to grant to us . . ., a non-exclusive, royalty free, worldwide licence to use, copy, publish, display, reformat, translate and distribute, and broadcast, such information or content and to grant and authorise sub-licences of the same. You further waive any moral or potential infringements rights you may have in any such information or content. . . . *Specifically please note that we may use any of your content, including your photographs, for the purposes of advertising or publicity. . . .*” *See* RJN Ex. 1 at Section 6.B (emphasis added).

27. Use of UniformDating.com is also subject to a Privacy Policy, a true and correct copy of which is attached to the concurrently filed RJN as **Exhibit 2**. I have personal knowledge of the Privacy Policy, which provides in relevant part: “(b) Important notice about how we use your photographs . . . As we explain in our terms and conditions, *when you upload a photo to any of our Services you are allowing us to use that photo for advertising and other commercial purposes, royalty free. . . .*” *See* RJN Ex. 2 at Section 4B(b) (emphasis added).

28. Since being served with Plaintiff's Complaint and First Amended Complaint, NSI Holdings has investigated Plaintiff's claims, and has discovered that there is a user profile on UniformDating.com with two images of Plaintiff, birth date, and personal email address, all of which has since been confirmed to be the accurate identifying information of Plaintiff. One of the images that appears in the profile is the subject of Plaintiff's lawsuit. The other image is a photograph of Plaintiff wearing a t-shirt. The IP address associated with the profile is located in Miami, Florida, where Plaintiff has alleged he resides and works.

29. This user profile was created on November 23, 2017, at 9:23 p.m. The last log-on by the creator of the profile was that same evening, at 10:30 p.m. Attached hereto as **Exhibit 1** is a true and correct copy of the data associated with the creation of the profile.

30. NSI Holdings did not create the profile at issue, nor did any of NSI Holdings' staff. Rather, the facts and evidence available to it indicate that Plaintiff himself – or at the very least, someone who knows Plaintiff's personal identifying information – was the individual who created the profile at issue. NSI Holdings is unaware of any facts or information whatsoever to the contrary and to date Plaintiff has failed to provide any such facts or information. Despite NSI Holdings' inquiries and requests, Plaintiff has provided no evidence or facts whatsoever that would support his claim that NSI Holdings took any action whatsoever in connection with the creation of the profile at issue, and thus has presented no facts or evidence that would rebut the presumption that Plaintiff himself created the profile.

31. For example, Plaintiff alleges that NSI Holdings obtained his date of birth from his driver's license, and then input this date of birth into the profile bearing Plaintiff's name. D.E. 14, ¶ 30. This is not true. Plaintiff sent a copy of his driver's license to NSI Holdings in or around late April of 2018, as part of his request that NSI Holdings remove the social media advertisements with his

image. The UniformDating.com profile that bears Plaintiff's name, date of birth, and other information, was created on November 23, 2017, months before Plaintiff provided NSI Holdings with a copy of his driver's license.

32. Plaintiff also alleges that NSI Holdings obtained the image that is the subject of this lawsuit from his Facebook profile. D.E. 14, ¶ 21. This is not true. NSI Holdings is not Facebook "friends" with Plaintiff and has no access to the images or content contained on Plaintiff's private Facebook page, including his birthdate and personal email address. None of NSI Holdings' staff are Facebook "friends" with Plaintiff either. Additionally, none of NSI Holdings' staff have visited Plaintiff's Facebook profile, and neither NSI Holdings, nor its staff, obtained any images of Plaintiff from his Facebook profile.

33. Plaintiff additionally alleges that NSI Holdings knew he was located in Miami, Florida, because his Facebook profile stated he lived in Florida, and because his driver's license also provided his home address in Miami, Florida. D.E. 14, ¶¶ 20–21, 30. Again, this is not true. As for Plaintiff's allegations regarding his driver's license, he did not provide his license to NSI Holdings until in or around late April 2018, months after the profile was created in November 2017. Additionally, as already stated, neither NSI Holdings, nor its staff, visited Plaintiff's Facebook profile.

34. NSI Holdings may use stock images from Getty Images or others. In order to use these stock images, NSI Holdings pays a license fee, thereby obtaining a license to use the stock images. NSI Holdings does not otherwise search for content for its advertisements, including for images to use in advertisements, outside of its websites. Thus, much of the content used in advertisements for UniformDating.com comes directly from user profiles, with their consent.

35. I am personally aware of numerous other instances in which a married person has signed

up for an online dating service provided by NSI Holdings and then been caught by a spouse or others. The user who created the profile with Plaintiff's image only visited UniformDating.com once, when the profile was created, which suggests a momentary dalliance. Alternatively, it is possible that someone seeking to harm Plaintiff, and with access to Plaintiff's private Facebook page and who knew of his birthdate and personal email address, created the profile.

36. Because the profile at issue was created pursuant to and subject to the Terms of Use on the UniformDating.com website, NSI Holdings has, and had, no reason to believe that it was not duly subject to those Terms of Use, and in particular the Terms relating to Jurisdiction and the use of user content for advertising and marketing purposes. *See* RJN Ex. 1 hereto.

37. The advertisements containing Plaintiff's image ran from November 24, 2017, through April 30, 2018.

38. Plaintiff contacted NSI Holdings in or around late April 2018, and requested that his image be removed from UniformDating.com advertisements on social media. When NSI Holdings receives a request to delete information, it is standard process in terms of privacy and data protection to request photo identification in order to confirm the person's identity. As such, within days of NSI Holdings receiving a copy of Plaintiff's driver's license, Plaintiff's image was removed from all UniformDating.com advertisements within days of his making a complaint to NSI Holdings. Attached hereto as **Exhibit 2** is a true and correct copy of the data associated with the removal of Plaintiff's images, which removal was done on April 30, 2018.


39. NSI Holdings is unaware of any facts whatsoever related to Plaintiff's claim that would demonstrate any meaningful contact with the State of Florida related to Plaintiff's claims on the part of NSI Holdings.

40. NSI Holdings is amenable to suit in England and will waive any defenses related to the

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statutes of limitation, venue, or jurisdiction if this action is brought in England.

I declare under penalty of perjury of the laws of the United States of America, pursuant to 28 U.S.C § 1746, that the foregoing is true and correct to the best of my knowledge. Executed on this 27th day of August, 2019.



Laura Robyn Edison

Exhibit 1

Exhibit 1

User id ▼ 593160383 Search

Search by id: 593160383 | [Print version](#) | 

Scammer

Screen name:	BurningBubble						
Registered name:							
Registered date:	23 Nov 2017 - 21:23:12						
Date of birth:	20 Aug 1994						
Age:	24						
Email address:	davidguzman2094@gmail.com						
Mobile phone:							
Last logged in:	23 Nov 2017 - 22:30:14						
Short description:							
Long description:							
Address:	Country: United States City: Miami Zip: 85539						
In use interest:							
Pictures:							
Removed pictures:	<div>  <p>[main] [approved]</p> </div> <div>  <p>[public] [approved]</p> </div>						
Card holder details:							
Logged in on:	<table border="1"> <thead> <tr> <th>Date/Time</th> <th>IP address</th> <th>Country</th> </tr> </thead> <tbody> <tr> <td>2017-11-23 21:24:06</td> <td>0.0.0.0</td> <td></td> </tr> </tbody> </table>	Date/Time	IP address	Country	2017-11-23 21:24:06	0.0.0.0	
Date/Time	IP address	Country					
2017-11-23 21:24:06	0.0.0.0						
Messages sent:							
Messages recieved:	Messages not found						
Messages deleted:	Messages not found						



Photos approve history



Posted date		Approved date	Staff
2017-11-23 21:24:16		2017-11-23 21:25:12	
2017-11-23 21:25:12		2017-11-28 11:30:04	I 

Exhibit 2

Exhibit 2

☒ For anyone to see
☐ For friends only

Removed



Removed by ens_ycwo
at 2018-04-30 11:24:07
[approve history](#)
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