STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JOHN DOE,

Plaintiff,

vs.

THEODORE EDWIN GUINDON,

Defendant.

Case No. **CV 2013 6038**

MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S "MOTION FOR ATTACHMENT, LEVY AND MOTION FOR PRELIMINARY INJUNCTION"

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on plaintiff's "Motion for Attachment, Levy, and Motion for Preliminary Injunction."

On August 20, 2013, plaintiff John Doe filed his "Complaint for Damages Based On: (1) Assault; (2) Battery; (3) Lewd Conduct with a Child; (4) Sexual Exploitation of a Child; (5) Sexual Abuse of a Child; (6) Intentional Infliction of Emotional Distress; and (7) Negligent Infliction of Emotional Distress." Doe, now an adult male (Complaint, p. 2, ¶ 1) alleges that from the time he was age three to age nine, defendant Guindon, an adult over the age of eighteen at the time, repeatedly molested Doe in Guindon's house. The Complaint does not state Doe's current age or the years in which the conduct by Guindon allegedly occurred. In the Complaint, no claim was made for injunctive relief. At the time the Complaint was filed, this case was assigned to District Judge Christensen.

On October 16, 2013, Guindon, through counsel, filed an Answer.

On January 30, 2014, Judge Christensen held a scheduling conference, and this case was set for a three-day jury trial beginning February 2, 2015.

On March 25, 2014, Doe filed an "*Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction", "Memorandum in Support of *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment", "Affidavit of A.D. (plaintiff) in Support of *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment", and an "Affidavit of Counsel (Daniel Sheckler) in Support of *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment". The next day, on March 26, 2014, Doe filed "*Amended (with citations to Affidavits)* Memorandum in Support of *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment." It is important to note that none of the filings on March 25, 2014, and March 26, 2014, show a copy being sent to counsel for Guindon. Up to this point all these filings are *ex parte.* That changes at a later date.

On March 27, 2014, Judge Christensen disqualified himself from this civil matter. That same day, Administrative District Judge Haynes assigned this civil case to District Judge Simpson. On March 28, 2014, Judge Simpson entered an "Order Denying (Doe's) *Ex-Parte* Application for Temporary Restraining Order", noting the Complaint was filed August 20, 2013, and the *ex parte* motion was filed very recently, and made the finding that Doe's "application did not justify ex parte relief under I.R.C.P. 65(b) because the Court does not find that the Plaintiff clearly will suffer immediate and irreparable injury, loss, or damage." Order Denying (Doe's) *Ex-Parte* Application for Temporary Restraining Order, p. 1. The next day, on March 28, 2014, counsel for Doe filed his "Motion to Disqualify Without Cause", in which Doe moved to disqualify Judge

Simpson without cause pursuant to I.R.C.P. 40(d)(1)(E). Judge Simpson immediately disqualified himself, and later that same day, March 28, 2014, Administrative Judge Haynes assigned the undersigned to this civil lawsuit. On March 31, 2014, the undersigned scheduled this matter for a scheduling conference to be held on May 13, 2014.

On April 1, 2014, counsel for Doe filed a "Notice of Hearing", noticing up for hearing on May 13, 2013, Doe's "Motion for Attachment and Motion for Preliminary Injunction." Counsel for Doe showed a copy of this Notice of Hearing being sent to counsel for Guindon, and counsel for Doe also filed a Certificate of Service which indicates he sent counsel for Guindon a copy of all *ex parte* materials filed March 24, 2014, and March 26, 2014. On May 13, 2014, counsel for Doe requested a continuance of the oral argument on Doe's Motion for Attachment, Levy and Motion for Preliminary Injunction. Oral argument was rescheduled for June 4, 2014. On June 4, 2014, counsel for Doe and for Guindon appeared for oral argument. As of the June 4, 2014, hearing, counsel for Guindon has filed no written response to Doe's Motion for Attachment, Levy and Motion for Preliminary Injunction.

On April 1, 2014, counsel for Doe also filed a "Motion for Reconsideration of Order Denying *Ex Parte* Application for TRO." That motion has not been noticed up for hearing. At oral argument on June 4, 2014, Doe's counsel agreed such motion is moot.

II. STANDARD OF REVIEW.

The grant of an injunction is within the sound discretion of the Court. *White v. Coeur d'Alene Big Creek Mining Co.,* 56 Idaho 282, 55 P.2d 720 (1936); *Harris v. Cassia County,* 106 Idaho 513, 517, 681 P.2d 988, 992 (1984).

Idaho Rule of Civil Procedure 65(e) sets forth the grounds upon which a preliminary injunction may be granted. Subparts one through four will be discussed below. Subsection five is not applicable as it permits the Court to grant a defendant's motion for preliminary injunction where a counterclaim has been filed seeking relief upon the grounds listed in subsections (1) to (4), "subject to the same rules and provisions providing for the issuance of injunctions on behalf of the plaintiff." I.R.C.P. 65(e)(5). Subsection six is not applicable as it is limited to real property.

The Idaho Supreme Court has evaluated the proper standard for a trial court to consider in *Harris v. Cassia County,* holding that the party seeking the injunction has a burden of proving a right thereto. *Harris,* 106 Idaho 513, 681 P.2d 988 (1984). Rule 65(d) requires that every order granting an injunction shall set forth the reasons for its issuance, it shall be specific in terms, it shall describe in reasonable detail the act sough to be restrained, and it is binding only upon the parties to the action, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise. I.R.C.P. 65(d).

Rule 65(e)(1) contains "entitled to the relief demanded" language. This Court, in *Moon et al. v. North Idaho Farmers Assoc., et al.,* CV 2002 3890 (D. Ct. First District Kootenai County, Nov. 30, 2002), has stated that this language is frequently restated as a "substantial likelihood of success." *Moon,* CV 2002 3890 at 4. This substantial likelihood of success cannot exist where complex issues of law or fact exist which are not free from doubt. *Id; Harris,* 106 Idaho 513, 518, 681 P.2d 988, 992 ("The substantial likelihood of success necessary to demonstrate that appellant are entitled to the relief they demanded cannot exist where complex issues of law or fact exist which

are not free from doubt."). In fact, "[i]t is this Court's opinion that there can be no substantial likelihood of success where there exist complex issues of law, the resolution of which are not free from doubt. This is especially true where the record before the Court is incomplete." *Id.* at 5. A "likelihood of success" and even a "good likelihood of success" are not sufficient. *Id.; Harris,* 106 Idaho 513, 518, 681 P.2d 988, 993. In *Moon,* this Court determined that citizen plaintiffs were not entitled to an injunction related to the farmers' burning of grass seed residue "due to the somewhat complex legal issues, the lack of complete record in some aspects, and because the matter is not free from doubt." *Moon,* CV 2002 3890 at 6. The record in *Moon* was incomplete because the citizen plaintiffs' medical records had only been disclosed to the farmers' counsel at the time of hearing. *Id.*

Rule 65(e)(2) requires that a preliminary injunction issue only in extreme cases where irreparable injury would result to the plaintiff if not granted. *Brady v. City of Homedale,* 130 Idaho 569, 572, 944 P.2d 704, 707 (1997) (a preliminary injunction is issued only in extreme cases where the right is very clear and it appears irreparable injury would result if the injunction were denied.) Ultimately, "[t]he requirements for the issuance of a permanent injunction are 'the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law.'" *Easyriders Freedom F.I.G.H.T. v. Hannigan,* 92 F.3d 1486, 1495 (9th Cir.1996) (quoting *American-Arab Anti-Discrimination Comm. v. Reno,* 70 F.3d 1045, 1066-67 (9th Cir.1995))

Idaho Rule of Civil Procedure 65(e)(3) pertains to the situation where the party opposing the preliminary injunction is doing something against the moving party that violates the moving party's rights "…tending to render the judgment ineffectual." Idaho Rule of Civil Procedure 65(e)(3) appears to have been interpreted by the Idaho

Supreme Court only once in *Gilpin v. Sierra Nevada Consol. Mining Co.,* 2 Idaho 696, 703, 23 P. 547, 549 (1890). *Gilpin* dealt with whether an injunction regarding a mine in Shoshone County should have been denied by the district court. The Idaho Supreme Court held: "To remove the ore from the mine, and leave but a worthless shell to be contended for, would certainly have a 'tendency to render ineffectual' any judgment which the plaintiff might recover." *Id.* It should be noted that in *Gilpin* the Idaho Supreme Court reversed the district court's denial of a preliminary injunction, and itself ordered a preliminary injunction, not even remanding the issue back to the trial court. 23 P. 547, 552. The requirement of Idaho Rule of Civil Procedure 65(e)(2) that an injunction cannot "have the effect of giving to the party seeking the injunction all the relief sought in the action" does not apply to Idaho Rule of Civil Procedure 65(e)(3). Thus, an injunction granting all relief requested could issue under this ground.

Finally, I.R.C.P. 65(e)(4) appears to be most pertinent, as it pertains to situations "[w]hen it appears, by affidavit, that the defendant during the pendency of the action, threatens, or is about to remove, or to dispose of the defendant's property with the intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition."

III. ANALYSIS.

In Doe's affidavit, he states he is currently 27 years old, and the events at issue regarding Guindon occurred when Doe was between the ages of 4-10, from 1991-1998. Affidavit of A.D. (plaintiff) in Support of *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment, pp. 1-2, ¶¶ 1, 3. Thus, the events which would support Doe's damage claim began 23 years ago, and occurred most recently sixteen years ago.

Even after the alleged sexual abuse stopped, Guindon would occasionally continue to see Doe. In one of those conversations Guindon told Doe about Guindon's purchase of gold and silver coins because it was easy to move and conceal. *Id.,* pp. 3-4, ¶¶ 15-20. The most recent conversation Doe apparently had with Guindon on that topic was in May 2013. *Id.,* p. 4, ¶ 20. At no time did Doe claim Guindon specifically told him he would hide his assets due to any claim Doe might make against Guindon, but Doe does claim "[Guindon] has indicated to me [Doe] that if if [Guindon] is ever in legal trouble, [Guindon] will hide his precious metals, so that they cannot be taken from him." *Id.,* p. 3 ¶ 19. Doe does not state exactly what Guindon said, and instead Doe states Guindon "indicated" these things to him. Doe does not provide any time frame for this statement. On March 11, 2014, counsel for Doe in this civil case took Guindon's deposition. Guindon answered questions about his general background. Affidavit of Counsel (Daniel Sheckler) in Support of *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment, Exhibit 5, pp. 1-21. However, when asked about prior sexual conduct, Guindon, through counsel, asserted his Fifth Amendment rights. *Id.,* pp. 21-43. No questions were asked about Guindon's present financial situation or any earlier attempts to hide assets. The only discovery tangentially related to assets was regarding applicable insurance coverage. *Id.,* Exhibit 6, pp. 5-6, 8, Answer to Interrogatory No. 15, and Response to Request for Production No. 2.

After discussing in detail the acts Guindon allegedly (the Court realizes that at present, Doe's claims are uncontroverted as Guindon has not responded to these motions) perpetrated upon Doe over the years, Doe claims:

> 23. The aforesaid evidence establishes a high likelihood that based on a preponderance of the evidence standard, I will prevail at trial, and I will recover considerable damages, so that I am compensated for him taking my innocence.

> 24. Because there is a high likelihood that I will prevail, and since it is important that the Judgment is effectual, the Court should issue an injunction and attach his assets.

Id., p. 13, ¶¶ 23, 24. The Court will analyze these claims.

In Doe's *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction, Doe fails to favor the Court with an explanation of under which subpart of I.R.C.P. 65(e) Doe seeks relief. In Doe's Memorandum in Support of *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction, Doe makes a singular reference to I.R.C.P. 65(e)(3). Memorandum in Support of *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction, p. 7. In Doe's more recently filed Motion for Attachment, Levy and Motion for Preliminary Injunction, Doe again fails to favor the Court with an explanation of under which subpart of I.R.C.P. 65(e) Doe seeks relief.

Idaho Rules of Civil Procedure Rule 65(e) governs the grounds for a preliminary injunction. It provides in pertinent part:

> A preliminary injunction may be granted in the following cases:
>
> (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.
>
> (2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.
>
> (3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.
>
> (4) When it appears, by affidavit, that the defendant during the pendency of the action, threatens, or is about to remove, or to dispose of the

> defendant's property with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition. . . .

I.R.C.P. 65(e)(1)-(4).

"Whether to grant or deny a preliminary injunction is a matter for the discretion of the trial court." *Brady v. City of Homedale,* 130 Idaho 569, 572, 994 P.2d 704, 707 (1997) (citing *Harris v. Cassia County* 106 Idaho 513, 517, 681 P.2d 988, 992 (1984)). A preliminary injunction "is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal." *Harris,* 106 Idaho at 518, 681 P.2d at 993 (citing *Evans v. District Court of the Fifth Judicial Dist.,* 47 Idaho 267, 270, 275 P. 99, 100 (1929) (*quoted in Farm Service, Inc. v. United States Steel Corp.,* 90 Idaho 570, 587, 414 P.2d 898, 907 (1966)). "One who seeks an injunction has the burden of proving a right thereto." *Id.* (citing *Lawrence Warehouse Co. v. Rudio Lumber Co.,* 89 Idaho 389, 405 P.2d 634 (1965)).

Even if Doe has demonstrated a "substantial likelihood of success" under I.R.C.P. 65(e)(1), (and there are problems even with this as discussed below regarding the statute of limitations, and beyond that problem, the events happened a long time ago and no trier of fact has assessed the credibility of either Doe or Guindon), Doe is suing Guindon for damages based on *prior* alleged molestation, and Doe is *presently* asking for a restraint on what Guindon might in the *future* do with his assets. Doe is not asking for a restraint on acts of molestation, and that is the conduct for which I.R.C.P. 65(e)(1) primarily addresses. Idaho Rule of Civil Procedure 65(e)(1) allows courts to restrain "…the commission or continuance of the acts complained of, either for a limited period or perpetually." Idaho Rule of Civil Procedure 65(e)(1) does not allow courts to restrain acts which *might* happen. That rule allows restraint only on "…the commission

or continuance of the acts complained of", and Does has no proof that Guindon has already dissipated his assets. Thus, there is no "commission" of a current act sought to be restrained, and since there is no current act, there is no "continuance" of that act to be restrained. Doe's request for injunctive relief fails under I.R.C.P. 65(e)(1).

The Court will turn its attention to any claims that could be made by Doe under I.R.C.P. 65(e)(2), (3) and (4).

A plaintiff's unsubstantiated allegation that a defendant is about to dispose of his assets is insufficient to justify issuance of a preliminary injunction. 11 WRIGHT & MILLER 116, § 2948. The burden is on the plaintiff to offer proof that a genuine risk of such will occur. *Id.* To accomplish this, courts have allowed a plaintiff to offer evidence of intent to dispose of assets from other activities by or characteristics of the defendant. *See, e.g., EBSCO Indus., Inc. v. Lilly,* 840 F.2d 333, 336 (6th Cir.) (affirming grant of preliminary injunction on showing by plaintiff that "the defendant had taken specific steps to conceal assets and had refused to disclose what assets he has or where they are located"); *In re Feit & Drexler, Inc.,* 760 F.2d 406, 416 (2d Cir. 1985) (upholding preliminary injunction based on evidence that defendant had engaged in several efforts to hide and secrete assets); *USACO Coal Co. v. Carbomin Energy, Inc.,* 689 F.2d 94, 98 (6th Cir. 1982) (finding risk of dissipation given defendant's "previous questionable dealings in matters connected to the present lawsuit"); *Productos Carnic, S.A. v. Central Am. Beef & Seafood Trading Co*., 621 F.2d 683, 686 (5th Cir. 1980) (finding irreparable harm given that defendant "once attempted to transfer the beef [in issue] to a fictitious trading company, that [defendant] may have altered documents while the beef was in San Salvador, and that [a] bank account in Ft. Lauderdale, Florida, was closed and over $300,000 withdrawn"). In *EBSCO*, the

defendant "had taken specific steps to conceal assets", and that has not been alleged, let alone proven, in the present case. In *USACO,* there was several prior surreptitious actions, and no such prior actions of secretion of funds or assets has been alleged or proven in this case. In *Productos Carnic,* there was prior evidence of fraud and assets withdrawn, and that has not been alleged or proven in the present case.

In this case, the only evidence provided by Doe that Guindon "may" or "is likely to" dissipate assets is from the Affidavit of A.D. (Doe) which alleges the Guindon has gold and silver coins in a safe in Guindon's home and Guindon has told A.D. (Doe) that "if he is ever in legal trouble, [Guindon] will hide his precious metals, so that they cannot be taken from him." Affidavit of A.D. in Support of Ex Parte Motion for Temporary Restraining Order, Preliminary Injunction and Attachment, p. 3 ¶ 19. Even if the Court finds this evidence alone is sufficient to substantiate Doe's claim that Guindon will dispose of his assets [it does not given the above cases], then the Court must look at the nature of the harm Doe will suffer as a result. *Harris,* 106 Idaho at 518, 681 P.2d at 993.

Even if the plaintiff can meet the above stated requirements, many courts have been reluctant to issue a preliminary injunction to freeze the defendant's assets where the relief sought is solely based on economic damages. *See De Beers Consol. Mines v. United States*, 325 U.S. 212, 222-23, 65 S. Ct. 1130, 1135, 89 L.Ed. 1566 (1945) (reversing the order for preliminary injunction, finding that otherwise "[e]very suitor who resorts to chancery for any sort of relief by injunction may, on a mere statement of belief that the defendant can easily make away with or transport his money or goods, impose an injunction on him, indefinite in duration, disabling him to use so much of his funds or property as the court deems necessary for security or compliance with its

possible decree."); *In re Fredeman Litig.,* 843 F.2d 821, 824 (5th Cir. 1988) (holding "[t]he general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment."); *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 560 (5th Cir. 1987) (holding "[a]s a general rule, such an injunction is not permissible to secure post-judgment legal relief in the form of damages."); *Ashland Oil, Inc. v. Gleave*, 540 F.Supp. 81, 86 (W.D.N.Y. 1982) (stating that "[i]t is questionable whether the sort of harm plaintiff points to—frustration of enforcement of a money judgment—can ever constitute irreparable harm for purposes of preliminary injunctive relief"); *Oxford Int'l Bank & Trust, Ltd. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 374 So. 2d 54, 56 (Fla. Dist. Ct. App. 1979) (rejecting the plaintiff's claim of harm that "it had no adequate remedy at law because the monies allegedly owed to it could not from a practical standpoint be recovered unless the funds were impounded...[T]his confuses the question of the ability to obtain a judgment with the question of the ability to satisfy a judgment."); *Stewart v. Manget*, 181 So. 370 (Fla. 1938) (stating "the inadequacy of a remedy at law to produce money is not the test of the applicability of the rule. All remedies, whether at law or in equity, frequently fail to do that; and to make that the test of equity jurisdiction would be substituting the result of a proceeding for the proceeding which is invoked to produce the result. The true test is, could a judgment be obtained in a proceeding at law, and not, would the judgment procure pecuniary compensation.").

On the other hand, some courts have found an irreparable injury exists when there is a permanent loss of money. *See Teradyne, Inc. v. Mostek Corp.,* 797 F.2d 43 (1st Cir.1986) (upholding the issuance of a preliminary injunction in order to protect a potential damages remedy); *Foltz v. U.S. News & World Report,* 760 F.2d 1300, 1307–

09 (D.C.Cir.1985) (holding that the "[i]rrevocable loss" of a cause of action for monetary recovery against an ERISA-covered pension plan would constitute irreparable injury for preliminary injunction purposes); *In re Feit & Drexler, Inc.,* 760 F.2d 406, 416 (2d Cir.1985) ("[E]ven where the ultimate relief sought is money damages, federal courts have found preliminary injunctions appropriate where it has been shown that the defendant 'intended to frustrate any judgment on the merits' by 'transfer[ring] its assets out of the jurisdiction.'").

In the cases immediately above, there are factual differences to the present case. In *Terradyne*, the defendant Mostek was in the process of winding down its business. The trial court found Terradyne likely to prevail at trial, but denied the injunctive relief of ordering Mostek to set aside assets. The First Circuit Court of Appeals reversed, but did so based on finding Mostek was "likely to be insolvent at the time of judgment." 797 F.2d 43, 52-53. This Court does not have such evidence before it at the present time in the instant case. In *Foltz*, The U.S. News and World Report had announced a distribution to its pension and profit sharing plan, and the trial court held "no irreparable injury flowing to the former employees were injunctive relief to be denied, and on the other hand foresaw substantial injury to the 505 current employees of U.S. News were such relief to be granted." 760 F.2d 1300, 1305. On appeal, the D.C. Circuit Court of Appeals holding was based on prior bad actions regarding assets:

> The gravamen of the complaint in this case is, as we have seen, that a variety of enumerated acts of alleged wrongdoing by various defendants resulted in a substantial and unlawful depression of the value of the plaintiffs' respective interests in the Plan. That theory fits most logically within the concept of breach of fiduciary duty, which for purposes of ERISA is directly subject to redress under section 409 of that statute, 29 U.S.C. § 1109(a) (1982).

760 F.2d 1300, 1305, 1307. And, just as Mostek was winding down in *Terradyne*, there were similar concerns in *Foltz*. The D.C. Circuit Court of Appeals held:

> What is more, plaintiffs persuasively maintain that any cause of action against the Plan under ERISA would effectively be lost by the Plan's paying out the lion's share—if not all—of its current assets, and most emphatically so if the Plan then proceeds promptly to wind up its affairs and effectuate its own dissolution as an entity. In that event, it is clear beyond cavil that any cause of action under ERISA against the Plan "as an entity," in the words of the statute, would forever be lost. Irrevocable loss of a cause of action created by Congress for the remedial and humane purpose of protecting beneficiaries and participants of ERISA-covered plans could, in our judgment, well work irreparable injury warranting the fashioning of equitable relief under the well-settled standards articulated by this court.

760 F.2d 1300, 1305, 1308. (footnote omitted). After noting that there had been no determination of liability, the D.C. Circuit Court of Appeals held:

> Notwithstanding that factor [that liability had not been determined], an equitable remedy designed to freeze the *status quo,* as opposed to creating a pool of resources from which members of the plaintiff class could draw prior to a determination of liability and the extent, if any, of damages, would be entirely in keeping with the principles that undergird equity jurisprudence. In consequence, as a conceptual matter, we are convinced that fashioning an equitable remedy—as against the Plan—carefully crafted in light of the entire set of circumstances before the trial court would not, in theory, be improper.

760 F.2d 1300, 1305, 1309. As much as Doe might want this Court to preserve the *status quo*, there is not the "winding down" present in the instant case, and there is no evidence before the Court as to bad *financial* acts by Guindon, even though there are a plethora of bad sexual acts alleged by Doe against Guindon. There are statements Guindon made to Doe about what he might do with his assets, but there is no evidence that he has done anything with those assets. Also, there is no evidence of what *is* the status quo, as there is no evidence before the Court on Guindon's assets.

Doe also cited *Gilpin v. Sierra Nevada Consolidated Mining Company,* 2 Idaho 696, 23 P. 547 (1890), and reiterated Doe's reliance on that case at the June 4, 2014,

oral argument. In *Gilpin*, the Idaho Supreme Court reversed a district court's denial of a preliminary injunction and ordered such injunction (not remanding to district court) and held: "To remove the ore from the mine, and leave but a worthless shell to be contended for, would certainly have a tendency to render ineffectual any judgment which the plaintiff might recover." 23 P. 547, 549. In *Gilpin,* the "injury complained of", that being mining operations, were ongoing and continuing. In the present case, the "injury complained of" happened years ago.

Finally, there is the issue of whether Doe is substantially likely to prevail on the merits. At oral argument on June 4, 2014, counsel for Guindon argues that the statute of limitation has expired in this civil case.

Earlier, Doe had written in support of his motion for a temporary restraining order that I.C. § 5-248 "…allows victims of crime to toll the limitations period until one year after the offender is convicted and ultimately released." Memorandum in Support of Ex Parte Motion for Temporary Restraining Order, Preliminary Injunction, and Attachment, p. 8. It would appear that such statute has not run, given the fact that Guindon has yet to be tried on his criminal charges. Doe also claims:

> Second, the legislature adopted an additional tolling period in cases of sexual abuse. Idaho Code § 6-1704 previously set a five-year limitation period after a minor sex abuse victim turns 18. However, that statue was amended in 2007, when the Plaintiff was 20, extending the limitation period until after the victim identifies the causal connection to an injury or condition suffered by the Plaintiff. The statute has not run because the injuries were recently discovered.

Id. No citation in briefing was made to admissible evidence to support the claim that Doe only recently discovered his injuries. In his affidavit, Doe obliquely states:

> It was not until May of 2013 that I ever told anyone what happened, and only then did I start to make connections. I have been severely damaged by his wrongful conduct.

Affidavit of A.D. in Support of Ex Parte Motion for Temporary Restraining Order,

Preliminary Injunction, and Attachment, p. 12, ¶ 22.y. Idaho Code § 6-1704 presents challenges for Doe, and it applies in addition to I.C. § 5-248, as I.C. § 6-1704 begins:

> (1) *Notwithstanding any limitation contained in chapter 2, title 5, Idaho Code*, an action under the provisions of this chapter must be commenced within five (5) years or, after the child reaches the age of eighteen (18) years, within five (5) years of the time the child discovers or reasonably should have discovered the act, abuse or exploitation and its causal relationship to an injury or condition suffered by th child, whichever occurs later.

(italics added). Thus, at a minimum, there is an issue of fact which remains to be decided as to whether Doe is barred by the applicable statute of limitations.

IV. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED plaintiff Doe's Motion for Attachment, Levy and Motion for Preliminary Injunction are DENIED.

Entered this 10th day of June, 2014.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of June, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Daniel Sheckler	208-292-4632	John E. Redal	676-8680

_____
Jeanne Clausen, Deputy Clerk