

CAUSE NO. DC-17-04087

TOMI LAHREN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GLENN BECK and THEBLAZE, INC.,	§	
	§	
Defendants.	§	68th JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL COUNTERCLAIM
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION

Glenn Beck ("Beck") and TheBlaze, Inc. ("TheBlaze", and, together with Beck, "Defendants"), by and through counsel, hereby file this Original Counterclaim and Application for a Temporary Restraining Order and Temporary Injunction, and in support hereof, respectfully state as follows:

I. THEBLAZE'S VIEW

Plaintiff and Counter-Defendant Tomi Lahren ("Lahren") attempts to paint a picture for the Court where her employment with TheBlaze has been terminated and she has been locked out of her social media accounts by TheBlaze. In reality, her employment agreement with TheBlaze remains in full force and effect, she continues to be employed (and paid) by TheBlaze, and she has access to her social media accounts, as well as a Facebook page TheBlaze created and maintains.

In addition, Lahren attempts to portray her appearance on *The View* as the reason her relationship with TheBlaze is on the rocks. In reality, TheBlaze has had employment issues with Lahren for well over a year. That is the reason why TheBlaze decided that it would not extend

Lahren's employment agreement beyond its expiration in September 2017 even before her appearance on *The View*.

With respect to her appearance on *The View*, it is undeniable that the opinions Lahren expressed reflected a drastic departure from views she had previously expressed. Lahren went from calling those who are pro-choice "straight-up baby killers" (as late as December 2016)¹ to stating that she would be a hypocrite, as a conservative believer in small government, to not be pro-choice. Not surprisingly, the whiplash effect was profound.

When TheBlaze informed Lahren that her show was suspended for one week, it also advised her that it would continue to honor her contract (as it has and continues) and would invoke its rights to "pay or play" (i.e., to pay Lahren but not broadcast her show).² Lahren responded by suing TheBlaze, and in the process, has committed additional breaches of her employment agreement. TheBlaze is now forced to respond and requests the Court hold that the employment agreement remains in force and enter the requested relief to require Lahren to abide by its terms.

II. SUMMARY OF KEY FACTS

1. Plaintiff and Counter-Defendant Tomi Lahren ("Lahren") filed this case asserting that she was fired from TheBlaze and has been blocked from her "social media" accounts in retaliation for statements she made on national television. Her claims are baseless.

2. Long before her appearance on *The View*, Lahren quickly made herself into one of the most divisive people in media both to the general public and within TheBlaze organization.

¹ Kimberly Ross, *FLIP FLOP: Three Months Ago Tomi Lahren Said Abortion Is Murder*, RedState (Mar. 18, 2017), http://www.redstate.com/kimberly_ross/2017/03/18/three-months-lahren-abortion-murder/.

² This concept is expressly reflected and agreed upon in the employment agreement and is common throughout the industry.

Lahren engaged in conduct that raised serious concerns regarding her continued affiliation with TheBlaze, including the following:

- Lahren's treatment of the floor crew was inappropriate and unprofessional, constantly complaining about everything including but not limited to lighting, room temperature, editing, shooting, directing, etc.
- Lahren's word choices on air had to be addressed repeatedly for bordering on the profane.
- Lahren would not work with one of two full time make-up artists, which resulted in a report to TheBlaze's human resources department.
- Lahren has been overheard by many employees complaining about TheBlaze, stating that she will sue TheBlaze and that she could own TheBlaze when she is done.
- Lahren was divisive and created conflicts with other media personalities at TheBlaze.³
- Lahren turned down a number of advertisers on TheBlaze for unexplained reasons, limiting any chance for TheBlaze to recoup its investment into her and her show.
- Lahren publicly commented on and disclosed the dollar value of her wardrobe allowance without TheBlaze's prior approval, in violation of her employment agreement.
- Lahren embarrassed the company and many of its staff and other personalities because her statements were uninformed and inconsistent.

3. Her comments on *The View* (which demonstrated a apparent flip-flop from opinions she had previously expressed) were simply the latest in a series of events that led TheBlaze management to conclude that TheBlaze did not intend to extend her contract beyond the end of its term in September 2017.

³ See, e.g., Matt Walsh, *Pro-Lifers Aren't the Ones Being Hypocrites, Tomi*, TheBlaze (Mar. 20, 2017), <http://www.theblaze.com/contributions/pro-lifers-arent-the-ones-being-hypocrites-tomi/>.

4. Upon learning of that fact, Lahren surreptitiously filed suit against TheBlaze, asserting that she had been fired for appearing on *The View*. Her Petition is riddled with false statements:

a. TheBlaze never terminated Lahren. Rather, TheBlaze relied on the industry standard “pay or play” provision in her contract that gave TheBlaze the ability to not broadcast her show.

b. Lahren claims that TheBlaze terminated her email account. This is false. Lahren continues to have access to her email provided she resets her password (like all other employees) in accordance with TheBlaze’s information technology policies.

c. TheBlaze never had access to Lahren’s personal social media accounts and has taken no action to block her from using them—as can be demonstrated by her continuous Twitter stream and Instagram posts.

d. TheBlaze is the owner and administrator of the Facebook page where content created and owned by TheBlaze was posted. TheBlaze created and maintained that page for Lahren’s use, and though Lahren claimed that her access was blocked, this too is false. TheBlaze has NEVER removed Lahren’s access to the Facebook page and the only restriction of her use of it would be to abide by her contract and her nondisclosure agreement.

5. Given those facts, it is apparent that Lahren brought this case an attempt to strong-arm TheBlaze, in the press and in court, into agreeing to terminate Lahren’s employment agreement with TheBlaze before the date through which she freely agreed to be exclusive to TheBlaze. TheBlaze, however, has abided by its contractual obligations and, in fact, is now forced for bring these Counterclaims against Lahren to force her to do the same

III. PARTIES, JURISDICTION, AND VENUE

6. Counter-Plaintiff TheBlaze, Inc. is a Delaware corporation with its principal place of business in Irving, Texas.

7. Counter-Defendant Tomi Lahren is a Texas resident. Lahren has already appeared in this action.

8. This Court has subject-matter jurisdiction over this matter because the amount in controversy is within the jurisdictional limits of this Court.

9. Venue is proper in this Court because TheBlaze is asserting compulsory counterclaims related to the underlying action.

IV. BACKGROUND

A. TheBlaze and Beck.

10. TheBlaze is an innovative digital network that delivers provocative news and entertainment to impassioned people who want to impact change. TheBlaze reaches millions of people each month through internet-based streaming services, and cable and satellite networks.

11. Beck is a prominent television and radio personality, author, and entrepreneur, among other things. Beck is the largest shareholder in TheBlaze.

B. Lahren's Employment Agreement with TheBlaze.

12. TheBlaze and Lahren entered into an Employment Agreement dated as of September 9, 2015 (the "Employment Agreement"). The term of the Employment Agreement began on September 1, 2015, and remains in effect through September 30, 2017. Empl. Agreement ¶ 3.

13. Under the Employment Agreement, Lahren agreed to "carry out the duties reasonably assigned to [her] by [TheBlaze] management consistent with employees of [her]

level.” Empl. Agreement ¶ 3. Among other things, the duties that Lahren agreed to carry out include the following:

a. Creating and hosting 230 one-hour episodes of a television program each year for broadcast on TheBlaze TV. Empl. Agreement ¶ 3.

b. Contributing regular digital video commentaries to TheBlaze.com. Empl. Agreement ¶ 3.

c. Otherwise contributing to TheBlaze.com in the form of video commentaries as well as written commentaries. Empl. Agreement ¶ 3.

14. Importantly, the foregoing duties are contained in a paragraph of the Employment Agreement entitled “Services” and reflect the services Lahren is obligated to perform.

15. The Employment Agreement also imposed other obligations on Lahren, including the following obligations:

a. *Exclusivity.* Lahren agreed that she would work only for TheBlaze and not provide services to any directly competing digital or television outlets for the Employment Agreement’s term. Empl. Agreement ¶ 7(a).

b. *Limitation on Public Appearances and Statements.* Lahren agreed that, during the Employment Agreement’s term, she would not make “any public appearances or issue any public statements or press releases relating to [Lahren], [Lahren’s] employment by [TheBlaze], [TheBlaze], [TheBlaze’s] officers and employees, [and] [TheBlaze’s] business affiliates” without the prior approval of TheBlaze. Empl. Agreement ¶ 7(b).

16. In addition, Lahren entered into a Confidentiality, Non-Disclosure, and Assignment of Inventions Agreement (the “NDA”), incorporated by reference into and attached

to the Employment Agreement. Empl. Agreement ¶ 14 (“Employee agrees to comply with the terms set forth in the Non- Disclosure [sic] Agreement attached hereto as Exhibit A and incorporated herein by this reference.”). Under the NDA, Lahren agreed that she would “not, directly or indirectly, at any time during or after the end of [Lahren’s] employment for whatever reason” (a) “bring any publicity to any aspect of the business of [TheBlaze]” or (b) “[d]isparage, criticize, ridicule or make any negative comments about [TheBlaze], Beck or any of his employees or family members, or anyone else known by [Lahren] to be a friend or other associate of Beck.” NDA ¶ 6(b)–(c).

17. In exchange for Lahren’s undertaking her obligations in the Employment Agreement, TheBlaze agreed to pay Lahren a salary and certain other benefits. Empl. Agreement ¶ 5. TheBlaze also agreed that it could “suspend or terminate . . . [Lahren’s] employment *and end*” the Employment Agreement under certain specified conditions. Empl. Agreement ¶ 11 (emphasis added).⁴

18. Importantly, TheBlaze did *not* promise or agree that it would air or otherwise use any of the material Lahren created. To the contrary, the Employment Agreement explicitly states that TheBlaze is not obligated to broadcast any material, and that all of TheBlaze’s obligations under the Employment Agreement shall be deemed discharged by the payment of the monetary compensation TheBlaze was obligated to pay under the agreement:

[N]othing in this Agreement shall be deem to obligate [TheBlaze] or [TheBlaze’s] business affiliates to *use or broadcast or otherwise use* any or all programs or materials provided by [Lahren] or in which [Lahren] appears, and TheBlaze shall have *fully discharged* its obligations hereunder by paying the applicable monetary compensation specified in Paragraph 5 of this Agreement.

Empl. Agreement ¶ 10(c) (emphasis added).

⁴ TheBlaze never invoked this provision and never suspended or terminated Lahren’s employment.

C. Lahren's Employment History at TheBlaze.

19. Lahren started working at TheBlaze in September 2015.

20. From approximately September 2015 through January 2016, Lahren prepared an online show for TheBlaze and contributed a regular digital video commentary titled "Final Thoughts with Tomi Lahren."

21. From the beginning of her employment, TheBlaze worked with Lahren to refine and promote her social media presence and, by extension, viewership of the material Lahren created for TheBlaze. When Lahren joined the company, she had preexisting, personal accounts on Twitter and Instagram, among other platforms. TheBlaze has never sought to have, nor has it had, control over or access to those accounts.

22. Because Lahren did not have a Facebook page, TheBlaze created a page for Lahren using its Facebook Business Manager account, as it was permitted to do under the Employment Agreement. *See* Empl. Agreement ¶ 8. A screenshot of the Facebook page as it appeared to the public as of the date hereof is attached hereto as **Exhibit A**.

23. Although TheBlaze owned and continues to own the Facebook page, TheBlaze granted Lahren the rights to contribute to and edit the Facebook page. Many other employees of TheBlaze also have the rights to contribute to and edit the Facebook page. At all times, TheBlaze retained ownership of and ultimate administrative rights over the Facebook page. Screenshots showing TheBlaze's ownership of and administrative control over the Facebook page, as well as the listing of TheBlaze employees with the rights to contribute to and edit the page (including Lahren), as of the date hereof are attached hereto as **Exhibit B**.

24. TheBlaze owns all of the underlying intellectual property and content created and posted to the Facebook page, which was created, marketed, and posted using TheBlaze staff, equipment, and property (at significant expense). *See* Ex. A.

25. Beginning in February 2016, TheBlaze launched Lahren's self-titled one-hour program, *Tomi*. Lahren served as the host of *Tomi*. TheBlaze broadcasted *Tomi* five days per week on its internet and broadcast television network.

26. From the start, Lahren attracted both internal and external attention at TheBlaze—not all of it positive. Lahren's firebrand persona extended to her interpersonal relationships with other employees of TheBlaze, including lower-level support staff. And Lahren's incendiary, emotion-driven approach to content creation often turned off Lahren's colleagues, advertisers, and viewers.

27. Lahren often acted brashly when interacting with TheBlaze staff. In addition, several advertisers reported that Lahren was difficult to work with and that their advertisements performed poorly on her show, which resulted in lower than expected advertising support for Lahren.

28. In addition, in an interview with *The Ringer* published in October 2016, Lahren disclosed the amount of her wardrobe budget.⁵ Lahren did not have TheBlaze's permission to make this disclosure, and the public disclosure violated paragraph 7(b) of the Employment Agreement. Lahren's disclosure led to numerous complaints to TheBlaze's management. Although TheBlaze's management determined not to seek legal recourse for Lahren's breach on this occasion, members of TheBlaze's management team admonished Lahren to honor her contractual obligations going forward.

D. Lahren's Appearance on *The View*.

29. On March 17, 2017, Lahren appeared on the television program *The View*. During her appearance, Lahren made a statement that not only diverged dramatically from her

⁵ See Kyle Chaka, *Tomi Lahren Has Some Thoughts*, *The Ringer* (Oct. 12, 2016), <https://theringer.com/tomi-lahren-profile-499f9e1930f9>.

previous public positions but also effectively called many of TheBlaze's employees, viewers, and readers hypocrites. Specifically, Lahren stated as follows:

I am a constitutional, y'know, someone that loves the Constitution. I'm someone that's for limited government. So I can't sit here and be a hypocrite and say I'm for limited government but I think the government should decide what women do with their bodies. I can sit here and say that, as a Republican, and I can say, you know what, I'm for limited government, so stay out of my guns, and you can stay out of my body as well.⁶

30. It is no secret that a substantial portion of TheBlaze's viewership and readership consists of politically conservative people, the majority of whom are pro-life and also believe in limited government.

31. Lahren's statements were offensive to many of TheBlaze's supporters and followers because they imply that only a hypocrite would believe in the Constitution or conservative values but not be pro-choice. Because Lahren is closely associated with TheBlaze, her statements also reflected negatively on TheBlaze's reputation.

32. TheBlaze supports its employees' expression of their opinions and did not take issue with Lahren's comments simply because they expressed a pro-choice viewpoint. Her comments were shocking and disappointing because they demonstrated Lahren was uninformed and unprepared to speak on those issues. In addition, her comments were inconsistent with positions she had previously expressed.⁷

33. Due to the long-standing issues with Lahren's conduct, following her appearance on *The View*, on March 20, 2017, TheBlaze's management met with Lahren and advised her that

⁶ Ruth Graham, *Tomi Lahren Has Lost Pro-Life Conservatives. But at Least She Has the Alt-Right!*, Slate (Mar. 21, 2017), http://www.slate.com/blogs/xx_factor/2017/03/21/tomi_lahren_reveals_she_s_pro_choice_enjoys_alt_right_support.html.

⁷ See, e.g., Nicole Russell, *Tomi Lahren's Incoherent Abortion Flip-Flop Smells of Opportunism*, The Federalist (Mar. 20, 2017), <http://thefederalist.com/2017/03/20/tomi-lahrens-incoherent-abortion-flip-flop-smells-opportunism/>.

TheBlaze was suspending production of *Tomi* for the week of March 20. TheBlaze's management asked Lahren to keep their discussion confidential, as required by the Employment Agreement.

34. On March 23, 2017, TheBlaze's management advised Lahren that it was suspending production of *Tomi* indefinitely. TheBlaze, contractually, was obligated to inform Lahren by April 1, 2017 of whether it intended to extend the Employment Agreement beyond its expiration in September 2017. TheBlaze decided to tell her at the same time that TheBlaze had no interest in extending the Employment Agreement.

35. Although TheBlaze determined that it would not extend the Employment Agreement, it did not suspend or terminate Lahren or the Employment Agreement. TheBlaze continues to pay Lahren her salary and all benefits, as it is required to do under the Employment Agreement. Screenshots from TheBlaze's employee tracking and payroll processing system reflecting Lahren's continued employment and receipt of payments are attached hereto as **Exhibit C**. Thus, the Employment Agreement remains in full force and effect, and TheBlaze continues to honor its obligations under the Employment Agreement.

36. Likewise, Lahren's email account at TheBlaze remains active, and Lahren may continue to access it. A screenshot reflecting the administrator settings for Lahren's company email account is attached hereto as **Exhibit D**.

37. Lahren also continues to have the rights to edit the Facebook page TheBlaze created for her (provided that any use does not violate the Employment Agreement or NDA), as **Exhibit B** clearly reflects.

E. Lahren Breaches the Employment Agreement.

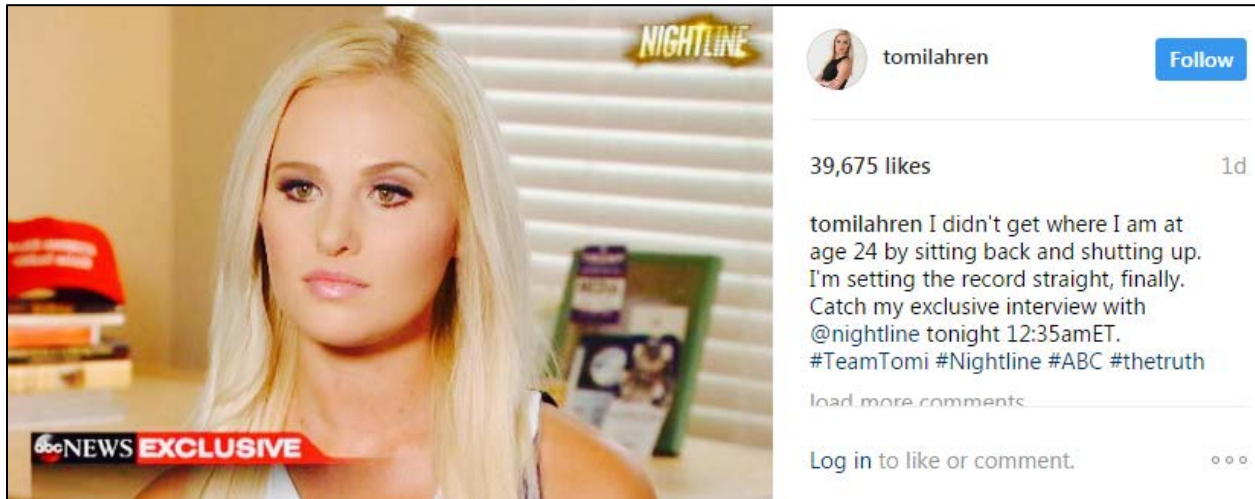
38. Lahren has repeatedly breached the Employment Agreement. Among other public statements, on April 12, 2017, Lahren sat for an interview with the television program

Nightline, during which she made numerous statements about TheBlaze, its employees, and her employment, including the false statements that she has been fired, that TheBlaze decided to fire her for expressing her pro-choice opinion, and that TheBlaze has wrongfully blocked her from accessing her personal Facebook page. All of these statements violated Lahren's obligations in the Employment Agreement. Thus, Lahren not only breached her Employment Agreement, she repeatedly misstated facts in order to increase coverage of her lawsuit.

39. Lahren has made clear that she has no intention of honoring her obligation to not make public statements relating to TheBlaze and her employment without prior approval from TheBlaze in the future. For instance, on April 7, 2017, the same date she that filed her Petition against TheBlaze and Beck, Lahren stated, via Twitter, that “[l]ay down and play dead really isn't [her] style,” in an obvious reference to her Petition:



40. Likewise, on April 12, 2017, the date of her *Nightline* interview, Lahren stated, via Instagram, that she “didn’t get where [she is] . . . by sitting back and shutting up”:



41. Lahren also has made clear that she has no intention of honoring her obligation not to make public appearances without the prior approval of TheBlaze. For instance, Lahren is an announced speaker for an American Freedom Tour event on May 9, 2017,⁸ and a Young Women’s Leadership Summit event on June 15–18, 2017.⁹ Lahren has neither sought nor received TheBlaze’s approval for her appearances at these events.

42. Lahren’s breach of her obligations in the Employment Agreement has injured TheBlaze by negatively impacting its reputation and goodwill among its current and prospective viewers and readers.

⁸ American Freedom Tour, *American Freedom Tour*, <https://www.americanfreedomtour.com/> (last visited Apr. 13, 2017).

⁹ *Young Women’s Leadership Summit*, Turning Point USA, <https://tpusa.com/ywls/> (last visited Apr. 13, 2017).

F. Lahren Litigates in the Press.

43. Though Lahren's Employment Agreement has a binding arbitration clause, Lahren ignored that obligation and filed the present lawsuit in court. In the process of doing so, she shared confidential information and breached the Employment Agreement.

44. During negotiations to amicably end the parties' relationship, upon information or belief, Lahren or someone acting for her benefit made the following statements to the press:

- a. *Tomi* was suspended.
- b. Lahren was "banned permanently" from TheBlaze.¹⁰
- c. TheBlaze was trying to keep Lahren's Facebook page.¹¹

45. TheBlaze was informed of Lahren's lawsuit by members of the press who had already seen the complaint before it was processed through the court system. Thus, it is apparent that Lahren or someone acting on her behalf sent her Petition to members of the press before filing or providing TheBlaze with a copy in an effort to litigate her claims in the media.

V. CAUSES OF ACTION

46. The preceding paragraphs are incorporated by reference as if fully set forth herein.

47. Based on the foregoing, TheBlaze asserts the following claims.

Count One: Declaratory Judgment

48. The preceding paragraphs are incorporated by reference as if fully set forth herein.

¹⁰ Richard Johnson, *Shake-Up Causes Drama at Glenn Beck's TheBlaze*, N.Y. Post (Mar. 26, 2017), http://pagesix.com/2017/03/26/shake-up-causes-drama-at-glenn-becks-theblaze/?_ga=1.161500732.1287097033.1475462885.

¹¹ *Tomi Lahren: I Wanna Keep My Facebook Fans! But TheBlaze Ain't Budging*, TMZ (Mar. 29, 2017), <http://www.tMZ.com/2017/03/29/tomi-lahren-could-lose-facebook-followers-leaving-theblaze/>

49. TheBlaze and Lahren entered into the Employment Agreement, which is a valid, enforceable contract.

50. TheBlaze performed its obligations under the Employment Agreement.

51. TheBlaze never suspended or terminated Lahren or Lahren's employment. Despite that fact, Lahren has publicly represented that her employment has been terminated.

52. In addition, TheBlaze created the Facebook page on which Lahren-related content created and owned by TheBlaze was posted. TheBlaze has always served as the administrator for the Facebook page, and TheBlaze's resources were used to create content posted on the Facebook page.

53. TheBlaze is the rightful and lawful owner of the Facebook page. Despite that fact, Lahren has stated that the Facebook page is hers and that she is entitled to control over it.

54. An actual and justiciable controversy exists as to whether the Employment Agreement remains in full force and effect and whether Lahren continues to be employed by TheBlaze.

55. In addition, an actual and justiciable controversy exists as to the ownership of the Facebook page.

56. TheBlaze seeks a declaration from the Court that (a) the Employment Agreement remains in full force and effect, (b) Lahren continues to be an employee of TheBlaze, and (c) TheBlaze is the lawful owner of the Facebook page.

Count Two: Breach of Contract

57. The preceding paragraphs are incorporated by reference as if fully set forth herein.

58. TheBlaze and Lahren entered into the Employment Agreement, which is a valid, enforceable contract.

59. TheBlaze performed its obligations under the Employment Agreement.

60. Under the Employment Agreement, Lahren has a duty not to make public appearances or statements about, or otherwise bring publicity to, TheBlaze, its employees, or her employment without TheBlaze's prior approval. In so agreeing to that obligation, Lahren knowingly, voluntarily, and intelligently waived her First Amendment right to speak freely about these subjects.

61. Lahren has breached the Employment Agreement by making a public appearance and public statements about TheBlaze, its employees, and her employment, all without TheBlaze's prior approval.

62. On information and belief, Lahren has no intention of honoring her obligations in the Employment Agreement going forward.

63. Lahren has damaged and will continue to damage TheBlaze in an amount that is not presently ascertainable.

64. TheBlaze is entitled to an injunction from this Court prohibiting Lahren from

- a. making any public appearances without TheBlaze's prior approval,
- b. issuing any public statements or press releases relating to Lahren, Lahren's employment by TheBlaze, TheBlaze, TheBlaze's officers and employees, and TheBlaze's business affiliates without TheBlaze's prior approval, and
- c. disparaging, criticizing, ridiculing, or making any negative comments about TheBlaze, Beck, or any of its or his employees or family members, or anyone else known by Lahren to be a friend or other associate of Beck; provided, however, that

nothing in the injunction shall prevent Lahren from responding truthfully to any governmental inquiry or lawfully issued subpoena.

Count Three: Attorney's Fees and Costs

65. The preceding paragraphs are incorporated by reference as if fully set forth herein.

66. Pursuant to section 38.001(8) of the Texas Civil Practice and Remedies Code, TheBlaze is entitled to recover the reasonable and necessary attorneys' fees and costs incurred in the prosecution of this action.

VI. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTIVE RELIEF

67. The preceding paragraphs are incorporated by reference as if fully set forth herein.

68. TheBlaze hereby seeks a temporary restraining order and temporary injunctive relief prohibiting Lahren from

- a. making any public appearances without TheBlaze's prior approval,
- b. issuing any public statements or press releases relating to Lahren, Lahren's employment by TheBlaze, TheBlaze, TheBlaze's officers and employees, and TheBlaze's business affiliates without TheBlaze's prior approval, and
- c. disparaging, criticizing, ridiculing, or making any negative comments about TheBlaze, Beck, or any of his or its employees or family members, or anyone else known by Lahren to be a friend or other associate of Beck; provided, however, that nothing in the injunction shall prevent Lahren from responding truthfully to any governmental inquiry or lawfully issued subpoena or from participating in this judicial proceeding.

69. “The purpose of a TRO is to preserve the status quo, which [the Supreme Court of Texas] ha[s] defined as ‘the last, actual, peaceable, non-contested status which preceded the pending controversy.’ ” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (quoting *Janus Films v. City of Fort Worth*, 358 S.W.2d 589, 589 (Tex. 1962) (per curiam)). Here, the last peaceable status before the parties’ dispute arose involved Lahren fully performing her obligations under the Employment Agreement, including her obligation (a) to seek TheBlaze’s prior approval before making (i) public appearances or (ii) statements about any aspect of TheBlaze’s business, and (b) not to disparage, criticize, ridicule, or make any negative comments about TheBlaze or any of its employees.

70. “To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (collecting cases).

71. Here, TheBlaze plainly satisfies the first two requirements for the issuance of injunctive relief. Breach of contract is a valid cause of action in Texas. Lahren’s recent public appearance and statements clearly breach her obligations in the Employment Agreement.

72. TheBlaze also satisfies the third requirement for injunctive relief. Lahren’s public statements to date have made clear that she has no intention of honoring her obligations under the Employment Agreement going forward. Further, Lahren already has scheduled future public appearances without seeking or receiving TheBlaze’s approval.

73. Texas courts regularly recognize that injury to reputation and loss of goodwill, such as that suffered by TheBlaze because of Lahren’s breach of the Employment Agreement, constitutes irreparable harm. *E.g.*, *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*,

354 S.W.3d 887, 895 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (“Threatened injury to a business’s reputation and good will with customers is frequently the basis for temporary injunctive relief. While such injuries are not categorically irreparable, the irreparable injury requirement is satisfied when injuries of this nature are difficult to calculate or monetize.” (collecting cases)); *Martin v. Linen Sys. for Hosps., Inc.*, 671 S.W.2d 706, 710 (Tex. App.—Houston [1st Dist.] 1984, no writ) (“A dollar value cannot easily be assigned to a company’s loss of clientele, goodwill, marketing techniques, office stability, etc.” (citing *David v. Bache Halsey Stuart Shield, Inc.*, 630 S.W.2d 754 (Tex. App.—Houston [1st Dist.] 1982, no writ))).

74. TheBlaze’s requested temporary restraining order and temporary injunctive relief relating to Lahren’s statements does not constitute a prior restraint in violation of the First Amendment to the U.S. Constitution or Article I, Section 8 of the Texas Constitution. By signing the Employment Agreement, Lahren knowingly, voluntarily, and intelligently waived her right to speak freely regarding TheBlaze. *See, e.g., Walls v. Klein*, No. 04-12-00615-CV, 2013 WL 988179, at *3 (Tex. App.—San Antonio Mar. 13, 2013, no pet.) (upholding injunction enforcing a confidentiality and nondisparagement provision because the nonmoving party waived her First Amendment rights by signing the agreement); *Taylor v. DeRosa*, No. 03-08-00199-CV, 2010 WL 1170228, at *3 (Tex. App.—Austin Mar. 24, 2010, no pet.) (finding no First Amendment issue because “the injunction in the present case merely serves to enforce a bargained-for provision of the parties’ settlement contract—the non-disparagement clause” (collecting cases)); *see also Perricone v. Perricone*, 972 A.2d 666, 682 (Conn. 2009) (“[A]n agreement that restricts speech, but that does not expressly refer to first amendment rights, constitutes a valid waiver of those rights, as long as the waiver was intelligent and voluntary.”); *Pierce v. St. Vrain Valley Sch. Dist. RE-1J*, 981 P.2d 600, 604 (Colo. 1999) (en

banc) (“Here, the parties imposed their own restrictions on their ability to speak publicly about the circumstances surrounding Dr. Pierce’s resignation. Enforcement of the settlement agreement does not violate the First Amendment”). Lahren is a sophisticated party, and the Employment Agreement’s language is clear. Further, Lahren specifically agreed that TheBlaze would not have employed Lahren or allowed her to begin work had she not agreed to the terms of the NDA, the terms of which are almost entirely dedicated to Lahren’s obligation not to disclose information regarding or bring publicity to the company. NDA ¶ 1. Lahren also agreed that TheBlaze could seek injunctive relief if she violated the NDA. NDA ¶ 10.

75. Lahren’s conduct also confirms her knowing, voluntary, and intelligent waiver. Before March 17, 2017, Lahren regularly sought TheBlaze’s approval before making public appearances (including her appearance on *The View*) or statements relating to the company, which demonstrates her understanding that she had waived her rights to speak freely.

76. Accordingly, the Court should grant a temporary restraining order and temporary injunctive relief in favor of TheBlaze.

VII. CONDITIONS PRECEDENT

77. All conditions precedent to the bringing of this action have been performed or waived.

VIII. REQUESTS FOR DISCLOSURE

78. Under Texas Rule of Civil Procedure 194, Defendants request that Lahren disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a)-(l).

PRAYER FOR RELIEF

Wherefore, TheBlaze prays that the Court enter judgment against Lahren for the following relief:

- a. monetary damages, including actual and consequential damages;
- b. pre-judgment and post-judgment interest;
- c. attorney's fees and costs;
- d. injunctive relief as sought by TheBlaze herein; and
- e. such other and further relief to which TheBlaze may show itself to be justly entitled in law or equity.

Dated: April 17, 2017

Respectfully submitted,

/s/ Eliot Burriss

Eliot T. Burriss

Texas State Bar No. 24040611

McDermott Will & Emery LLP

2501 North Harwood Street, Suite 1900

Dallas, Texas 75201

(214) 295-8053 (telephone)

(972) 920-3117 (facsimile)

eburriss@mwe.com

ATTORNEY FOR DEFENDANTS
GLENN BECK AND THEBLAZE, INC.

VERIFICATION

My name is Misty Kawecki, my date of birth is June 29, 1973, and my current address is 8736 Havant Lane, Plano TX 75024. I declare under penalty of perjury that I have read Defendants' Original Counterclaim and the factual statements therein are true and correct. Executed in Dallas County, Texas on the 17th day of April, 2017.


Misty Kawecki

CERTIFICATE OF SERVICE

I hereby certify that, on April 17, 2017, a true and correct copy of the foregoing document was served upon the attorney(s) of record in this matter in accordance with Rule 21a of the Texas Rules of Civil Procedure.

/s/ Eliot Burriss _____
Eliot T. Burriss

DM_US 81245187-11.T14775.0010

Exhibit A

Screenshot of “Tomi Lahren” Facebook Page as of April 17, 2017

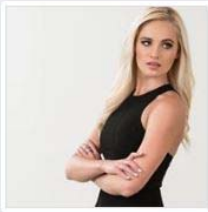
facebook

Email or Phone

Password

Log In

Forgot account?



Tomi Lahren

@TomiLahren

Home

Posts

Videos

Instagram feed

Twitter

Photos

About

Likes

Events

Create a Page

WHETHER YOU LOVE WHAT I'M SAYING
OR HATE WHAT I'M SAYING, YOU'RE HAVING
A REACTION TO IT, AND THAT IS EXACTLY
WHAT NEEDS TO HAPPEN IN THIS COUNTRY.
-Tomi Lahren

Like

Send Message

Share

...

Sign Up

Posts



Tomi Lahren

March 19 at 11:00am · 🌐

Colonel Mark A. Smith breaks down the strangle hold of the military industrial complex.



1.3M Views

Like

Comment

Share

Brandon Florez, Mj Pacetti, Robert Parkerson and 11,736 others like this.

4,061 shares

View all 3,168 comments



Tomi Lahren with Brian D. Moore.

March 18 at 9:27am · 🌐

Purple Heart recipient and Retired US Army Sergeant Brian Moore shares his shocking VA story. #PurpleHeartsAndWoundedSpirits



News Personality

The official Facebook page for Tomi Lahren.



4,206,797 people like this and 4,283,997 people follow this

About

See All



www.theblaze.com/tomi



News Personality · Lifestyle Services

People

>

4,206,797 likes

Visitor Posts

>



Elizabeth PiscesAries Knight

Today at 7:43am · 🌐



On Easter Sunday an elderly 74 year old man, Robert Godwin Sr. was r... See More

1 Comment

Like · Comment · Share



Demetri Titan

Today at 5:10am · 🌐



https://www.facebook.com/steve.honey.badger/posts/1377278918997049

Like · Comment · Share



Brian Fischer

Today at 4:43am · 🌐



No longer a Beck fan. I will not support a bully. Give Tomi Lahren back her voice!

Like · Comment · Share

People Also Like



Donald J. Trump

Public Figure


Exhibit B

**Screenshots from TheBlaze's Facebook Business Manager Account
Showing Ownership of and Administrator and Editor Rights to the Facebook Page
as of April 17, 2017**

Secure https://business.facebook.com/TomiLahren/?business_id=849805075056834

Pages Search business TheBlaze 40 Help

Page Notifications 99 Insights Publishing Tools Settings Help

 **Tomi Lahren** ✓
@TomiLahren

Home
Posts
Videos
Instagram feed
Twitter
Photos
About
Likes
Events
Grow Business

**WHETHER YOU LOVE WHAT I'M SAYING
OR HATE WHAT I'M SAYING, YOU'RE HAVING
A REACTION TO IT, AND THAT IS EXACTLY
WHAT NEEDS TO HAPPEN IN THIS COUNTRY.**
-Tomi Lahren

Liked Following Share Sign Up

Write something...

Share a photo or video Advertise your business Get sign ups Start a Live Video

News Personality

4.2M likes +7,586 this week
Jonathan Schreiber and 49 other friends

4.2M follows

See Pages Feed
Posts from Pages you've liked as your Page

3.4M post reach this week

Secure

https://business.facebook.com/TomiLahren/settings/?tab=admin_roles&ref=page_edit&business_id=849805075056834

☆

f

Pages

Search business

Q

MA

TheBlaze

40

Help

?

Page

Notifications99

Insights

Publishing Tools

Settings

Help

\$ Payments

Activity Log

Page Owner

Admins of the TheBlaze business can manage roles and other permissions on this Page.

b

TheBlaze

Agencies

Agencies can assign approved roles to people in their business to help you with your Page.

The Digital Ring

Roles approved: Analyst, Advertiser, Editor, Moderator, Admin

Existing Page Roles

Admin

Can manage all aspects of the Page. They can: send messages and publish as the Page, respond to and delete comments on the Page, create ads, see which admin created a post or comment, view insights, respond to and delete Instagram comments from the Page, edit Instagram account details from the Page and assign Page roles.

Lisa Kesler

Admin

Edit

2

Secure

https://business.facebook.com/TomiLahren/settings/?tab=admin_roles&ref=page_edit&business_id=849805075056834

☆

f

Pages

Search business

MA

TheBlaze

40

Help

Page

Notifications99

Insights

Publishing Tools

Settings

Help

Existing Page Roles

Admin

Can manage all aspects of the Page. They can: send messages and publish as the Page, respond to and delete comments on the Page, create ads, see which admin created a post or comment, view insights, respond to and delete Instagram comments from the Page, edit Instagram account details from the Page and assign Page roles.

Lisa Kesler

Admin

Edit

Nick Ring

Admin

Edit

Stewart Padveen

Admin

Edit

Charley Stran

Admin

Edit

Mateen Aini

Admin

Edit

Editor

Can send messages and publish as the Page, respond to and delete comments on the Page

3

Secure https://business.facebook.com/TomiLahren/settings/?tab=admin_roles&ref=page_edit&business_id=849805075056834

Pages Search business TheBlaze 40 Help

Page Notifications 99 Insights Publishing Tools Settings Help

Editor

Can send messages and publish as the Page, respond to and delete comments on the Page, create ads, see which admin created a post or comment, view insights, respond to and delete Instagram comments from the Page and edit Instagram account details from the Page.







	Laura Leon Editor	Edit
	Jess Weissman Lafferty Editor	Edit
	Sean Foster Editor	Edit
	Timothy Fox Editor	Edit
	Jessica Grose Editor	Edit
	Tomi Lahren Editor	Edit

Exhibit C

Screenshots of TheBlaze's Employee and Payroll Tracking System

Personal Management Log Out Site Map Search Help

theblaze
HOME • WAGE & TAX • **HR ADMINISTRATION** • WORKPLACE SAFETY • BENEFITS

Applications Reports Links Resources

Management Reports Employee Personnel Records Quick List Survey Management

Employee Personnel Records

The 'Employee Personnel Records' lookup is a quick overview of the employee personal information currently on file. Changes to personal information can be submitted through the eAction Notice (EAN) application. [Click Here](#).

Employee: LAHREN, TOMI R -

☒ Active
 ☐ On Leave
 ☐ Terminated

Employee Information

NameLahren, Tomi R

Employment StatusActive

ExponentHR ID

Empl #

Social Security #

Master ID

links...

Time Clock
Payroll Summary
Messages

Leave Requests
Total Comp
Incident Trkng

Paid Leave Info
Pay Schedule

Recurring Items
Retirement

Arrearages
Benefits

Garnishments
Life Events

Check Stubs
EAN History

Personal Info
Address/Contact
Employer
Auto/License
Work Status
Job Status
Pay Status
Paid Leave Accruals
Direct Deposit
HR Notes / Documents
Display All

Personal Information

First NameTomi
Middle InitialR
Last NameLahren
Prior Last Name
Nick Name
Birth Date
Age
EthnicityWhite (non-Hispanic)
ADA Disabled EmployeeNo
Veteran Status
GenderFemale
Marital Status

This information is current as of: 4/12/2017 8:42:54 AM

Pay Date		Time Clock Details	Check Number	Gross Earnings	Deductions	Taxes	Net Pay
04/14/2017	View Check	View Details					
04/14/2017	View Check	View Details					
03/31/2017	View Check	View Details					
03/31/2017	View Check	View Details					
03/15/2017	View Check	View Details					
03/15/2017	View Check	View Details					
02/28/2017	View Check	View Details					
02/28/2017	View Check	View Details					
02/15/2017	View Check	View Details					
02/15/2017	View Check	View Details					
01/31/2017	View Check	View Details					
01/31/2017	View Check	View Details					
01/13/2017	View Check	View Details					
01/13/2017	View Check	View Details					

Exhibit D

Screenshot of Administrator Settings for Lahren's Company Email Account

uest
quests