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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 JAMES WOODS, an individual,

15 Plaintiff,

16 vs.

17 JOHN DOE a/k/a "Abe List" and DOES 2
18 through 10, inclusive,

19 Defendants.

Case No.: BC 589746

[Hon. Mel Recana, Dept. 45]

**NOTICE OF MOTION AND MOTION FOR:
(1) AN ORDER COMPELLING NON-PARTY
KENNETH P. WHITE TO ANSWER
DEPOSITION QUESTIONS AND PRODUCE
DOCUMENTS; AND (2) AN ORDER FOR
SANCTIONS AGAINST NON-PARTY
KENNETH P. WHITE IN THE AMOUNT OF
\$9,040.55**

[Declaration of Michael E. Weinsten and Separate
Statement filed concurrently herewith]

Date: December 22, 2016

Time: 8:35 a.m.

Dept: 45

Reservation ID: 161109172908

Complaint Filed: July 29, 2015

Trial Date: None

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE that on December 22, 2016, at 8:35 a.m., or as soon thereafter as the
3 matter may be heard in Department 45 of the Los Angeles Superior Court, located at 111 North Hill
4 Street, Los Angeles, California 90012, Plaintiff James Woods ("Plaintiff") will, and hereby does, move
5 the Court for an order compelling Non-Party Kenneth P. White ("White") to (1) provide substantive
6 responses without objection to the questions asked during his deposition and (2) produce documents
7 responsive to Plaintiff's deposition subpoena.

8 Plaintiff brings this motion to compel White's deposition testimony pursuant to California Code
9 of Civil Procedure § 2025.480(a). Plaintiff brings this motion after White refused, during his November
10 14, 2016 deposition, to answer any questions related to the actual identity of his client in this action –
11 Defendant John Doe a/k/a "Abe List" – by improperly asserting the attorney-client privilege and other
12 unfounded objections.

13 Plaintiff will also move the Court for an order compelling White to produce documents that he
14 was required to produce pursuant to Plaintiff's deposition subpoena.

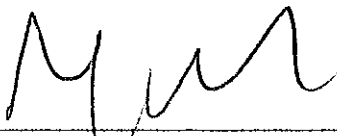
15 Plaintiff will also move the Court for an order that White pay to Plaintiff the sum of no less than
16 \$9,040.55 as the reasonable costs and attorney fees incurred by Plaintiff in connection with bringing the
17 instant Motion and taking White's November 14, 2016 deposition.

18 This Motion is made and based upon this Notice, the accompanying Memorandum of Points and
19 Authorities, the Separate Statement, the Declaration of Michael E. Weinsten and any exhibits attached
20 thereto, the court's file herein, and any oral argument and other documentary evidence as may be
21 presented at the hearing.

22 Dated: November 30, 2016

LAVELY & SINGER
PROFESSIONAL CORPORATION
MICHAEL E. WEINSTEN
LINDSAY MOLNAR

23
24
25
26 By:



MICHAEL E. WEINSTEN
Attorneys for Plaintiff JAMES WOODS

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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 **I. INTRODUCTION**

3 This case arises from the publication of a malicious and fabricated accusation leveled against
4 actor James Woods (“Woods”) by an individual who hid behind the Twitter name “Abe List” (hereafter
5 “AL”). In July 2015, AL falsely accused Woods of being a “cocaine addict” on the widely popular
6 social media site Twitter and, after Twitter refused to remove the libelous statement, Woods was forced
7 to file suit for defamation and invasion of privacy by false light to protect his good name and reputation.

8 Rather than face Woods’ claims on the merits, AL’s *modus operandi* from the very beginning of
9 this lawsuit has been to utilize various procedural roadblocks to conceal his identity from Woods and
10 delay the prosecution of Woods’ claims. For example, shortly after Woods filed the Complaint, AL
11 filed a frivolous (and ultimately unsuccessful) anti-SLAPP motion, which was clearly intended solely to
12 prevent his identity from being disclosed. When Woods then sought to conduct discovery in connection
13 his opposition of the anti-SLAPP motion, AL vehemently opposed the motion, claiming that Woods first
14 had to prove his entire *prima facie* case against AL before discovering AL’s identity.

15 After this Court denied AL’s anti-SLAPP and rightly held that Woods had “met his burden of
16 showing a probability of prevailing” on his claims, AL filed a *frivolous* appeal of this Court’s order,
17 once again trying to block the disclosure of his identity and further delaying the prosecution of Woods’
18 claims. Then, when it was finally time for AL to file his reply brief – after Woods had already incurred
19 the time and expense of filing a 50-page Respondents’ brief – AL’s counsel, Kenneth P. White
20 (“White”), filed a declaration with the appellate court (1) stating that his client had passed away, (2)
21 indicating that AL’s estate would be substituting into the matter, and (3) requesting an extension of time
22 for the filing of AL’s reply brief. However, no substitution was ever made. Instead, weeks later, White
23 suddenly filed a dismissal of the appeal – which resulted in this case being remanded back to the trial
24 court.

25 Critically, although White claims that AL is deceased, ***he has refused to provide any evidence***
26 ***whatsoever substantiating this claim.*** Moreover, when Woods’ counsel reasonably requested that
27 White at least provide the identity of his now-purportedly-deceased client – a fact which would be
28 necessary in order to confirm whether AL is actually deceased – White ***refused.***

1 As a result of White's staunch refusal to provide evidence of AL's purported client's death, or
2 even AL's name, Woods was forced to take White's deposition on November 14, 2016. During this
3 deposition, White still refused to disclose AL's identity (or produce the relevant documents requested in
4 the deposition subpoena), asserting the unfounded objections that such information is private, subject to
5 the attorney-client privilege, not relevant to the claims in this lawsuit, and harassing.¹

6 Obviously, White's objections are meritless and in bad faith. First and foremost, AL's right to
7 privacy died along with him and, in any event, White cannot assert this right on his deceased client's
8 behalf. *See Lugosi v. Universal Pictures*, 25 Cal.3d 813, 820, 833 (1979) (dissenting Justices agreeing
9 with majority that: "It is not disputed that the right of privacy is a personal one, which is not assignable
10 and ceases with an individual's death.") (emphasis added). Second, AL's identity and information
11 related to his identity are not subject to the attorney-client privilege – as these are merely facts, not
12 communications. *See Hays v. Wood*, 25 Cal.3d 772, 785 (1979) (rejecting attorney's claim that the
13 identity of his clients are privileged). Indeed, Woods is unaware of even a single case where the
14 attorney-client privilege was upheld to preclude an anonymous litigant from disclosing his name. Third,
15 there is no question that AL's identity is relevant to Woods' ability to effectively prosecute his claims,
16 conduct discovery and obtain a judgment against a known person – even more so in light of the fact that
17 the Court has already found Woods has a "probability of prevailing" on his claims. Indeed, if White is
18 unwilling to substantiate his claim that AL is deceased, Woods is entitled to investigate whether this
19 claim is true.² Lastly, information related to AL's identity is clearly not being requested for purposes of
20 "harassment" or "intimidation," nor has White has offered any factual or legal support for such an
21 absurd objection (nor does any such support exist).

22
23
24
25 ¹ Making AL's alleged death even more suspicious, White admitted in his deposition that he never saw
26 AL's alleged death certificate. *See, e.g.*, Declaration of Michael E. Weinsten, ¶6, Ex. E at 16:13-15 ("I
have not reviewed a death certificate of Abe List.").

27 ² Notably, White has previously informed Woods' counsel that AL lied about many things, including
28 information on AL's Twitter profile. These prior lies make it even more important to get proof that AL
is in fact deceased.

1 In light of the above, Woods' motion should be granted and White should be compelled to
2 answer the deposition questions set forth in the concurrently-filed Separate Statement, as well as
3 produce documents responsive to the Subpoena.

4 **II. STATEMENT OF RELEVANT FACTS**

5 **A. AL's Unsuccessful Anti-SLAPP Motion**

6 On July 29, 2015, Woods filed the instant lawsuit against AL for defamation and invasion of
7 privacy by false light.

8 On September 2, 2015, AL filed an anti-SLAPP motion claiming that the defamatory tweet at
9 issue was protected by the First Amendment and that Woods could not prevail on his claims because the
10 tweet was not a statement of fact, but, instead, mere "rhetorical hyperbole" and "insult."

11 On February 8, 2016, the Court denied AL's anti-SLAPP motion, finding that Woods had "met
12 his burden of showing a probability of prevailing" on his claims for defamation and invasion of privacy.

13 On February 11, 2016, AL filed a Notice of Appeal of the Court's February 8, 2016 order
14 denying his anti-SLAPP.

15 **B. White's Unsubstantiated Claim That AL Died During The Appeal of the Court's**
16 **Anti-SLAPP Ruling.**

17 On August 26, 2016, while AL's appeal was pending, Woods' counsel received an email from
18 White stating that there had been a "development in the Woods v. Doe matter," and requesting a time to
19 speak. Declaration of Michael E. Weinsten ("Weinsten Decl."), ¶2, Ex. A. During a telephone that
20 same day, White informed Woods' counsel that AL had purportedly died. Weinsten Decl., ¶2. White,
21 however, would not respond to any of Woods' counsel's questions regarding the identity of AL, or how
22 or when AL allegedly died. *Id.* White also refused to provide any actual documentary evidence that AL
23 is deceased. *Id.* Shortly thereafter, on October 21, 2016, AL (or AL's estate), dismissed the pending
24 appeal.

25 **C. White's Unfounded and Bad-Faith Refusal to Answer Basic Deposition Questions**
26 **and Produce Documents Concerning the Identity of His Purportedly Deceased**
27 **Client**

28 On November 3, 2016, Woods issued and served a Deposition Subpoena for Personal

1 Appearance and Production of Documents and Things (the "Subpoena") on White Weinsten Decl., ¶3,

2 Ex. B.

3 In addition to testimony, the Subpoena sought the production of the following categories of
4 documents:

- 5 • DOCUMENTS sufficient to IDENTIFY John Doe a/k/a "Abe List", your client and
6 the defendant in the lawsuit captioned *James Woods v. John Doe a/k/a "Abe List"*,
7 which is pending in Los Angeles Superior Court, Case No. BC589746.
- 8 • DOCUMENTS sufficient to IDENTIFY the personal representative of the estate of
9 John Doe a/k/a "Abe List."

10 Weinsten Decl., ¶3, Ex. B.

11 On November 9, 2016, White served written objections to the Subpoena. Weinsten Decl., ¶4,
12 Ex. C. On the same day, White also informed Woods' counsel by phone that he would not answer
13 questions at the deposition that would disclose the identity of AL. Weinsten Decl., ¶5, Ex. D. However,
14 White was ambiguous as to whether he would answer other questions. *Id.*

15 On November 10, 2016, Woods' counsel sent White a meet and confer letter explaining that
16 White's objections to the Subpoena were unfounded because the identity of his client was not subject of
17 the attorney-client privilege or private information. Weinsten Decl., ¶5, Ex. D. White never responded
18 to this letter. Weinsten Decl., ¶5.

19 On November 14, 2016, Woods took White's deposition pursuant to the Subpoena. Weinsten
20 Decl., ¶6, Ex. E. During his deposition, White refused to respond to the following questions, among
21 others:

- 22 • "What is the legal name of your client?" Weinsten Decl., ¶6, Ex. E at 7:7.
- 23 • "What is the name of his heir?" Weinsten Decl., ¶6, Ex. E at 8:12.
- 24 • "What was Abe List's residential address when he passed away?" Weinsten Decl., ¶6, Ex. E
25 at 31:14-15.
- 26 • "[D]id Mr. Abe List live in Los Angeles, California?" Weinsten Decl., ¶6, Ex. E at 26:13-14.
- 27 • "Other than the handle "Abelisted" are there any other Twitter accounts under other handles
28 that were owned or managed by Abe List?" Weinsten Decl., ¶6, Ex. E at 39:6-8.

- “Who informed you that Abe List had passed?” Weinsten Decl., ¶6, Ex. E at 14:2.
- “Would that be Abe List’s father?” Weinsten Decl., ¶6, Ex. E at 14:8.
- “So just to be clear, you are not going to give me the name of the personal representative of Abe List’s estate?” Weinsten Decl., ¶6, Ex. E at 14:14-17.
- “Where did Mr. Doe pass away? Weinsten Decl., ¶6, Ex. E at 15:15.
- “How old was Abe List when he passed away?” Weinsten Decl., ¶6, Ex. E at 17:16.
- “Was Abe List married?” Weinsten Decl., ¶6, Ex. E at 23:3.
- “Did Abe List live in Los Angeles, California, when he passed away?” Weinsten Decl., ¶6, Ex. E at 26:21-22.

White’s counsel objected to the above questions on the grounds that they purportedly seek information that is (1) protected by the attorney-client privilege, (2) “not reasonably calculated to lead to admissible evidence,” and (3) designed to “harass, intimidate third parties and/or deceased people...” Weinsten Decl., ¶6, Ex. E at 7:8-22. White also failed and refused to bring any of the documents requested in the Subpoena to the deposition. Weinsten Decl., ¶6.

Efforts to further meet and confer continued throughout White’s deposition, wherein Woods’ counsel sought legal authority in support of White’s objections, but was provided none. *See, e.g.*, Weinsten Decl., ¶6, Ex. E at 7:23-8:4.

III. LEGAL ARGUMENT

A. A Motion To Compel Is Proper Where A Deponent Refuses To Answer Questions During The Examination Or Produce Documents At Deposition

“Any party may obtain discovery ... by taking in California the oral deposition of any person, including any party to the action.” Cal. Civ. Proc. Code § 2025.010. “It is established that a litigant has the right to take a proper deposition, and to receive responsive answers to proper questions...for the purposes of discovery or for use as evidence, or for both purposes.” *Beverly Hills Nat. Bank & Trust Co. v. Superior Court In and For Los Angeles County*, 195 Cal. App. 2d 861, 864-865 (1961) (citations omitted). Indeed, “a deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party, or to the claim or defense of any other party.” *Kramer v. Superior Court of Los*

1 *Angeles County*, 237 Cal. App. 2d 753, 756 (1965); *see also* CCP § 2017.010 (providing that “any party
2 may obtain discovery ... that is relevant ..., if the matter either is itself admissible in evidence or
3 appears reasonably calculated to lead to the discovery of admissible evidence.”) “The statute authorizing
4 the taking of depositions... should be liberally construed to the end that a litigant in a pending action
5 may be afforded a reasonable opportunity to procure available testimony in support of his cause.” *Moran*
6 *v. Superior Court in and for Sacramento County*, 38 Cal. App. 2d 328, 334 (1940).

7 “If a deponent fails to answer any question or to produce any document...under the deponent’s
8 control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery
9 may move the court for an order compelling that answer or production.” CCP § 2025.480(a). “If the
10 court determines that the answer or production sought is subject to discovery, it shall order that the
11 answer be given or the production be made on the resumption of the deposition.” CCP § 2025.480(e).

12 As set forth below and in Woods’ Separate Statement filed herewith, White’s objections to
13 Woods’ deposition questions and White’s objections to Woods’ document requests are without merit
14 and the answers and production sought are relevant to the issues in this litigation. As such, Woods
15 submits that Mr. White should be compelled to provide answers to the deposition questions set forth
16 herein and produce responsive documents to the Subpoena.

17 **B. The Court Should Compel White To Answer Deposition Questions Relating to the**
18 **Identity of AL Since This Information is Neither Private Nor Privileged And Is**
19 **Critical To Woods’ Ability To Effectively Prosecute His Claims Against AL.**

20 Mr. White has refused to produce responsive documents and answer critical questions at his
21 deposition relating to the identity of his purportedly-deceased client on the grounds that such
22 information is somehow (1) protected by the right to privacy, (2) protected by the attorney-client
23 privilege, (3) “not reasonably calculated to lead to admissible evidence,” and (4) intended to “harass,
24 intimidate third parties and/or deceased people...” For the reasons set forth herein, White’s objections
25 are meritless and his testimony, as well as the production of responsive documents, should be
26 compelled.

1 **i. Because AL's Privacy Rights Died With Him, White Cannot Withhold AL's**

2 **Identity On Privacy Grounds**

3 White has refused to produce documents responsive to the Subpoena on the baseless ground that
4 the documents are "protected by the right to privacy and anonymity." Weinstein Decl., ¶4, Ex. C at 2:13-
5 14, 24-25. First, assuming AL is actually deceased (which is not conceded), he no longer has any right
6 to privacy. More specifically, it is well settled that the right of privacy does not survive but dies with the
7 person. *See Lugosi v. Universal Pictures*, 25 Cal.3d 813, 820, 833 (1979) (dissenting Justices agreeing
8 with majority that: "It is not disputed that the right of privacy is a personal one, which is not assignable
9 and ceases with an individual's death.") (emphasis added); *Hendrickson v. California Newspapers, Inc.*,
10 48 Cal.App.3d 59, 62 (1975). Further, "the right to privacy is purely a personal one; it cannot be
11 asserted by anyone other than the person whose privacy has been invaded...." *Hendrickson*, 48
12 Cal.App.3d at 62; *Flynn v. Higham*, 149 Cal.App.3d 677 (1983) (children of deceased actor Errol Flynn
13 cannot sue author of biography of Flynn for defamation or invasion of privacy because the right of
14 privacy cannot be asserted by anyone other than the person whose privacy has been invaded). Thus,
15 ***White cannot assert such a right on AL's behalf.***

16 Second, AL does not have (and never had) the right to proceed anonymously in this lawsuit.
17 Under California law, a litigant who has voluntarily appeared and submitted to the jurisdiction of the
18 court has a very high burden to satisfy in order to remain anonymous. A general "presumption exists
19 that cases will be litigated with the true identities of the parties set forth on the record, and a court may
20 not lightly disregard that presumption." *AF Holdings LLC v. Doe*, No. 2:12-CV-1066 GEB GGH, 2012
21 WL 6042635, at *2 (E.D. Cal. 2012) (emphasis added) (denying defendant's right to litigate
22 anonymously.) This presumption is based on, among other things, the public interest in an open court
23 system, including the public's right to know the identity of parties to a lawsuit. *See Doe v.*
24 *Kamehameha Schools etc.*, 596 F.3d 1036, 1042-43 (9th Cir. 2010) ("We are sympathetic to the
25 concerns of the Doe children and their parents, but we recognize the paramount importance of open
26 courts.") California courts only allow parties to use pseudonyms in the "unusual case" when
27 nondisclosure of the party's identity "is necessary ... to protect a person from harassment, injury, ridicule
28 or personal embarrassment." *United States v. Doe*, 655 F.2d 920, 922 (9th Cir. 1980) ("We recognize

1 that the identity of the parties in any action, civil or criminal, should not be concealed except in an
2 unusual case, where there is a need for the cloak of anonymity.”). Here, *AL has never established (and*
3 *neither has White) the extraordinary circumstances required for a litigant to remain anonymous.*³

4 In light of the above, White cannot refuse to answer questions of produce documents that relate
5 to the identity of AL on privacy grounds.

6 ii. **AL’s Identity and Information Related To His Identity Is Not Protected By**
7 **The Attorney-Client Privilege**

8 Contrary to White’s claims, AL’s identity and information related to his identity is *not* subject to
9 the attorney-client privilege. *See Hays*, 25 Cal.3d at p. 785 (“It is well established that the attorney-client
10 privilege, designed to protect communications between them, does not ordinarily protect the client’s
11 identity.”); *Tien v. Superior Court*, 139 Cal.App.4th 528, 537 (2006) (same); *Brunner v. Superior Court*
12 *of Orange Cty.*, 51 Cal.2d 616, 618 (1959) (“[I]t is the general rule that an attorney is not privileged to
13 withhold disclosing by whom he has been employed.”). To the contrary, California courts have
14 acknowledged that once litigation is commenced, a litigant should not be required “to struggle in the
15 dark against unknown forces,” even if this means disclosing the name of a client who wishes to remain
16 anonymous. *See Baird v. Koerner*, 279 F.2d 623, 630 (9th Cir. 1960) (“There is no question...that it is
17 at times vital to the administration of justice to require disclosure of a client’s name.”)

18 The attorney-client privilege is “a privilege to refuse to disclose, and to prevent another from
19 disclosing, a confidential communication between client and lawyer.” *See* Evid.Code, § 954 (emphasis
20 added). “[C]onfidential communication between client and lawyer’ means information transmitted
21 between a client and his or her lawyer in the course of that relationship and in confidence by a means
22 which...discloses the information to no third persons other than those who are present to further the
23

24 ³ Based on previous filings with the Court in this action, AL has effectively conceded this point. For
25 instance, in opposing Woods’ prior motion to conduct discovery, AL cited *Krinsky v. Doe 6*, 159
26 Cal.App. 4th 1154 (2008) for the proposition that a defamation plaintiff can only pierce the anonymity
27 of an internet speaker if it makes a *prima facie* case. *See Krinsky*, 159 Cal.App.4th at p. 1171 (holding
28 that a libel plaintiff seeking to compel disclosure of an anonymous speaker’s identity must (1) give
notice to the anonymous speaker and (2) “make a prima facie showing of the elements of libel...”)
Thus, because Woods has now made such a *prima facie* showing (confirmed by the Court when it
denied AL’s anti-SLAPP motion), AL’s own-cited authorities allow Woods to discover AL’s identity.

1 interest of the client in the consultation, and includes a legal opinion formed and the advice given by
2 the lawyer in the course of that relationship.” Evid.Code, § 952 (emphasis added).

3 Here, AL’s legal name does not fit within the purview of Evid. Code, § 954, as it is not a
4 “communication” made in confidence. There is no question that someone’s legal name is not
5 “confidential”—it is known by many people outside the scope of any attorney-client privilege
6 communications. Moreover, disclosing the identity of AL, or information related to his identity, would
7 not disclose the contents of any legal advice obtained by AL (or AL’s estate). Woods is not asking for
8 any communications that AL had with White regarding his identity. Indeed, Woods is not aware of a
9 single case where a court has allowed an attorney of a deceased client who is a party to a lawsuit to
10 withhold the identity of his client on privilege grounds.

11 Furthermore, the extremely limited exceptions to the general rule that client identities are not
12 privileged are inapplicable here. First, there is no reason to believe that disclosing the identity of AL (or
13 his estate’s personal representative) might implicate AL in unlawful activities or expose him to criminal
14 or civil liability. *See Tien*, 139 Cal.App.4th at 537; *Hays*, 25 Cal.3d at 785. Considering that AL has
15 already been sued by Woods, there is no risk in exposing him to any “civil liability” beyond what he is
16 already facing. Moreover, there is no risk of exposing AL to criminal liability since Woods’ allegations
17 are not criminal in nature. Thus, this exception does not apply.

18 Second, this is not a situation where “known facts regarding an attorney’s representation are such
19 that the disclosure of the client’s identity would betray personal, confidential information regarding the
20 client.” *Tien*, 139 Cal.App.4th at 537-538 (holding trial court’s discovery order compelling disclosure
21 of the names of class members who contacted plaintiffs’ counsel did not violate attorney-client privilege
22 because disclosing the names would not “disclose any personal, confidential information.”) The identity
23 of AL or information related to the identity of AL does not constitute “personal, confidential
24 information” because, as stated above, AL’s name is not confidential—*it is known by virtually everyone*
25 *that has met AL; not solely his attorneys*. Moreover, the disclosure of this information would not
26 “betray a confidential communication” because someone’s legal name is not a “confidential
27 communication” – it is a *fact*, plain and simple. *See Tien*, 139 Cal.App.4th at 538; cf. *Rosso, Johnson,*
28 *Rosso & Ebersold v. Superior Court*, 191 Cal.App.3d 1514, 1518 (1987) (refusing to order disclosure of

1 identities of women who responded to newspaper advertisement directed to women who have suffered
2 injury from use of an intrauterine device because “revealing their names would reveal the nature of a
3 medical problem, ordinarily considered a confidential communication”).

4 **iii. Information Related to the Identity of AL Is Highly Relevant And Critical**
5 **For Woods’ To Prosecute His Claims Against AL**

6 Woods is entitled to discover the identity of AL. It is indisputable that AL’s identity is critical
7 and relevant to Woods’ ability to investigate and gather information to prosecute his claims against AL.
8 Indeed, California courts have recognized that “[n]otwithstanding the constitutional right to
9 anonymity... a libel plaintiff has a legitimate competing interest in discovering an anonymous speaker’s
10 identity in order to effectively prosecute the libel claim.” *Doe 2*, 206 Cal. App. 5th at p. 1311.
11 Moreover, because White has refused to provide any evidence substantiating his claim that AL is
12 deceased, Woods *requires* AL’s name in order to conduct his own investigation into the issue. Lastly,
13 Woods cannot obtain (or collect) a judgment against a “John Doe.” Thus, he needs AL’s identity to
14 obtain a collectable judgment against him.

15 **C. White’s Claim That Woods Is Not Entitled to Information Related to the Identity of**
16 **AL Due to Fear of “Harassment” or “Intimidation” Is Unfounded**

17 Lastly, White has refused to provide the identity of AL based on the baseless claim that this
18 information is sought to “harass, intimidate [unnamed] third parties and/or deceased people...”
19 Weinstein Decl., ¶6, Ex. E at 7:13-15. This is ridiculous. First of all, *if AL is in fact deceased (as White*
20 *contends), he cannot as a matter of fact (and common sense) be “harassed” or “intimidated.”*
21 Moreover, White does not indicate who the “third parties” are that would purportedly be “harassed” or
22 “intimidated” should the identity of AL be disclosed. Instead, White’s objections are baseless and
23 designed to further obstruct Woods’ ability to prosecute his claims. White provides zero evidence that
24 Woods intends to use this information for any other purpose than to prosecute his claims in this lawsuit.
25 As such, White should be compelled to respond to the deposition questions and produce responsive
26 documents.

1 **IV. WHITE'S FAILURE TO PROVIDE ANY JUSTIFICATION FOR HIS FAILURE TO**
2 **ANSWER DEPOSITION QUESTIONS AND OR PRODUCE DOCUMENTS**
3 **RESPONSIVE TO THE SUBPOENA WARRANTS AN AWARD OF MONETARY**
4 **SANCTIONS AGAINST HIM**

5 Pursuant to Code of Civil Procedure section 2025.480(j), where a court concludes that a
6 deponent improperly refused to answer deposition questions, the court *must* impose monetary sanctions
7 unless the court finds that the losing party “acted with substantial justification” or that there are other
8 circumstances that make the imposition of sanctions improper. California courts may also impose a
9 monetary sanction against a deponent engaging in the misuse of the discovery process by failing to
10 respond to a subpoena. *See* Cal. Code of Civ. Pro. § 2023.030(a) (“The court may impose a monetary
11 sanction ordering that one engaging in the misuse of the discovery process...pay the reasonable
12 expenses, including attorney’s fees, incurred by anyone as a result of that conduct.”). A nonparty
13 opposing a motion to compel compliance with a subpoena without substantial justification is also subject
14 to sanctions. *See* Cal. Code of Civ. Pro. §§ 1987.2(a) (“the court may in its discretion award the amount
15 of the reasonable expenses incurred in making . . . the motion, including reasonable attorney’s fees, if
16 the court finds the motion was . . . opposed in bad faith or without substantial justification.”); 2020.030;
17 2025.480; 2023.010(d); *see also Pers. v. Farmers Ins. Grp. of Companies*, 52 Cal. App. 4th 813, 818
18 (The Code “authorizes service of a deposition subpoena for the production of documents on a nonparty
19 witness and . . . authorize[s] punishment for ‘refusal . . . to produce’ documents requested in the
20 subpoena.”) (emphasis added)

21 Here, White’s refusal to answer Woods’ deposition questions was without substantial
22 justification and constituted a misuse of the discovery process pursuant to CCP §§ 2023.010(d) and (e).
23 As such, monetary sanctions are warranted to compensate Woods for the reasonable costs and fees
24 associated with the motion and deposition.


25 As set forth in the accompanying declaration, the total fees and costs that Woods will incur in
26 connection with this motion are no less than \$9,040.55. Weinsten Decl., ¶¶7-9.

1 **V. CONCLUSION**

2 For the reasons stated herein and in Woods' Separate Statement filed concurrently herewith,
3 White has unjustifiably refused to answer relevant questions during his deposition and produce the
4 relevant documents specified in the Subpoena. As such, Woods respectfully requests that the Court
5 issue an Order directing White to appear and answer the questions set forth in Woods' Separate
6 Statement and to produce all documents specified in the Subpoena at 10:00 a.m. on January 5, 2017.
7 Woods also respectfully requests that the Court award monetary sanctions against White and in favor of
8 Woods in the sum of \$9,040.55.

9 Dated: November 30, 2016

LAVELY & SINGER
PROFESSIONAL CORPORATION
MICHAEL E. WEINSTEN
LINDSAY MOLNAR

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12 By: 
13 MICHAEL E. WEINSTEN
14 Attorneys for Plaintiff JAMES WOODS
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DECLARATION OF MICHAEL E. WEINSTEIN

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2 1. I am an attorney at law duly qualified to practice before the Courts of the State of
3 California. I am a member of Lavelly & Singer Professional Corporation, attorneys of record for
4 Plaintiff JAMES WOODS (“Woods”) in this action. The facts stated herein are true and correct and of
5 my own personal knowledge, and if called and sworn as a witness, I could and would testify
6 competently thereto under oath.

7 2. Attached hereto as Exhibit “A” is a true and correct copy of an August 26, 2016 email
8 that I received from Kenneth White (“White”), counsel for Defendant JOHN DOE a/k/a “Abe List”
9 (“AL”) in this action. That same day, during a telephone call with my associate Lindsay Molnar, White
10 claimed that AL had died. However, White would not respond to any of Mrs. Molnar’s questions
11 regarding the identity of AL, or how or when AL allegedly died. White also refused to provide any
12 actual documentary evidence that AL was deceased.

13 3. On November 3, 2016, my firm issued and served a Deposition Subpoena for Personal
14 Appearance and Production of Documents and Things (the “Subpoena”) on White. A true and correct
15 copy of the Subpoena is attached hereto as Exhibit “B.”

16 4. On November 9, 2016, White served written objections to the Subpoena, a true and
17 correct copy of which is attached hereto as Exhibit “C.”

18 5. Attached hereto as Exhibit “D” is a true and correct copy of a November 10, 2016 letter
19 sent by Ms. Molnar to White. White never responded to this letter.

20 6. On November 14, 2016, Mrs. Molnar took White’s deposition pursuant to the Subpoena.
21 White failed and refused to bring any of the documents requested in the Subpoena to the deposition. A
22 true and correct copy of relevant excerpts from the certified transcript of White’s deposition is attached
23 hereto as Exhibit “E.”

24 7. Woods has incurred and will incur reasonable costs and attorney fees in connection with
25 White’s deposition and the bringing of this Motion in the amount of \$9,040.55, consisting of the
26 following:

- 27 (a) Motion filing fee - \$60.00
- 28 (b) Process server fee - \$70.00

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(c) Deposition court reporter and transcript fee-- \$598.05

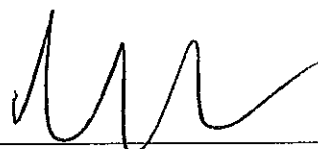
(d) Attorney fees - \$8,312.50

8. At the hourly billing rate of \$375.00, Mrs. Molnar has spent nine (9) hours meeting and conferring with White, taking White's deposition, and drafting this motion, for a total of \$3,375.00 in attorney fees. Additionally, at the hourly billing rate of \$400.00, my associate David B. Jonelis has spent five (5) hours drafting and revising this motion, for a total of \$2,000.00 in attorney fees. Additionally, at the hourly billing rate of \$625.00, I spent one and a half (1.5) hours reviewing and revising this motion, for a total of \$937.50 in attorney fees.

9. Based upon my experience, I anticipate that Mr. Jonelis will spend an additional five (5) hours preparing the reply to this motion and attending the hearing on this motion, for a total of \$2,000.00 in attorney fees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of November, 2016, at Los Angeles, California.



MICHAEL E. WEINSTEN

On Aug 26, 2016, at 1:09 PM, Kenneth White <kwhite@brownwhitelaw.com> wrote:

Michael and Lindsay:

There's been a development in the Woods v. Doe matter that I'd like to bring to your attention. I hope that it will permit a resolution. I know you have a brief due soon and I'll stipulate to extending the time to file it while I brief you on it. Please let me know when you are available to talk.

Ken White

<image001.jpg>

Kenneth P. White

Brown White & Osborn LLP

333 S. Hope Street, Suite 4000

Los Angeles, CA 90071

Phone (213) 613-9446

Fax (213) 613-0550

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MICHAEL E. WEINSTEN (BAR NO. 155680) LINDSAY MOLNAR (BAR NO. 272156) LAVELY & SINGER, P.C. 2049 Century Park East, Suite 2400 Los Angeles, California 90067-2906 TELEPHONE NO.: (310) 556-3501 FAX NO. (Optional): (310) 556-3615 E-MAIL ADDRESS (Optional): mweinsten@lavelysinger.com ATTORNEY FOR (Name): Plaintiff James Woods	FOR COURT USE ONLY CASE NUMBER: BC589746
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: James Woods DEFENDANT/RESPONDENT: John Doe a/k/a "Abe List", et al.	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Kenneth P. White, Brown White & Osborn LLP, 333 South Hope Street, 40th Floor, Los Angeles, California 90071

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

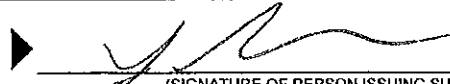
Date: November 14, 2016	Time: 11:00 a.m.	Address: LAVELY & SINGER, P.C. 2049 Century Park East, Suite 2400, Los Angeles, California 90067
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- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
 - b. You are ordered to produce the documents and things described in item 3.
 - c. This deposition will be recorded stenographically through the instant visual display of testimony and by audiotape videotape.
 - d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:
 See Attachment 3.
- Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

 Continued on Attachment 4.
5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.
6. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: November 9, 2016


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
Lindsay Molnar, Esq.
 Attorneys for Plaintiff James Woods

PLAINTIFF/PETITIONER: James Woods	CASE NUMBER:
DEFENDANT/RESPONDENT: John Doe a/k/a "Abe List", et al.	BC589746

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (*check one*):

(1) were paid. Amount: \$ 0.00

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): \$ 0.00

f. Fee for service: \$ 0.00

2. I received this subpoena for service on (*date*):

3. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Registered professional copier
- g. Exempt from registration under Business and Professions Code section 22451
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

1 ATTACHMENT 3

2 DEFINITIONS

3 1. The term "DOCUMENT" or "DOCUMENTS" as used herein shall mean and refer to
4 all writings (whether electronic or hard copy) as defined by California Evidence Code section 250,
5 and further includes any and all originals as defined by California Evidence Code section 255 and any
6 and all duplicates as defined by California Evidence Code section 260, as well as all drafts prepared
7 at any time in connection with such DOCUMENTS, within YOUR possession, custody and/or control
8 and/or YOUR agents, attorney, accountants and/or any other PERSON who may act on his behalf,
9 excepting only those DOCUMENTS which are privileged or otherwise protected from discovery.

10 2. Without limiting the foregoing, the term "DOCUMENT" or "DOCUMENTS" as used
11 herein also includes all written, typewritten, printed, electronic and graphic materials of any kind or
12 nature, including, but not limited to, correspondence, notes, memoranda, telegrams, cables, telexes,
13 telecopies, electronic messages and attachments (including but not limited to email messages and
14 attachments transmitted, received or maintained via websites or internet service providers such as
15 Hotmail, Gmail, Earthlink, AOL, Cox, Yahoo, ATT, Comcast, Verizon, Sprint, or any other provider
16 or account) (also including any messages, posts, instant messages, emails, or status updates of any
17 sort sent, received, posted, and/or transmitted via Facebook.com, Twitter.com, MySpace.com, or
18 other internet websites or social networking services), instant messages, text messages, sms
19 messages, weblog posts, posts and/or messages made on the internet or any website, publications,
20 contracts, agreements, insurance policies, minutes, interoffice communications, offers, charts, papers,
21 records, reports, analyses, studies, books, calendars, diaries, appointment books, statements,
22 complaints, filings with any court, tribunal or governmental agency, internal investigations, plans,
23 bylaws, corporate minutes, ledgers, transcripts, summaries, agendas, audits, work orders, repair
24 orders, bills, invoices, receipts, estimates, financial records, financial statements, account statements,
25 confirmations, performance evaluations, personnel files, diplomas, certificates, instruction manuals,
26 policy manuals, bulletins, advertisements, periodicals, accounting records, checks, check stubs, check
27 registers, canceled checks, bank statements, money orders, negotiable instruments, sound recordings,
28 films, photographs, mechanical or electronic recordings, tapes, transcriptions, any records of any

1 statement, conversation, telephone call, meeting, event or activity, computer program(s) and data and
2 data processing cards. As used herein, the term "DOCUMENTS" should be construed in its broadest
3 possible sense to include all types of documents and "WRITINGS" as defined by California Evidence
4 Code Section 250, all forms of information retained on any computer or other electronic or magnetic
5 media or memory, all computer diskettes, drives, flash drives, cellular phones, and other memory
6 apparatus containing such information, and any other graphic, printed or typed material of any nature
7 or kind whatsoever.

8 3. "IDENTIFY," as it relates to a Person, shall mean to state the Person's full name, last
9 known address, last known telephone number, last known company for whom that Person worked,
10 and the Person's position with that company. As it relates to a Document, "IDENTIFY" shall mean
11 to state the type and title of the Document, its subject matter and bates number, and who has
12 possession, custody or control of it.

13 4. The terms "COMMUNICATION" and "COMMUNICATIONS" as used herein shall
14 mean and include every manner or means of disclosure, transfer, communication, or exchange of data
15 and/or information, whether orally, electronically, by DOCUMENT, or in any other manner or
16 whether face to face or by telephone, mail, facsimile, electronic mail, text message, internet posting,
17 personal delivery, or otherwise.

18 REQUESTS FOR PRODUCTION

19
20 1. DOCUMENTS sufficient to IDENTIFY John Doe a/k/a "Abe List", your client and
21 the defendant in the lawsuit captioned *James Woods v. John Doe a/k/a "Abe List"*, which is pending
22 in Los Angeles Superior Court, Case No. BC589746.

23 2. DOCUMENTS sufficient to IDENTIFY the personal representative of the estate of
24 John Doe a/k/a "Abe List."

1 BROWN WHITE & OSBORN LLP
2 KENNETH P. WHITE (Bar No. 173993)
3 333 South Hope Street, 40th Floor
4 Los Angeles, California 90071-1406
5 Telephone: 213. 613.0500
6 Facsimile: 213.613.0550

7
8 Attorneys for subpoenaed non-party,
9 KENNETH P. WHITE

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 JAMES WOODS,

12 Plaintiff,

13 v.

14 JOHN DOE, ET AL.

15 Defendants.

Case No.: BC589746

**NON-PARTY KENNETH P. WHITE'S
OBJECTION TO DEPOSITION
SUBPOENA FOR PERSONAL
APPEARANCE AND PRODUCTION
OF DOCUMENTS AND THINGS**

Date: November 14, 2016
Time: 10:00 a.m.
Place: Lavelly & Singer, P.C.
2049 Century Park East, Ste. 2400
Los Angeles, CA 90067

23 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that non-party Kenneth P. White hereby objects to the
25 Deposition Subpoena for Personal Appearance and Production of Documents and Things,
26 served by Plaintiff James Woods as follows:
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28



BROWN, WHITE & OSBORN
ATTORNEYS

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OBJECTION TO DEPOSITION NOTICE

Non-party Kenneth P. White objects to the notice of deposition on the grounds that it represents an attempt to depose him on subjects protected by the attorney-client privilege, and is not reasonably calculated to lead to discoverable evidence for use in the case. Its purpose is to harass Mr. White, the late Mr. Doe's family, and to attack the late Mr. Doe's name.

OBJECTION TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION No. 1.:

DOCUMENTS sufficient to IDENTIFY John Doe a/k/a "Abe List", your client and the defendant in the lawsuit captioned *James woods v. John Doe a/k/a "Abe List"*, which is pending in Los Angeles Superior Court, Case No. BC589746:

OBJECTION TO REQUEST FOR PRODUCTION No. 1.:

Non-party Kenneth P. White responds as follows: Non-party objects that the request seeks documents protected by the right to privacy and anonymity. Non-party objects that the request is not reasonably calculated to lead to discoverable evidence for use in the case. Rather, the purpose is to harass Mr. White, the late Mr. Doe's family, and to attack the late Mr. Doe's name. Non-party objects that the request seeks information covered by the attorney-client privilege. Without waiving the first two objections, Non party rests on the latter objection and will not produce documents.

REQUEST FOR PRODUCTION No. 2.:

DOCUMENTS sufficient to IDENTIFY the personal representative of the estate of John Doe a/k/a "Abe List."

OBJECTION TO REQUEST FOR PRODUCTION No. 1.:

Non-party Kenneth P. White responds as follows: Non-party objects that the request seeks documents protected by the right to privacy and anonymity. Non-party objects that the request is not reasonably calculated to lead to discoverable evidence. Rather the purpose is to harass Mr. White, the late Mr. Doe's family, and to attack the late Mr. Doe's name. Non-party objects that the request seeks information covered by the attorney-client privilege.

1 Without waiving the first two objections, Non party rests on the latter objection and will not
2 produce documents.

3 DATED: November 9, 2016

BROWN WHITE & OSBORN LLP

4
5 By 

KENNETH P. WHITE
Attorneys for subpoenaed non-party,
KENNETH P. WHITE

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BROWN WHITE & OSBORN
ATTORNEYS



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 333 South Hope Street, 40th Floor, Los Angeles, California 90071.

On November 9, 2016, I served the following document(s) described as: **NON-PARTY KENNETH P. WHITE'S OBJECTION TO DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Michael E. Weinsten
Lavelly & Singer, P.C.
2049 Century Park East, Ste. 2400
Los Angeles, CA 90067

Tel.: (310) 556-3501
Fax: (310) 556-3615
Attorneys for Plaintiff
James Woods

- BY MAIL:** I deposited such envelope in the mail at 333 South Hope Street, 40th Floor, Los Angeles, California 90071. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 213/613-0550. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.
- BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles, California, I caused each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated below. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 9, 2016, at Los Angeles, California



Letty Perez

4814-8513-2092, v. 1

JOHN H. LAVELY, JR.
MARTIN D. SINGER
BRIAN G. WOLF
LYNDA B. GOLDMAN
MICHAEL D. HOLTZ
PAUL N. BORRELL
MICHAEL E. WEINSTEN
EVAN N. SPIEGEL

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TODD S. EAGAN,
ANDREW B. BRETTLER,
DAVID B. JONELIS
LINDSAY D. MOLNAR,
ZEV F. RABEN,
JONATHAN M. KLEIN

ALLISON S. HART
HENRY L. SELF, III
OF COUNSEL

* ALSO ADMITTED IN NY
* ALSO ADMITTED IN NY AND NJ

November 10, 2016

VIA EMAIL: kwhite@brownwhitelaw.com

Kenneth P. White
Brown White & Osborn LLP
333 S. Hope Street, Suite 4000
Los Angeles, CA 90071

Re: James Woods v. John Doe a/k/a "Abe List", et al.
Our File No. 5802-2

Dear Ken:

I am in receipt of your objections to our Subpoena, and your email suggesting you will be voicing similar objections at the deposition. As you know, your objections are not well founded. Indeed, you previously objected to disclosing your client's name on privacy grounds stating that we first had to first establish a *prima facie* case for defamation. The Court has now held that my client has a probability of prevailing on the merits, and your appeal on that issue has been dismissed. By definition we have established a *prima facie* case for defamation by your client. Nor do any of our requests involve attorney-client communications. We have every right to determine who your client is, whether your client is in fact still living or deceased, and if deceased when it happened, who is administering the estate, etc.

Further, when I called to tell you the types of questions we would be asking, none of which invoke privacy rights or privilege, you refused to indicate one way or another how you would answer. Since you have refused to volunteer this information, we have no choice but to go forward with your deposition. So that there is no confusion down the road, please note that if you refuse to answer under oath questions that do not invoke attorney-client privilege, we will have no choice but to move to compel answers and seek our attorneys' fees and costs for doing so.

Very truly yours,



LINDSAY D. MOLNAR

LDM

cc: Michael Weinsten, Esq.

Kenneth P. White
November 14, 2016

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES WOODS, an individual,
Plaintiff,

vs.

Case No. BC589746

JOHN DOE a/k/a "ABE LIST" and
DOES 2 through 10, inclusive,
Defendants.

VIDEOTAPED DEPOSITION OF KENNETH P. WHITE

Monday, November 14, 2016

11:00 a.m. - 11:59 a.m.

2049 Century Park East, Suite 2400
Los Angeles, California

Reported By:
PAMELA A. STITT
CSR No. 6027

1 APPEARANCES:

2

3 For Plaintiff:

4 LAVELY & SINGER
5 BY: LINDSAY D. MOLNAR
6 ATTORNEY AT LAW
7 2049 Century Park East
8 Suite 2400
9 Los Angeles, California 90067-2906
10 310.556.3501
11 lmolnar@lavelysinger.com

12 For Defendants:

13 BROWN WHITE & OSBORN LLP
14 BY: CALEB MASON
15 ATTORNEY AT LAW
16 333 South Hope Street
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18 Los Angeles, California 90071
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INDEX TO EXAMINATION

WITNESS: KENNETH P. WHITE

EXAMINATION

PAGE

By Ms. Molnar

6

RECESSES

(11:47 a.m. - 11:51 a.m.)
(11:56 a.m. - 11:57 a.m.)

INFORMATION REQUESTED

(None)

UNANSWERED QUESTIONS

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1 the defendant referenced in Exhibit 1 as John Doe a/k/a
2 Abe List?

3 A. Yes. I will confirm that the person named here,
4 the person whose conduct is described here was my client.

5 Q. You say "was." He is no longer your client?

6 A. He is deceased.

7 Q. Okay. What is the legal name of your client?

8 MR. MASON: We are going to object on several
9 grounds that I think Mr. White -- I'm happy to have him
10 articulate -- but they boil down to attorney-client
11 communications, they are privileged, and we believe that
12 the underlying purpose of the question is not reasonably
13 calculated to lead to admissible evidence and it's purpose
14 is to harass, intimidate third parties and/or deceased
15 people, which we do not believe is an appropriate function
16 of the litigation process, but Mr. White is an attorney
17 and I'm happy to let him explain all of that.

18 THE WITNESS: I am going to follow my attorney's
19 admonition and I would only add factually that the core
20 purpose of representation of Mr. Doe was to protect his
21 identity and that is part of the basis of the assertion of
22 the attorney-client privilege.

23 MS. MOLNAR: Okay. Are you aware of any legal
24 authority that supports your position?

25 MR. MASON: Yes.

1 MS. MOLNAR: Do you know any of it off the top of
2 your head?

3 THE WITNESS: No. And as deponent I think it
4 would be work product.

5 BY MS. MOLNAR:

6 Q. So are you still in an attorney-client
7 relationship with your client now that he is deceased?

8 A. I am in an attorney-client relationship with his
9 heir.

10 Q. And is his heir a male or a female?

11 A. Male.

12 Q. What is the name of his heir?

13 MR. MASON: Again, we would object to that
14 question for the same reasons articulated earlier.

15 If Mr. White wants to expand on his reasons, he
16 is free to do so but we are objecting to the question. He
17 is not going to give you a substantive answer as to the
18 name.

19 THE WITNESS: I would only add that the specific
20 reason for the continuing representation of the interest
21 of the late Mr. Doe was to protect his identity and the
22 identity, therefore, of his heirs.

23 BY MS. MOLNAR:

24 Q. So who is your client now?

25 A. I would say that it is the estate of John Doe.

1 A. I don't but I did it in writing.

2 Q. And who informed you that Abe List had passed?

3 MR. MASON: Same objections.

4 THE WITNESS: The person I now am instructed by
5 as the representative of the late Mr. Doe, a family member
6 is the one who contacted me.

7 BY MS. MOLNAR:

8 Q. Would that be Abe List's father?

9 MR. MASON: Same objections.

10 THE WITNESS: I am going to stick with that.

11 BY MS. MOLNAR:

12 Q. You are not going to answer that question?

13 THE WITNESS: Yes, I am going to decline to.

14 BY MS. MOLNAR:

15 Q. So just to be clear, you are not going to give me
16 the name of the personal representative of Abe List's
17 estate?

18 A. That's correct.

19 Q. Were you informed the date that Abe List passed
20 away?

21 MR. MASON: I would go vague as to grammar and
22 also the same objections. Informed of the date or
23 informed on the date?

24 MS. MOLNAR: I can strike that.

25 MR. MASON: Yes. Just add a preposition.

1 BY MS. MOLNAR:

2 Q. When did Mr. Abe List pass away?

3 MR. MASON: That one I am going to interpose the
4 same objections we had previously.

5 THE WITNESS: I do not remember the date;
6 however, if I did, I would stand by the objections as
7 articulated by counsel.

8 BY MS. MOLNAR:

9 Q. I believe you previously had informed us that it
10 was the month of August; is that correct?

11 A. I believe that in settlement communications,
12 specifically denominated as such, I made a reference to
13 that general time range, yes. Outside of settlement
14 communications I would decline to answer.

15 Q. Where did Mr. Doe pass away?

16 MR. MASON: Same objections.

17 THE WITNESS: I am going to decline to answer
18 because I think it would reveal confidential
19 communications.

20 BY MS. MOLNAR:

21 Q. And just to be clear for the record when I refer
22 to Mr. Doe and Abe List, it's interchangeably, I am
23 referring to your client.

24 A. I understand.

25 Q. Did you ever view a death certificate for Abe

1 List?

2 MR. MASON: Same objections.

3 THE WITNESS: Did I ever view a death
4 certificate?

5 BY MS. MOLNAR:

6 Q. Yes. Did you see one? Were you provided with
7 one?

8 MR. MASON: So, right, same objections and I
9 think also the question is vague. Can you --

10 MS. MOLNAR: I can rephrase.

11 MR. MASON: Yeah.

12 BY MS. MOLNAR:

13 Q. Have you seen Abe List's death certificate?

14 A. I have not reviewed a death certificate of Abe
15 List. I have not read one.

16 Q. Have you asked for one?

17 A. I didn't --

18 MR. MASON: Well, yeah, as to that question again
19 as phrased I would go with vague, particularly as to the
20 object of the verb "asked." Depending on how it was
21 phrased that could reveal attorney-client communications
22 so I think as phrased I would say same objections as
23 previous.

24 THE WITNESS: Now that I think about it, I think
25 I have to decline to answer that on the basis of

1 attorney-client communications.

2 MR. MASON: Generally what we are going for here
3 is -- the position that we are taking and I understand
4 that you guys have a different view of the legal merits of
5 this position and we will litigate that in the appropriate
6 forum, but Mr. White is declining to answer questions that
7 ask him to reveal steps that he took or legal
8 communications that he had that would tend to reveal the
9 identity of John Doe in this case. I understand that you
10 guys want to know the name and we don't want to tell it to
11 you.

12 MS. MOLNAR: Right. And that we obviously
13 disagree with your position.

14 MR. MASON: Exactly.

15 MS. MOLNAR: Okay.

16 Q. How old was Abe List when he passed away?

17 MR. MASON: Same objections.

18 THE WITNESS: I only know that fact through
19 attorney-client communications, so on that ground I
20 decline to answer.

21 And for the record I don't remember the exact
22 number anyway.

23 BY MS. MOLNAR:

24 Q. What was the cause of Abe List's death?

25 MR. MASON: Same objections. Also foundation,

1 A. He did. And to my knowledge his identity was
2 withheld from her.

3 Q. Okay. Was Abe List married?

4 MR. MASON: Same objections.

5 THE WITNESS: I only know the answer to that
6 question based on an attorney-client communication and on
7 that basis I think I have to refuse to answer.

8 Let me think about that for a second. I think
9 that during a discussion with you which -- I will confirm
10 that in a discussion that I would characterize as a
11 settlement discussion with you, not a successful one, but
12 a settlement overture I told you that he had not been
13 married at any time relevant to this case. And I will
14 confirm that I did that in a settlement context. I
15 believe that would be covered by 1152. That aside I
16 cannot reveal anything more than that.

17 MS. MOLNAR: Okay. I am going to mark this as, I
18 believe, Exhibit 2.

19 (Deposition Exhibit 2 was marked.)

20 BY MS. MOLNAR:

21 Q. Mr. White, can you describe to me what we have
22 just marked as Exhibit 2?

23 MR. MASON: For the record has there been --
24 forgive my ignorance, has there been discovery in this
25 case? Should I be looking for a Bates stamp or anything?

1 interpose --

2 MS. MOLNAR: But I haven't asked yet.

3 MR. MASON: I understand that. But rather than
4 speculate on the record, I mean, if you learned the fact
5 relevant to the question through the attorney-client --
6 through attorney-client communications or attorney
7 work-product, then that would fall within the same
8 objections that we have been interposing throughout the
9 case. So with that caution we can listen attentively for
10 the next question.

11 THE WITNESS: Okay.

12 BY MS. MOLNAR:

13 Q. Is that true, does Mr. -- did Mr. Abe List live
14 in Los Angeles, California?

15 A. On that one part of the profile I do not remember
16 a nonprivileged source of information or a place where it
17 has been disclosed so I am unable to answer that part of
18 the profile -- I'm unable to answer based on the
19 attorney-client privilege. I do know the answer. I'm
20 unable to disclose it.

21 Q. Okay. And outside the profile did Abe List live
22 in Los Angeles, California, when he passed away?

23 MR. MASON: Same objections.

24 THE WITNESS: Right. My same objection. I know
25 the answer to the question, but I only know as to that

1 particular one from an attorney-client source and that is
2 not one where I think it has been revealed elsewhere by me
3 or by the client.

4 BY MS. MOLNAR:

5 Q. Okay. Did Abe List own a house in Los Angeles at
6 the time of his death?

7 MR. MASON: Same objections. Also foundation,
8 calls for speculation.

9 THE WITNESS: This one -- Let me lay the
10 foundation for why I think I can answer it. At the very
11 beginning of the case I informed lead counsel for
12 Mr. Woods that the profile of Mr. List was completely
13 fictitious and that -- I remember saying a few things that
14 weren't true, one of which was being that he owned any
15 property. Given that deliberate disclosure in the past I
16 think I'm able to answer no, he did not.

17 BY MS. MOLNAR:

18 Q. Okay. And going back on Exhibit 2 it also
19 referenced that Abe List has a link to Harvard, which
20 would imply that he went to Harvard at some point.

21 Did he graduate from Harvard?

22 MR. MASON: Same -- Same objections.

23 THE WITNESS: Without waiving -- If I knew the
24 answer to the question, I would refuse to answer on the
25 basis of the attorney-client privilege. I do not

1 MR. MASON: I was making an objection, facial
2 expression. I would go with our same objections and also
3 vague and foundation, it calls for speculation --

4 THE WITNESS: Let me think about that.

5 MR. MASON: -- asking about tweet history.

6 THE WITNESS: I'm sorry. I'm going to withdraw
7 my answer and say that I think that asking me that invades
8 attorney work-product. You are asking me what I did in
9 the course of investigating the case.

10 MR. MASON: That's what it sounds like to me.

11 THE WITNESS: And on that ground I will decline
12 to answer.

13 BY MS. MOLNAR:

14 Q. What was Abe List's residential address when he
15 passed away?

16 MR. MASON: Same objections.

17 THE WITNESS: I will -- I will say that I do not
18 remember the address but without -- I will say that
19 without waiving the objection, which I would invoke if I
20 knew the answer.

21 BY MS. MOLNAR:

22 Q. Did you e-mail Abe List?

23 MR. MASON: Same objections. Same objections.

24 THE WITNESS: I think I have to -- as to the
25 methodology of contact I think I have to assert the

1 accounts?

2 MR. MASON: Same objections.

3 THE WITNESS: When you say "any other Twitter
4 accounts," what are you including and excluding?

5 BY MS. MOLNAR:

6 Q. Other than the handle "Abelisted" are there any
7 other Twitter accounts under other handles that were owned
8 by or managed by Abe List?

9 MR. MASON: Same objections. Also foundation,
10 calls for speculation.

11 THE WITNESS: I have to assert the
12 attorney-client privilege because the only way I know the
13 answer to that question is by attorney-client
14 communication.

15 BY MS. MOLNAR:

16 Q. Did Abe List have a website?

17 MR. MASON: Same objections. Also foundation,
18 also calls for speculation.

19 THE WITNESS: If I knew the answer to the
20 question, I would need to assert the attorney-client
21 privilege and decline to answer it because the only way I
22 would know would be by attorney-client communications;
23 however, I do not know the answer to the question.

24 MS. MOLNAR: Could we take a five-minute break?

25 MR. MASON: You bet.

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)
3

4 I, PAMELA A. STITT, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in
7 the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing but
9 the truth;

10 That said proceedings were taken before me at
11 the time and place therein set forth and were taken down
12 by me in shorthand and thereafter transcribed into
13 typewriting under my direction and supervision;

14 I further certify that I am neither counsel
15 for, nor related to, any party to said proceedings, not
16 in anywise interested in the outcome thereof.

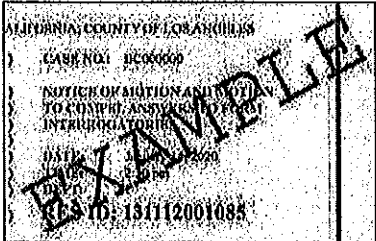
17 In witness whereof, I have hereunto subscribed
18 my name.

19
20 Dated: November 16, 2016

21 

22 PAMELA A. STITT
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Case Number: BC589746
Case Title: JAMES WOODS VS JOHN DOE ET AL
Party: WOODS JAMES (Plaintiff/Petitioner)
Courthouse: Stanley Mosk Courthouse
Department: 45
Reservation Type: Motion to Compel Discovery (not "Further Discovery")
Date: 12/22/2016
Time: 08:35 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: Party asserts first paper was previously paid.

Description	Fee
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On the date indicated below, I served the foregoing document described as:

NOTICE OF MOTION AND MOTION FOR: (1) AN ORDER COMPELLING NON-PARTY KENNETH P. WHITE TO ANSWER DEPOSITION QUESTIONS AND PRODUCE DOCUMENTS; AND (2) AN ORDER FOR SANCTIONS AGAINST NON-PARTY KENNETH P. WHITE IN THE AMOUNT OF \$9,040.55

on the interested parties in this action by placing the original document OR a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Kenneth P. White, Esq. Brown White & Osborn LLP 333 S. Hope Street, 40 th Floor Los Angeles, CA 90071-1406 Email: kwhite@brownwhitelaw.com Tel: (213) 613-9446	Attorneys for John Doe (@abelisted)
--	-------------------------------------

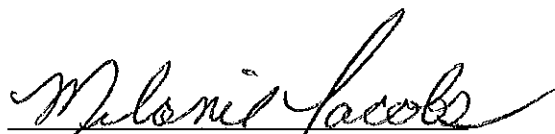
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 Melanie Jacobs