

MARK BEALE

Plaintiff

vs.

JOHN DOE

Defendant

CIVIL ACTION COVERSHEET

2017 - CP - 10 - 1097

(Please Print)

Submitted By: Steven M. Abrams
Address: 1154 Holly Bend Drive
Mount Pleasant, SC 29466

SC Bar #: 76230
Telephone #: (843) 216-1100
Fax #: (843) 278-5107
Other:
E-mail: steve@abramscyberlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650)

FILED
2017 MAR -3 AM 11:22
JULIE JAMSTRONG
CLERK OF COURT

Submitting Party Signature:

[Handwritten Signature]

Date: March 3, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MARK BEALE,)
)
Plaintiff,)

v.)

JOHN DOE,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 17-CP-10-1697

SUMMONS

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

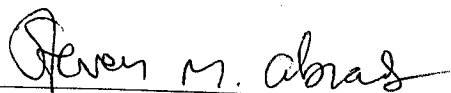
2017 MAR -3 AM 11:22

FILED

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Mt. Pleasant, South Carolina



Steven M. Abrams
SC Bar No.: 76230
1154 Holly Bend Drive
Mt. Pleasant, SC 29466
(843) 216-1100

March 2, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
MARK BEALE,)
) Plaintiff,)
)
v.)
)
JOHN DOE,)
) Defendant.)
)
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IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:17-CP-10-1097

COMPLAINT
JULIE J. ARMSTRONG
CLERK OF COURT
2017 MAR -3 AM 11:22
FILED

COMPLAINT FOR LEGAL, INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, Mark Beale for his Complaint alleges as follows:

1. Plaintiff Mark Beale brings this action pursuant the tort of defamation to secure temporary, preliminary, and permanent injunctive relief, and other legal and equitable relief for Defendant's defamatory acts or practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter because Plaintiff is a citizen of Charleston County, and the acts which gave rise to this lawsuit also occurred in Charleston County.

3. Venue in the Court of Common Pleas in Charleston County is proper.

PARTIES

4. Plaintiff Mark Beale (“Dr. Beale”) is a medical doctor specializing in the practice of Psychiatry from his office at 669 St Andrews Blvd, Charleston, South Carolina 29407. Dr. Beale is strictly a private figure for purposes of defamation law.

5. At all times material to this Complaint, acting alone or in concert with others, Defendant John Doe (“Defendant”) has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint.

DEFINITIONS

6. “Spoofing” means the practice of disguising an e-mail to make the e-mail appear to come from an address or individual from which it actually did not originate. There are two common means of spoofing email. One means of spoofing involves placing in the “From” or “Reply-to” lines in e-mails an e-mail address other than the actual sender’s address without the consent or authorization of the user of the e-mail address whose address is spoofed. Spoofing can also be accomplished by setting up unauthorized email accounts under the name of an individual that will fraudulently be seen as the originator of the emails, and/or choosing email addresses that are so similar to the actual email address used by the apparent originator of the email so as to create the impression that the emails came from that individual.

DEFENDANT’S SPOOFING AND DEFAMATORY ACTIVITIES

7. Defendant, or agents acting on his behalf, set up a Google account using the subscriber name "Richard Hill."

8. On or about October 20, 2016, Defendant under the assumed name of "Richard Hill" posted a Google review of Dr. Beale and his Charleston Psychiatric Associates in which he gave the most negative review possible of only one out of five stars. This extremely negative review seems to be for no other purpose than to defame and damage Dr. Beale in his profession.

9. Upon information and belief, Dr. Beale has never treated any patient named "Richard Hill", thus the negative Google review is implicitly false. Defendant being a non-patient would have no knowledge upon which to base a truthful review.

10. Dr. Beale has received many legitimate reviews on other internet sites in which he is consistently rated very highly by his patients.

11. Defendant has in the five months since his review of Dr. Beale posted two other non-related reviews on Google. Both of these reviews were for businesses in the Newport News Virginia area.

FIRST CAUSE OF ACTION FOR
DEFAMATION

12. Each allegation in paragraphs 7 to 11 is repeated herein as if first stated.

13. The Google review posted by Defendant which gave rise to this lawsuit was defamatory because it was posted in an attempt to injure Dr. Beale in his "business or

occupation.”

14. The negative Google review that gave rise to this lawsuit was published with actual or implied malice. There was no text published with the one star rating, thus there was no explanation other than malice provided by Defendant to justify the extremely negative rating or to show there was a legitimate reason for the highly negative review.

15. The one star review was patently false because the reviewer was not a patient of Dr. Beale. Defendant therefore knew, or should have known, that he had no truthful experience as a patient of Dr. Beale, and no legitimate basis for rating Dr. Beale.

16. According to Google the negative review that gave rise to this lawsuit was published by Defendant under the pen name “Richard Hill”.

17. The false and negative review that gave rise to this lawsuit was published listing Plaintiff and his business explicitly as “Charleston Psychiatric Associates: Beale Mark D MD.”

18. Defendant’s libelous conduct in disparaging Plaintiff’s professional reputation by publication of a phony and negative review of his professional services constitutes defamation *per se* and is actionable *per se*. In addition to legally presumed damages and special damages resulting from the defamatory conduct of Defendant, the false and negative review of Dr. Beale was published intentionally and recklessly, specifically calculated to cause emotional distress to Plaintiff, which in fact it did.

THIS COURT’S POWER TO GRANT RELIEF

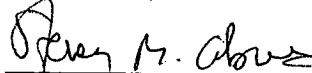
23. This court has the equitable powers to grant injunctive relief from the continuing publication of the defamatory material by ordering the removal of the defamatory review from all websites and search engines.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court pursuant to its own equitable and legal powers:

1. Enter an order enjoining Defendant preliminarily and permanently from engaging in the publication of untruthful professional reviews of Plaintiff, and granting Plaintiff actual and punitive damages for Defendant's defamatory statements published intentionally and recklessly with malice.
2. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,



Steven M. Abrams
SC Bar No. 76230
1154 Holly Bend Drive
Mt. Pleasant, SC 29466
(843) 216-1100
Attorney for the Plaintiffs

Dated: *March 3, 2017*

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

MARK BEALE,)

Plaintiff,)

v.)

JOHN DOE,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:17-CP-10-1097

AMENDED SUMMONS

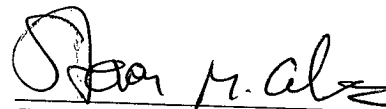
2017 MAR 24 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY KDK

FILED

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Mt. Pleasant, South Carolina



Steven M. Abrams
SC Bar No.: 76230
1154 Holly Bend Drive
Mt. Pleasant, SC 29466
(843) 216-1100

March 24, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

MARK BEALE,)

Plaintiff,)

v.)

JOHN DOE,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:17-CP-10-1097

AMENDED COMPLAINT

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2017 MAR 24 PM 3:30

FILED

COMPLAINT FOR LEGAL, INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, Mark Beale for his Amended Complaint alleges as follows:

1. Plaintiff Mark Beale brings this action pursuant the tort of defamation to secure temporary, preliminary, and permanent injunctive relief, and other legal and equitable relief for Defendant's defamatory acts or practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter because Plaintiff is a citizen of Charleston County, and the acts which gave rise to this lawsuit also occurred in Charleston County.

3. Venue in the Court of Common Pleas in Charleston County is proper.

PARTIES

4. Plaintiff Mark Beale (“Dr. Beale”) is a medical doctor specializing in the practice of Psychiatry from his office at 669 St Andrews Blvd, Charleston, South Carolina 29407. Dr. Beale is strictly a private figure for purposes of defamation law.

5. At all times material to this Complaint, acting alone or in concert with others, Defendant John Doe (“Defendant”) has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint.

DEFINITIONS

6. “Spoofing” means the practice of disguising an e-mail to make the e-mail appear to come from an address or individual from which it actually did not originate. There are two common means of spoofing email. One means of spoofing involves placing in the “From” or “Reply-to” lines in e-mails an e-mail address other than the actual sender’s address without the consent or authorization of the user of the e-mail address whose address is spoofed. Spoofing can also be accomplished by setting up unauthorized email accounts under the name of an individual that will fraudulently be seen as the originator of the emails, and/or choosing email addresses that are so similar to the actual email address used by the apparent originator of the email so as to create the impression that the emails came from that individual.

DEFENDANT’S SPOOFING AND DEFAMATORY ACTIVITIES

7. Defendant, or agents acting on his behalf, set up a Google account using the subscriber name "Richard Hill."
8. On or about October 20, 2016, Defendant under the assumed name of "Richard Hill" posted a Google review of Dr. Beale and his Charleston Psychiatric Associates in which he gave the most negative review possible of only one out of five stars. This extremely negative review seems to be for no other purpose than to defame and damage Dr. Beale in his profession.
9. Upon information and belief, Dr. Beale has never treated any patient named "Richard Hill", thus the negative Google review is implicitly false. Defendant being a non-patient would have no knowledge upon which to base a truthful review.
10. Dr. Beale has received many legitimate reviews on other internet sites in which he is consistently rated very highly by his patients.
11. Defendant likely resides in or near New Port News, Virginia. Defendant has in the five months since his review of Dr. Beale posted two other non-related reviews on Google. Both of these reviews were for businesses in the Newport News, Virginia area.
12. Dr. Beale's mother resides in New Port News, Virginia, and is a retired criminal court judge. She has expressed concern that the poster of this false and defamatory review may be someone known to her.
13. Upon information and belief, Dr. Beale has no current or former patients who reside in the New Port News, Virginia area. He is certain of this because he has not gained or lost patients in over a year, and none of his former patients have moved to this area of Virginia. Also Dr. Beale has never practiced in Virginia, nor has he ever been

licensed there.

FIRST CAUSE OF ACTION FOR
DEFAMATION

14. Each allegation in paragraphs 7 to 13 is repeated herein as if first stated.
15. The Google review posted by Defendant which gave rise to this lawsuit was defamatory because it was posted in an attempt to injure Dr. Beale in his “business or occupation.”
16. The negative Google review that gave rise to this lawsuit was published with actual or implied malice. There was no text published with the one star rating, thus there was no explanation other than malice provided by Defendant to justify the extremely negative rating or to show there was a legitimate reason for the highly negative review.
17. The one star review was patently false because the reviewer was not a patient of Dr. Beale. Defendant therefore knew, or should have known, that he had no truthful experience as a patient of Dr. Beale, and no legitimate basis for rating Dr. Beale.
18. According to Google the negative review that gave rise to this lawsuit was published by Defendant under what Google contends is a legitimate pen name “Richard Hill”. Since Dr. Beale has no current or former patients in the area of Virginia where Defendant likely resides, based upon Defendant’s other recent reviews on Google, it is not possible that any person residing in or around New Port News, Virginia, regardless of what name they go by, has been or is a patient of Dr. Beale, the review posted to Google is fictitious and defamatory.

19. The false and defamatory review that gave rise to this lawsuit was published listing Plaintiff and his business explicitly as “Charleston Psychiatric Associates: Beale Mark D MD.”

20. Defendant’s libelous conduct in disparaging Plaintiff’s professional reputation by publication of a phony negative review of his professional services constitutes defamation *per se* and is actionable *per se*. In addition to legally presumed damages and special damages resulting from the defamatory conduct of Defendant, the false and negative review of Dr. Beale was published intentionally and recklessly, specifically calculated to cause emotional distress to Plaintiff, which in fact it did.

THIS COURT’S POWER TO GRANT RELIEF

21. This court has the equitable powers to grant injunctive relief from the continuing publication of the defamatory material by ordering the removal of the defamatory review from all websites and search engines.

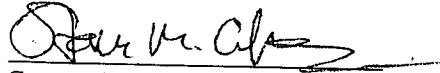
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court pursuant to its own equitable and legal powers:

1. Enter an order enjoining Defendant preliminarily and permanently from engaging in the publication of untruthful professional reviews of Plaintiff, and granting Plaintiff actual and punitive damages for Defendant’s defamatory statements published intentionally and recklessly with malice.

2. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,



Steven M. Abrams
SC Bar No. 76230
1154 Holly Bend Drive
Mt. Pleasant, SC 29466
(843) 216-1100
Attorney for the Plaintiffs

Dated: *March 24, 2017*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 MARK BEALE)
 _____)
 Plaintiff,)
 vs.)
)
 JOHN DOE ,)
 _____)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-10-1097

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Steven M. Abrams, Bar No. 76230 Address: 1154 Holly Bend Drive, Mt Pleasant, SC 29466 Phone: 843-216-1100 Fax 843-278-5107 E-mail: steve@abramscyberlaw.com Other: _____	Defendant's Attorney: Jim Griffin & Maggie Fox, Bar No. 9995 & 76228 Address: 1116 Blanding Street, Columbia, SC 29201 PO Box 999 (29202) Phone: 803-744-0800 Fax: 803-744-0805 E-mail: JGriffin@griffindavislaw.com & MFox@griffindavislaw.com Other:
--	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

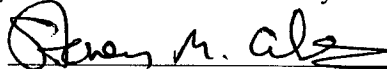
SECTION I: Hearing Information

Nature of Motion: Motion to Compel
 Estimated Time Needed: 1 Hour Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

6/30/2017

Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

MARK BEALE,)
Plaintiff,)

v.)

JOHN DOE,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINETH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-1097

PLAINTIFF'S NOTICE OF MOTION,
MOTION TO COMPEL AND
MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO COMPEL

FILED
2017 JUL -3 PM 12:17
JULIE J. ARYSTORONG
CLERK OF COURT
BY _____

TO: GOOGLE INC. via its local counsel, Jim Griffin and Maggie Fox, Griffin Davis, 1116 Blanding Street, Columbia, SC 29201.

PLEASE TAKE NOTICE that the Plaintiff, through his undersigned attorney, will move before the Presiding Judge for the Court of Common Pleas for Charleston County, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order requiring Google Inc. to fully comply with Plaintiff's Subpoena by providing identifying information of its subscriber, Defendant John Doe, also known by the alias of "Richard Hill", who using Google's online services posted defamatory material which caused damage to Plaintiff, and in support of this motion, the Plaintiff would show unto this Honorable Court as follows:

FACTS AND ARGUMENT

On or about March 28, 2017, the Plaintiff by his process server, Davina Hartigan, personally served upon Google Inc. at its place of business at 1669 Garrott Avenue, Moncks Corner, Berkeley County, South Carolina, the Plaintiff's Subpoena, in writing and pursuant to Rule 45 of the South Carolina Rules of Civil Procedure. The same are attached hereto and specifically incorporated by reference. **Exhibit "A", Plaintiff's Subpoena Duces Tecum to Google Inc.** The same subpoena was served upon Google previously on March 6, 2017, via its South Carolina Registered Agent, Corporation Service Company at 1703 Laurel Street, Columbia, South Carolina. (Return card part of Exhibit A.)

Despite repeated requests by the Plaintiff, Google Inc. has refused and continues to refuse to provide responses to Plaintiff's Subpoena Duces Tecum propounded upon it in the course of discovery, in particular, Google has refused to 1) provide the email or IP address used to post the defamatory review of Plaintiff and his business, and 2) to provide the true name and address of "Richard Hill", and any email or IP addresses associated with "Richard Hill". Further, Google has expressly refused to preserve the evidence requested in Plaintiff's subpoena.

Google responded three times in writing citing various objections to providing the information requested in Plaintiff's subpoena. In late March 2017, Google hired outside counsel in the firm of Perkins Coie LLP in Washington DC. That firm sent two letters dated March 21, 2017 and April 7, 2017, in which they voiced many of the same objections voiced by Google's legal department regarding their belief that California law

should apply over the Subpoena, and raising First Amendment arguments designed to protect anonymous speech, **Exhibit B, Google's objections to Plaintiff's Subpoena.**

The first response was dated March 15, 2017, and was from Google's legal department. In this letter from Mika Yukimura, Legal Investigations Support, Google acknowledges that Plaintiff provided a URL in the subpoena to Google that specifically identifies the Google Maps posting that Plaintiff contends is defamatory. Google also acknowledges that this posting includes a pseudonym of the poster, "Richard Hill" and a Google internal reference number of the posting, "116665495737246396362". Yet, despite this pinpoint specific identification of the material Plaintiff was seeking, Google claimed that it had been provided with "Insufficient Information."

Google was personally served at its South Carolina "Corporate Office", a \$1.2 Billion Dollar Data Center in Moncks Corner, South Carolina, and therefore jurisdiction and venue are proper in South Carolina. Plaintiff argues the *in rem* and/or *quasi in rem* jurisdiction conveyed by service at Google's data center satisfies Plaintiff's legal obligation to compel access to the specific data requested in Plaintiff's subpoena.

Plaintiff initially served Google with his subpoena via its registered agent in Columbia, South Carolina on or about March 6, 2017. Google objected that it had not been properly served per California law, "Cal. Civ. Proc. Code 2029.400" and, as more fully explained below, that service on its registered agent did not confer subpoena power over an out of state third party witness. Plaintiff's remedy to this objection was to personally serve Google on March 28th, 2017 at its corporate data center in Moncks

Corner, South Carolina. A search on Google for “google data center moncks corner south carolina” returned “Google Data Center ... 33 Google reviews ...Corporate Office...Address: 1669 Garrott Ave, Moncks Corner, SC 29461.” Google was served personally at a location that Google self-identified as a “corporate office.” In its April 7, 2017, letter Google’s outside counsel raises objections on the basis of lack of subpoena power over an out of state third party witness based solely on service of a registered agent within the forum state, even where, as in this instant case, the third-party conducts business within the forum state. (See April 7, 2017 letter from Hayley L. Berlin in Appendix B.) Google concedes that because it has a plant in South Carolina therefore personal jurisdiction exists, but contends that alone doesn’t require it to answer a subpoena served on its registered agent within the state. Ms. Berlin cites ten cases to establish that merely conducting business within a forum state and/or having a registered agent within the forum state doesn’t confer subpoena power over an out of state third party. However, the facts in this instant case are completely distinguished from each and every case cited by Ms. Berlin because in this case Plaintiff personally served Google not only at its registered agent, but also upon supervisory personnel at its corporate headquarters within the State of South Carolina. **Plaintiff argues that because of service upon supervisory personnel at Google’s data center in South Carolina, he has *quasi in rem* jurisdiction over Google and *in rem* jurisdiction over the data contained at the data center where service was made and therefore subpoena power over any data contained within Google’s servers located in South Carolina, and any data that can be accessed over Google’s network from its data center in South Carolina. Upon information and belief, the data requested in Plaintiff’s subpoena either**

resides on the servers located in Moncks Corner, South Carolina or can be accessed from Google's network within the data center in Moncks Corner, South Carolina.

“In suits strictly *in rem*, that is, where the property itself, conceived of as having done the wrong or as having been the instrument of its commission, is being proceeded against; and in suits *quasi in rem*, that is, where the suit is against the person in respect to the res—where, for example, it has for its object partition or the sale or other disposition of defendant's property within the jurisdiction, to satisfy plaintiff's demand by enforcing a lien upon it—personal service within the jurisdiction or appearance is not necessary. The decree can, however, extend only to the property in controversy. But there is this distinction between these two classes of proceedings: In the former, public citation to the world is all that is necessary and the decree binds everybody; in the latter, defendant's interest is alone sought to be affected; he must be cited to appear, and the judgment therein is conclusive only between the parties.” *Freeman v. Alderson*, 119 U. S. 185 [7 Sup. Ct. 165, 30 L. Bd. 372]

The Federal Stored Communications Act Allows Non-Government Entities to Obtain Subscriber Information by Subpoena.

Next Google objected based on a series of federal statutes and related cases referencing the federal Stored Communications Act. “Google objects on the grounds that Section 2702(a) of the federal Stored Communications Act (“SCA”) prohibits Google from disclosing the content of electronic communications or content stored on behalf of the user pursuant to a subpoena.” This is irrelevant boilerplate since Plaintiff’s subpoena seeks no communications content be disclosed. Additionally, the federal Stored Communications Act specifically allows for a non-government entity to obtain subscriber information by sending a subpoena, as was the case with Plaintiff’s subpoena to Google.

Finally, Google lists five enumerated objections.

“1. Google objects to the Subpoena to the extent it seeks to impose an undue burden on a disinterested non-party. Google further objects to the Subpoena to the extent it seeks information already in the party’s possession or available to a party from some other source (including public sources) this is more

convenient, less burdensome or less expensive. Google objects to the Subpoena to the extent it seeks electronically stored information that is not reasonably accessible to Google.”

The very limited information sought in the Plaintiff’s subpoena is specifically crafted to be records easily obtained by Google and impossible to obtain from any other source, and to be relevant and necessary for Plaintiff to identify the defendant who posted the defamatory material that is the basis for this lawsuit. **Google is the only possible source of this information.**

“2. Google objects to the Subpoena to the extent it seeks information that is not proportionate to the needs of the case, not relevant to any party’s claims or defenses, or not reasonably calculated to lead to the discovery of admissible evidence.”

The information sought in Plaintiff’s subpoena is the identification of the tortfeasor defendant or information likely to lead to the identification of the tortfeasor defendant. As such, it is proportionate and directly relevant to Plaintiff’s case.

The Information Sought by the Plaintiff is Relevant.

The information sought by the Plaintiff in Plaintiff’s Subpoena is relevant. “In South Carolina, the scope of discovery is very broad and an ‘objection on relevance grounds is likely to limit *only the most excessive discovery request.*” *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (S.C.App. 1997), quoting, J. Flanagan, *South Carolina Civil Procedure* 216 (2d ed.1996). (*emphasis added*). “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE.

The Information Sought by Plaintiff will likely Lead to Admissible Evidence.

Admissibility of evidence is a matter for determination by the court and is squarely within the trial court's discretion. *R & G Const., Inc. v. Lowcountry Regional Transp. Authority*, 343 S.C. 424, 540 S.E.2d 113, (S.C.App. 2000), *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994); *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct.App.2000). Likewise, the trial court determines, in its discretion, the relevancy of any particular evidentiary item. *Pike v. South Carolina Dept. of Transp*, 332 S.C. 605, 506 S.E.2d 516, (S.C.App. 1998); *Horry County v. Laychur*, 315 S.C. 364, 369, 434 S.E.2d 259, 262 (1993). These discretionary decisions, "... will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant." *Baber v. Greenville County*, 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997).

Indeed, it is the penultimate purpose of discovery to assist the parties in learning the facts available to both sides in order to determine the truth of a matter. Furthermore, the information sought by the Plaintiff, or its substantial equivalent, cannot be reasonably obtained without undue hardship, or in fact at all, without the cooperation of Google who solely is in possession of it. Without the information, available to Google requested in the Subpoena, Plaintiff will be severely prejudiced in preparing his case to the extent that going forward with this case will be impossible.

Google's Claim of Overly Broad and Unduly Burdensome Subpoena is False

"3. Google objects to the Subpoena to the extent it specifies a date of production that is unreasonable and unduly burdensome, including because it may not afford Google time to provide sufficient notice to the user."

Plaintiff's subpoena is limited to material that relates to this case. As such this subpoena was neither overly broad nor unduly burdensome. Plaintiff requested material in the possession of Google that relates to this instant case and nothing more, and that is readily accessible to Google.

Google was given ample time to notify its subscriber and to respond to the

Subpoena.

Plaintiff's subpoena gave Google at least 30 days to respond, and at this point it has had over 90 days to respond. This is much longer than the period required by statute, and would have given Google ample time to notify its subscriber before responding to the subpoena.

Plaintiff's Subpoena was limited in scope and specific to one posting by one Google subscriber.

“4. Google objects to the Subpoena (including but not limited to requests for “All documents, server logs, records, and data relating in any way to the review and “any email addresses or IP addresses that may be related in any way to the review” and “any email addresses of IP addresses that may be associated with ‘Richard Hill’”) because it is vague, ambiguous, unlimited in time or scope, or fails to identify the information sought with reasonable particularity. ... “

On its face, there is nothing “vague, ambiguous, or unlimited in time or scope” in a request for data identifying the poster of a single anonymous review of Plaintiff's business on Google Maps. Upon information and belief, and from previous experience, Google maintains server logs listing the IP addresses associated with every posting on Google and logfiles documenting the IP addresses used when signing up for a Google account. These are readily obtainable for at least 180 days after the posting event.

Google was put on notice to preserve this data within the 180-day period after this review of Plaintiff was posted.

Google has expressly refused to preserve information requested in Plaintiff's

Subpoena.

“... Accordingly, Google further objects to the Subpoena to the extent it purports to require Google to preserve any information in response to your Subpoena. Google is willing to meet and confer to discuss any preservation request.”

If Google, as it alludes in its reply, has not preserved this critical data in accordance with Plaintiff's timely request, then Plaintiff believes he is entitled to discovery sanctions for willful spoliation of evidence, and intends to ask this honorable Court to award sanctions.

Google has raised various requirements under California Law and First

Amendment jurisprudence setting forth prerequisite contact requirements for

Plaintiff and at the same time refusing to provide Plaintiff with a means of

providing said contacts.

“5. Google objects to the Subpoena to the extent it seeks to impose obligations on Google beyond what is permissible under applicable law.”

Courts across the Country have recognized a First Amendment right to anonymous free speech. This right to anonymous free speech has been extended to the Internet. This right is not absolute. When it can be shown under various testing schemes devised by the courts that the speech is defamatory then Plaintiffs can obtain the true identity of the authors of defamatory material so they can proceed in defamation suits against these tortfeasors.

In that the Internet provides a virtually unlimited, inexpensive, and almost immediate means of communication with tens, if not hundreds, of millions of people, the dangers of its misuse cannot be ignored. The protection of the right to communicate anonymously must be balanced against the need to assure that those persons who choose to abuse the opportunities presented by this medium can be made to answer for such transgressions. Those who suffer damages as a result of tortious or other actionable communications on the Internet should be able to seek appropriate redress by preventing the wrongdoers from hiding behind an illusory shield of purported First Amendment rights. *In re Subpoena Duces Tecum to America Online, Inc.*, 2000 WL 1210372 at *6, (Va. Cir. Ct.2000).

Google has cited in its attached correspondence examples of tests used in California and other jurisdictions across the county used to determine when an anonymous speaker can be identified. In Ms. Berlin's April 7, 2017, letter she cited a California case in which a preliminary requirement was imposed upon the party wishing to unmask the anonymous poster, a good faith attempt to notify the anonymous party of the lawsuit and the request for their identity. *Krinsky v. Doe*, 72 Cal. Rptr. 3d 231,239, 244-46 (Cal. Ct. App. 2008). In the instant case this requirement would impose an impossible burden upon the Plaintiff since defendant's identity is known exclusively by Google who has steadfast refused to give Plaintiff any means of identifying or contacting defendant.

The Plaintiff in this instant case resides in Charleston, South Carolina. The defendant likely resides in or around Newport News, Virginia. There does not appear to be an established test in South Carolina to unmask the author of an anonymous defamatory Internet posting. The only similar case in South Carolina that Plaintiff's counsel could find involved a political campaign website alleged to contain defamatory material, but there was no issue of anonymity as in the instant case. *George v. Fabri*, 548 S.E.2d 868, 345 S.C. 440 (S.C., 2001). Also in *George v. Fabri* the alleged defamatory

speech was political speech, in the instant case we are dealing with commercial speech, which is totally different. Depending on its purpose commercial speech is generally afforded much less rigorous First Amendment protections than non-commercial speech. (See Victor Brudney, *The First Amendment and Commercial Speech*, 53 B.C.L. Rev. 1153 (2012), <http://lawdigitalcommons.bc.edu/bclr/vol53/iss4/2>). In the same manner, because of the risk that a business could defame its competition and then hide behind a right to anonymous free speech courts have recognized a diminished right to anonymity in cases of purely commercial speech.

Both the plaintiff and defendant in the instant case reside within the 4th federal Circuit, therefore Plaintiff would argue that finding an appropriate test from a state within or nearby the 4th Circuit would be more appropriate. In two relatively recent cases, courts facing a nearly identical situation to the instant case, wrestled with balancing defendants' rights to anonymous speech over the Internet with Plaintiffs' interests in unmasking defendants in order to pursue a defamation action. *Cahill v. John Doe-Number One*, 879 A.2d 943 (Del. Super., 2005); *In re Subpoena Duces Tecum to America Online, Inc.*, 2000 WL 1210372, (Va. Cir. Ct.2000) (hereinafter "*AOL*"). In each case the action could not be pursued without the identity of the anonymous defendant. In each case cited, the Internet Service Provider, as Google in this instant case, was the only possible source of the identity of the defendant. Plaintiff would argue that the fact pattern in *AOL* is most similar to the instant case, and Virginia is a 4th Circuit state like South Carolina. The Virginia court in *AOL* was dealing with commercial speech as is the case in the instant case. The court in *AOL* applied a three-part test determining whether the subpoena would be enforced. First, the court must be

convinced by the pleadings and evidence submitted that "the party requesting the subpoena has a legitimate, good faith basis to contend that it may be the victim of conduct actionable in the jurisdiction where the suit was filed[.]" *AOL* at *8. Second, "the subpoenaed identity information [must be] *centrally needed to advance that claim.*"

Id. (emphasis added).

"a court should only order a non-party, Internet service provider to provide information concerning the identity of a subscriber (1) when the court is satisfied by the pleadings or evidence supplied to that court (2) that the party requesting the subpoena has a legitimate, good faith basis to contend that it may be the victim of conduct actionable in the jurisdiction where suit was filed and (3) the subpoenaed identity information is centrally needed to advance that claim" *Id.*

In *AOL*, because the court concluded that the plaintiff had met these requirements, the discovery was allowed. The Virginia court concluded that the compelling state interest in protecting business interests outweighed the limited intrusion on the First Amendment rights of any innocent Internet users.

The first and second prongs of the test from *AOL* is common with the tests devised by courts in other Internet defamation cases, a requirement that the plaintiff make good faith (*prima facie*) showing of defamation by the anonymous defendant.

A defamatory statement is one that is false and 1) injures another person's reputation; 2) subjects the person to hatred, contempt or ridicule; or 3) causes others to lose good will or confidence in that person. *Romaine v. Kallinger*, 109 N.J. 282, 289, 537 A.2d 284 (1988). A defamatory statement harms the reputation of another in a way that lowers the estimation of the community about that person or deters third persons from associating or dealing with him. *McLaughlin v. Rosanio*, *supra*, 331 N.J. Super. at 312, 751 A.2d 1066; *Restatement (Second) of Torts* § 559 (1977). "Words that clearly denigrate a person's reputation are defamatory on their face and actionable *per se.*" *Printing Mart-Morristown*, *supra*, 116 N.J. at 765, 563 A.2d 31. When determining if a statement is defamatory on its face "a court must scrutinize the language according to the fair and natural meaning which will be given it by reasonable persons of ordinary intelligence." *Ibid.* (quoting *Romaine*, *supra*, 109 N.J. at 290, 537 A.2d 284). A plaintiff does not make a *prima facie* claim of defamation

if the contested statement is essentially true. *Hill v. Evening News Co.*, 314 N.J. Super. 545, 552, 715 A.2d 999 (App.Div.1998). *Dendrite Intern., Inc. v. Doe No. 3*, 775 A.2d 756, 342 N.J. Super. 134 (N.J. Super., 2001)

Here, in satisfaction of the first prong of the *AOL* test, Plaintiff has alleged in his Amended Complaint that the anonymous review posted to Google Maps is defamatory for several reasons. First, Plaintiff believes that the one star review while it contains no words has harmed his reputation and that of his professional practice to the same extent as poor review in writing. This point has also been explained by Plaintiff's Internet publishing and culture expert, Andrew C. Brack, in his attached affidavit, (see **Exhibit "C". Affidavit of Andrew C. Brack.**) By today's Internet standards a one star review conveys the same meaning and has the same negative effect on the viewer as a derogatory written review in pre-Internet times. Mr. Brack explains that the Internet has transformed media consumption by consumers from a passive activity to one in which they all can engage in the sharing of opinions with potentially "billions of people around the world" without the requirement to invest in costly printing or broadcasting equipment or staff to operate them. Consumers now actively seek out the opinions of other total strangers in deciding what products and services to purchase. Mr. Brack further explains how with this ability to communicate ideas freely over the Internet has come the consumer rating systems such as the one provided by Google, which is the subject of this Motion to Compel.

"These "review" functions range from products for purchase to services, such as whether a customer likes a hotel or what a student thinks of a professor or what a patient thinks of a doctor. ... reviews can be helpful because they appear to offer bona fide experiences of other people who have used a particular product or service..." (Brack Aff., ¶10).

Brack further explains that while these reviews can be empowering to consumers they can also be used to create false impressions by dishonest or malevolent actors.

“It is not uncommon in the Internet culture to generate a review that may not reflect reality. Similarly, it is not uncommon for people to rate products, services or people with good or bad reviews or ratings to create false impressions.... Such false reviews or ratings could be done for multiple reasons, ranging from luring people into a mediocre restaurant to injuring the reputation of someone a reviewer doesn’t like.” (Brack Aff., ¶12).

Plaintiff believes that the review has unfairly caused him to lose the goodwill and confidence of the community, and that this defamatory review harmed him in a way that lowers the estimation in the community about his professional practice as a psychiatrist. Further, Plaintiff believes the review is false and defamatory because it could not have been posted by anyone who had firsthand knowledge of his practice, as he has no current or former patients living in Newport News Virginia, the location where the defendant most likely resides, Plaintiff has never has practiced or been licensed in Virginia, and since receiving his license to practice medicine and since beginning his practice as Charleston Psychiatric Associates he has never collaborated with any doctors in Virginia. The only physician he has had any contact with in Virginia during the past 25 years is retired pediatrician Dr. Thomas Morris, his step-father, with whom Plaintiff has never had any work-related relationship.

Mr. Brack after reviewing the one star review given to Plaintiff as well as the other two reviews given on Google by the same poster said that “it is clear that the Internet user who rated Dr. Beale clearly understood the difference between a one-star rating and a five-star rating.” (Brack Aff., ¶17).

Brack concludes, “It is my belief that the user gave a one-star rating to Dr. Beale to cast him and his business in a negative light. Any reasonable person looking at

the one-star rating would likely think of him and the business in a negative manner and might make a decision to not use his medical services because of the rating. In my opinion, Dr. Beale's professional reputation has suffered because of the one-star rating."(Brack Aff., ¶18).

Plaintiff has received numerous positive reviews of his practice on other sites on the Internet which he asserts also proves the falsity of the one star review posted on Google maps. For example, Vitals.com has reported that Plaintiff has been ranked within the top 5% of all physicians, within all specialties, in South Carolina.

Taken as a whole, Plaintiff asserts that these facts constitute a good faith (*prima facie*) showing of defamation and therefore Plaintiff has a legitimate, good faith basis to contend that he was the victim of conduct actionable in South Carolina in satisfaction of the second prong of the *AOL* test.

Plaintiff's subpoena to Google requests the identity of the defendant. This information is "*centrally needed to advance that claim*", and without this information which is only available from Google, Plaintiff will be totally without a remedy under law for the damages that he has suffered. This satisfies the third and final prong of the *AOL* test.

Having successfully satisfied all three prongs of the *AOL* test Plaintiff believes that he is entitled to defendant's identifying information that was subpoenaed from Google.

CONCLUSION

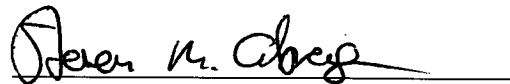
As addressed above, Plaintiff believes that by personally serving Google at its self-described "corporate office" in Moncks Corner, South Carolina, that jurisdiction is proper in Moncks Corner, South Carolina, and that South Carolina law regarding

subpoenas applies, and that Plaintiff has *quasi in rem* jurisdiction over Google and *in rem* jurisdiction over any data contained in the servers located in Moncks Corner or accessible from the network within the data center in Moncks Corner, and that the data requested in the Subpoena can be obtained in the data center in Moncks Corner.

For the reasons set forth herein, the Plaintiff respectfully requests that this Honorable Court issue an Order requiring Google to fully provide the information requested in Plaintiff's subpoena identifying the tortfeasor who posted defamatory information about Plaintiff within five (5) business days from the date of this hearing; and,

Furthermore, the Plaintiff seeks an immediate injunction preventing Google from altering or removing any of the subscriber information or IP logfile information requested in Plaintiff's subpoena; and,

Pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, the Plaintiff respectfully requests this Honorable Court award to the Plaintiff the costs and attorney's fees incurred by the Plaintiff in seeking this Order.



Steven M. Abrams
Abrams Cyber Law & Forensics, LLC
1154 Holly Bend Drive
Mount Pleasant, SC 29464
(843) 216-1100
Email: steve@abramscyberlaw.com
SC Bar #: 76230

July 3, 2017
Mount Pleasant, South Carolina

ATTORNEY FOR THE PLAINTIFF

Exhibit "A", Plaintiff's Subpoena Duces Tecum to Google Inc.

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF BERKELEY

MARK BEALE, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

JOHN DOE, Defendant

Case Number: 2017-CP-10-1097

Pending in Charleston County

TO: GOOGLE, INC., 1669 Garrott Avenue, Moncks Corner, SC 29461

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

1) All documents, server logs, records, and data relating in any way to the review on Google of "Charleston Psychiatric Associates: Beale Mark D MD" which was posted to Google approximately 5 months ago by "Richard Hill". Please provide email or IP addresses used to post the review and give the exact time and date it was posted on Google.

2) Any subscriber information in your possession that might aid in identifying the true name and address of "Richard Hill", and any email addresses or IP addresses that may be associated with "Richard Hill."

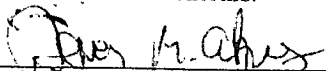
PLACE Abrams Cyber Law & Forensics LLC 1154 Holly Bend Drive Mount Pleasant, SC 29466 Attn: Steven M. Abrams, Esq. Fax: 843-278-5107 email: steve@abramscyberlaw.com	DATE AND TIME April 21, 2017, 10:00 AM
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



attys for
Plaintiff

3/24/2017

Steven Marc Abrams

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE <i>3/28/2017</i>	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE 1669 Garrott Avenue, Moncks Corner, SC 29461	<input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
SERVED ON GOOGLE, INC.,		MANNER OF SERVICE Personal Service
SERVED BY Davina Hartigan		TITLE Process Server

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on *3/28/2017*

SIGNATURE OF SERVER

1942 Old Parsonage Rd, Chareston, SC 29414
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B, Google's objections to Plaintiff's Subpoena.



March 15, 2017

Via Email and Express Courier
steve@abramscyberlaw.com

Steven M. Abrams
Abrams Cyber Law & Forensics LLC
1154 Holly Bend Drive
Mount Pleasant, SC 29466
843-813-1996

**Re: *Mark Beale v. John Doe*, Common Pleas Court of South Carolina, County of Charleston,
2017-CP-10-1097 (Internal Ref. No. 973275)**

Dear Steven M. Abrams:

Google Inc. ("Google"), a non-party to your litigation, has received your subpoena and letter, dated March 03, 2017, and in the above-referenced matter (the "Subpoena"). Your Subpoena states that you are requesting the following:

- "All documents, server logs, records, and data relating in any way to the review on Google of 'Charleston Psychiatric Associates: Beale Mark D MD'";
- "email or IP addresses used to post the review";
- "the exact time and date [the review] was posted on Google";
- "Any subscriber information in your possession that might aid in identifying the true name and address of 'Richard Hill'"; and
- "any email addresses or IP addresses that may be associated with 'Richard Hill.'"

We note that your letter dated March 03, 2017, included an attachment with the URL <https://www.google.com/maps/contrib/116665495737246396362/reviews/>. As we understand it, your Subpoena requests documents related to Google account(s) associated with 116665495737246396362 and "Richard Hill".

Without waiving the below objections, Google may be willing to produce responsive data, to the extent it exists and is available, subject to the limitations below. Google further hereby makes the following objections to the Subpoena.

Insufficient Information

Given the limited information provided in the Subpoena, Google objects to the Subpoena because it is unable to determine whether there is a relevant account in our records pertaining to the person Richard Hill. Google cannot respond to this request based on a proper name, because it fails to sufficiently identify a Google account. Google has hundreds of millions of users, making it impossible to



ensure that searches based on proper name, company name, birthday, social security number, presumed location, or similar information accurately identify the correct records.

Service

Google objects to the Subpoena on the grounds that it was improperly served. *See* Cal. Civ. Proc. Code § 2029.400.

Jurisdiction

Google objects to the Subpoena because it was issued by a state court without subpoena power over non-party Google. Google further objects on the grounds that to seek or compel disclosure from a California resident like Google, Petitioner must comply with Cal. Civ. Proc. Code §§ 2029.100, *et seq.* *See also* the Uniform Interstate Depositions and Discovery Act (“UIDDA”).

Google resides in Santa Clara County, California, USA, where it has Custodians of Records. Google accepts subpoenas issued from Santa Clara Superior Court via personal service on the Google Custodian of Records for Google Inc. at 1600 Amphitheatre Parkway, Mountain View, California, 94043.

User Notification

Google objects to the Subpoena to the extent it fails to allow sufficient time for Google to notify the affected user and for the user to assert his or her rights in response. Google provides its users at least 20 days to object to your request or to inform Google of their intent to file a motion to quash. If your subpoena sufficiently identifies a Google account, Google intends to forward notice of this matter, including your name and contact information, to the user at the email address provided by the user.

Violation of Federal Law

As written, the Subpoena request for “All documents...and data relating in any way to the review” can be construed to include information we are prohibited from disclosing. Google objects on the grounds that Section 2702(a) of the federal Stored Communications Act (“SCA”) prohibits Google from disclosing the content of electronic communications or content stored on behalf of the user pursuant to a subpoena. 18 U.S.C. § 2702(a) *see e.g.*, *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011); *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004); *Mintz v. Mark Bartelstein & Assocs., Inc.* 885 F. Supp. 2d 987, 993-94 (C.D. Cal. 2012); *In re Subpoena Duces Tecum to AOL, LLC.*, 550 F.Supp.2d 606, 611 (E.D. Va. 2008); *Flagg v. City of Detroit*, 252 F.R.D. 346, 366 (E.D. Mich. 2008); *Viacom Int'l Inc. v. YouTube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008); *O’Grady v. Superior Court of Santa Clara*, 139 Cal. App. 4th 1423, 1441-43 (2006).

Instead, the appropriate way to seek such content is to direct your request to the account holder who has custody and control of the data in the account, is not bound by the SCA, and is the party to whom discovery requests should be directed. *Suzlon*, 671 F.3d 726, 730-31; *Mintz*, 885 F. Supp. 2d at 993-94; *O’Grady*, 139 Cal. App. 4th at 1446-47. If the account holder is a party to the underlying litigation, you may serve a document request on the account holder for the content sought. *See Mintz*, 885 F. Supp. 2d at 993-94; *O’Grady*, 13 Cal. App. 4th at 1446-67; *see also Flagg*, 252 F.R.D. at 348, 366-67. Google users can obtain and produce their account content themselves, or by using Google Takeout, available at www.google.com/takeout/.

Additional Objections

1. Google objects to the Subpoena to the extent it seeks to impose an undue burden on a disinterested non-party. Google further objects to the Subpoena to the extent it seeks information already in a party's possession or available to a party from some other source (including public



- sources) that is more convenient, less burdensome or less expensive. Google objects to the Subpoena to the extent it seeks electronically stored information that is not reasonably accessible to Google.
2. Google objects to the Subpoena to the extent it seeks information that is not proportionate to the needs of the case, not relevant to any party's claims or defenses, or not reasonably calculated to lead to the discovery of admissible evidence.
 3. Google objects to the Subpoena to the extent it specifies a date of production that is unreasonable and unduly burdensome, including because it may not afford Google time to provide sufficient notice to the user.
 4. Google objects to the Subpoena (including but not limited to the requests for "All documents, server logs, records, and data relating in any way to the review" and "any email addresses or IP addresses that may be associated with 'Richard Hill'") because it is vague, ambiguous, unlimited in time or scope, or fails to identify the information sought with reasonable particularity. Accordingly, Google further objects to the Subpoena to the extent it purports to require Google to preserve the requested information. Therefore you should not assume that Google will undertake steps to preserve any information in response to your Subpoena. Google is willing to meet and confer to discuss any preservation request.
 5. Google objects to the Subpoena to the extent it seeks to impose obligations on Google beyond what is permissible under applicable law.

Google reserves the right to further object to the Subpoena in any additional response.

If you have any questions, please feel free to contact the undersigned at the Legal Support Department alias at GOOGLE-LEGAL-SUPPORT@GOOGLE.COM. Additionally, should you wish to seek any judicial relief in connection with this matter, Google requests the opportunity to meet and confer in advance of any such filing. Thank you.

Very truly yours,
/s/ Mika Yukimura
Legal Investigations Support

March 21, 2017

Hayley L. Berlin
HBerlin@perkinscoie.com
D. +1.202.654.6291
F. +1.202.654.9123

VIA EMAIL & FACSIMILE

Steven Abrams
1154 Holly Bend Drive
Mount Pleasant, SC 29466
steve@abramscyberlaw.com
Fax: 843.278.5107

Re: Subpoena to Google in *Beale v. Doe*, No. 2017-CP-10-1097, Common Pleas Court in the County of Charleston, SC (Google Ref. # 973275)

Dear Mr. Abrams:

We represent Google Inc. ("Google") and write regarding your subpoena to Google dated March 3, 2017. This letter reiterates objections made by my client by letter dated March 15, 2017, (enclosed for your reference) and supplements those objections as follows.

Your subpoena is objectionable because you have provided no documentation demonstrating that the court has considered and imposed the First Amendment safeguards required under California law before a litigant may be permitted to unmask the identity of an anonymous or pseudonymous speaker. As courts across the country addressing the issue have recognized, trial courts must strike a balance "between the well-established First Amendment right to speak anonymously, and the right of the plaintiff to protect its proprietary interests and reputation through the assertion of recognizable claims based on the actionable conduct of the anonymous, fictitiously-named defendants." *Dendrite Int'l, Inc. v. Doe No. 3*, 775 A.2d 756, 760 (N.J. Super. A.D. 2001); *see also Perry v. Schwarzenegger*, 591 F.3d 1147, 1164 (9th Cir. 2010) (where substantial First Amendment concerns are at stake, courts should determine whether discovery is likely to chill protected speech). Accordingly, before a service provider such as Google may be compelled to unmask an anonymous speaker, (1) a reasonable attempt to notify the user of the request and the lawsuit must be made, thereby providing the user an opportunity to assert his or her First Amendment right to speak anonymously through an application for a protective order or a motion to quash; and (2) the plaintiff must make a prima facie showing of the elements of defamation. *See Krinsky v. Doe*, 72 Cal. Rptr. 3d 231, 239, 244-46 (Cal. Ct. App. 2008). To establish a prima facie showing of the elements of libel, the plaintiff must present evidence sufficient to support a ruling in its favor. *Id.*; *see also In re Anonymous Online Speakers*, 661 F.3d 1168, 1176-77 (9th Cir. 2011) (holding that it was not clear error for a district court to apply the *Doe v. Cahill*, 884 A.2d 451 (Del. 2005) standard to unmasking an anonymous speaker); *Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 976 (N.D. Cal. 2005)

Steven Abrams
March 21, 2017
Page 2

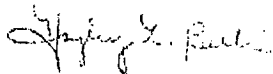
(requiring plaintiff to show a “real evidentiary basis” that the defendant engaged in wrongdoing); *Music Grp. Macao Commercial Offshore Ltd. v. Does*, No. 14-mc-80328-LB, 2015 WL 930249 (N.D. Cal. Mar. 2, 2015) (applying *Highfields* and denying motion to enforce third-party subpoena to Twitter seeking to unmask anonymous speakers). Moreover, under the California constitution, the party seeking discovery must demonstrate “a compelling need for discovery” that “outweigh[s] the privacy right when these two competing interests are carefully balanced.” *Digital Music News LLC v. Superior Court of Los Angeles*, 226 Cal. App. 4th 216, 229 (2014) (citing *Lantz v. Superior Court*, 28 Cal. App. 4th 1839, 1853–54 (1994)).

Google may invoke these rights on behalf of its users. See, e.g., *Glassdoor, Inc. v. Santa Clara Superior Court*, ___ Cal. Rptr. 3d ___, 2017 WL 944227, at *6 (Cal. Ct. App. Mar. 10, 2017) (website publisher has standing to assert anonymous speaker’s interest in maintaining her anonymity against a plaintiff’s efforts to compel website publisher to identify her); *Digital Music News LLC v. Superior Court*, 226 Cal. App. 4th 216, 228 n.12 (Cal. Ct. App. 2014) (holding an online newsletter publisher had standing to assert commentators’ constitutional rights); see also *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. 1461 et seq.*, 706 F. Supp. 2d 11, 17 n.3 (D.D.C. 2009) (company had standing to bring First Amendment challenge on behalf of its customers (citing *Virginia v. American Booksellers Ass’n*, 484 U.S. 383, 392–393 (1988)); cf. *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1047 (Co. 2002) (holding that an “innocent bookseller [must] be afforded an opportunity for an adversarial hearing prior to execution of a search warrant seeking customer purchase records” (citing *In re Grand Jury Subpoena to Kramerbooks & Afterwords Inc.*, 26 Med. L. Rptr. 1599 (D.D.C. 1998))).

It does not appear, based on the current complaint, that your client will be able to meet these standards. Google does not require users to provide their real names when signing up for an account or leaving a business review. Thus, the conclusion that the review must be “implicitly false” because your client has never treated a patient by the name of “Richard Hill” is fundamentally flawed.

Please contact me if you would like to discuss this further. Google preserves and does not waive any other available objections or rights.

Very truly yours,



Hayley L. Berlin

HLB

April 7, 2017

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VIA EMAIL & FACSIMILE

Steven Abrams
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steve@abramscyberlaw.com
Fax: 843.278.5107

Re: Subpoena to Google in *Beale v. Doe*, No. 2017-CP-10-1097, Common Pleas Court in the County of Charleston, SC (Google Ref. # 973275)

Dear Steven:

As you know, we represent Google Inc. ("Google") and write regarding your subpoena to Google dated March 24, 2017 ("Subpoena"). As we discussed during a telephonic meet and confer on April 5, 2017, and as set forth more fully below, the Subpoena suffers from the same deficiencies as the subpoena dated March 3, 2017, to which Google timely objected. I trust that this letter resolves this matter, but should you follow through on your threat to file an unnecessary and inappropriate motion to compel in a South Carolina (or any other) court, please attach this correspondence as well as Google's objections dated March 15, 2017, and March 21, 2017, to any such filing.

Subpoena Power

At the outset, Google and the custodians with control over its records are located in Mountain View, California, which is also where Google resides. Therefore, state court discovery demands must issue from a California state court or be properly domesticated under California law and personally served on Google in California. *See* Cal. Civ. Proc. Code § 2029.300; *id.* § 2029.400 ("A subpoena issued under this article shall be personally served in compliance with the law of this state."); Cal. Gov't Code § 70626(b)(5) (listing \$30 fee for "issuing a subpoena under Section 2029.300"); S.C. Code § 15-47-100, *et seq.*

The fact that Google has a data center in South Carolina does not render Google subject to South Carolina courts' subpoena power. "The underlying concepts of personal jurisdiction and subpoena power are entirely different," *In re Nat'l Contract Poultry Growers' Ass'n*, 771 So.2d 466, 469 (Ala. 2000), and personal jurisdiction does not confer subpoena power over a nonresident, non-party witness. *See, e.g., Ulloa v. CMI, Inc.*, 133 So.3d 914, 916 (Fla. 2013) ("we conclude that in criminal cases, in order to subpoena documents located in another state that are in the possession of an out-of-state nonparty, the party requesting the documents must

utilize the procedures of the Uniform Law” regardless of whether non-party has a registered agent in Florida); *Syngenta Crop Prot., Inc. v. Monsanto Co.*, 908 So.2d 121, 129 (Miss. 2005) (holding the same in Mississippi); *AARP v. American Family Prepaid Legal Corp., Inc.*, No. 06 CVS 10216, 2007 WL 2570841 (Sup. Ct. Guilford Co., N.C., Feb. 23, 2007) (granting motion to quash subpoena commanding a non-party foreign corporation to produce documents in North Carolina); *Craft v. Chopra*, 907 P.2d 1109, 1111 (Okla. Civ. App. 1995) (rejecting application of Supreme Court personal jurisdiction cases such as *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), as “enumerating constitutional due process requirements as to a party, more particularly a party defendant, not a witness as in the present case”); *Phillips Petroleum Co. v. OKC Ltd. P’ship*, 632 So.2d 1186, 1188 (La. 1994) (holding the same in Louisiana); *Colorado Mills, LLC v. SunOpta Grains and Foods Inc.*, 269 P.3d 731, 734 (Col. 2012) (finding no authority applying state long-arm statutes to enforce a civil subpoena against an out-of-state non-party); *First Am. Corp. v. Price Waterhouse LLP*, 988 F. Supp. 353, 362 n. 4 (S.D.N.Y. 1997) (“[New York’s] long-arm jurisdiction appears to be limited to non-domiciliary defendants[;] [r]esearch yields no example of long-arm jurisdiction being imposed on a non-party witness in order to obtain discovery”), *aff’d on other grounds*, 154 F.3d 16 (2d Cir.1998); *see also Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.*, 770 S.E.2d 440, 446 n.18 (Va. 2015) (holding that subpoena power is not conferred simply because a nonparty conducts business in state or has a registered agent in state) (collecting cases); *Reader’s Digest Ass’n v. Dauphinot*, 794 S.W. 2d 608 (Tex. Ct. App. 1990) (no subpoena power over corporation even where (1) subpoena had been served upon corporation’s registered agent within state; and (2) corporation otherwise had sufficient contacts for personal jurisdiction including conducting business within state and having employees within state).

Insufficient Information

Second, the Subpoena fails to properly identify a user account. Google has hundreds of millions of users, making it impossible to identify a particular account based solely on the name of the individual and business provided in the Subpoena.

Overbroad/Vague Discovery Request

Third, the Subpoena is overbroad and vague. All discovery must be relevant to a claim or defense. *See, e.g.*, S.C. R. Civ. P. 26(b)(1). Hence, your request for “all data relating in any way” to a vaguely-described review that “was posted to Google approximately 5 months ago” is both overbroad in that it seeks information not related to the claims in your lawsuit and inappropriately vague in that it fails to provide adequate information as to what account is implicated or what information, specifically, is sought.

First Amendment

Finally, the Subpoena is objectionable because you have provided no documentation demonstrating that the court has considered and imposed the First Amendment safeguards required by the Constitution before a litigant may be permitted to unmask the identity of an anonymous or pseudonymous speaker. As courts across the country addressing the issue have recognized, trial courts must strike a balance “between the well-established First Amendment right to speak anonymously, and the right of the plaintiff to protect its proprietary interests and reputation through the assertion of recognizable claims based on the actionable conduct of the anonymous, fictitiously-named defendants.” *Dendrite Int’l, Inc. v. Doe No. 3*, 775 A.2d 756, 760 (N.J. Super. A.D. 2001); *see also Perry v. Schwarzenegger*, 591 F.3d 1147, 1164 (9th Cir. 2010) (where substantial First Amendment concerns are at stake, courts should determine whether discovery is likely to chill protected speech).

Accordingly, before a service provider such as Google may be compelled to unmask an anonymous speaker, (1) a reasonable attempt to notify the user of the request and the lawsuit must be made, thereby providing the user an opportunity to assert his or her First Amendment right to speak anonymously through an application for a protective order or a motion to quash; and (2) the plaintiff must make a prima facie showing of the elements of defamation. *See Krinsky v. Doe*, 72 Cal. Rptr. 3d 231, 239, 244–46 (Cal. Ct. App. 2008).

To establish a prima facie showing of the elements of defamation, a plaintiff must present evidence sufficient to support a ruling in its favor. *Id.*; *see also In re Anonymous Online Speakers*, 661 F.3d 1168, 1176–77 (9th Cir. 2011) (holding that it was not clear error for a district court to apply the *Doe v. Cahill*, 884 A.2d 451 (Del. 2005) standard to unmasking an anonymous speaker); *Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 976 (N.D. Cal. 2005) (requiring plaintiff to show a “real evidentiary basis” that the defendant engaged in wrongdoing); *Music Grp. Macao Commercial Offshore Ltd. v. Does*, No. 14-mc-80328-LB, 2015 WL 930249 (N.D. Cal. Mar. 2, 2015) (applying *Highfields* and denying motion to enforce third-party subpoena to Twitter seeking to unmask anonymous speakers). Moreover, under the California constitution, the party seeking discovery must demonstrate “a compelling need for discovery” that “outweigh[s] the privacy right when these two competing interests are carefully balanced.” *Digital Music News LLC v. Superior Court of Los Angeles*, 226 Cal. App. 4th 216, 229 (2014) (citing *Lantz v. Superior Court*, 28 Cal. App. 4th 1839, 1853–54 (1994)).¹

These protections must be fiercely safeguarded where, as here, the main purpose of a defamation lawsuit is to unmask the anonymous speaker and not to actually pursue judicial

¹ In an email dated March 28, 2017, you claimed that “[t]he law in South Carolina is pretty straightforward compared to the cases you cited from the 9th Circuit,” but you did not cite any authority in support of your position that the Subpoena is proper.

relief. You informed me during our meet and confer on April 5, 2017, that your client's main objective in filing the lawsuit is to determine who posted the review. Armed with this information, your client will then decide whether to pursue his lawsuit or seek other forms of relief. Protecting anonymous speakers from extra-judicial self-help measures, *see, e.g., Swiger v. Allegheny Energy, Inc.*, No. 05-CV-5725, 2006 WL 1409622 (E.D. Pa. May 19, 2006), *aff'd*, 540 F.3d 179 (3rd Cir. 2008) (company filed Doe lawsuit, obtained identity of employee who criticized it online, fired the employee, and dismissed the lawsuit without obtaining any judicial remedy other than the removal of anonymity); *Tendler v. www.jewishsurvivors.blogspot.com*, 164 Cal. App. 4th 802, 812 (Cal. Ct. App. 2008) (recognizing that some requests to service providers to unmask anonymous speakers "will be solely for the purpose of silencing a critic by harassment, ostracism, or retaliation"), which harms individual speakers and chills speech across Internet platforms, is a bedrock of the First Amendment.

Google may invoke these rights and protections on behalf of its users. *See, e.g., Glassdoor, Inc. v. Santa Clara Superior Court*, ___ Cal. Rptr. 3d ___, 2017 WL 944227, at *6 (Cal. Ct. App. Mar. 10, 2017) (website publisher has standing to assert anonymous speaker's interest in maintaining her anonymity against a plaintiff's efforts to compel website publisher to identify her); *Digital Music News LLC v. Superior Court*, 226 Cal. App. 4th 216, 228 n.12 (Cal. Ct. App. 2014) (holding an online newsletter publisher had standing to assert commentators' constitutional rights); *see also In re Grand Jury Investigation of Possible Violation of 18 U.S.C. 1461 et seq.*, 706 F. Supp. 2d 11, 17 n.3 (D.D.C. 2009) (company had standing to bring First Amendment challenge on behalf of its customers (citing *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392-393 (1988)); *cf. Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1047 (Co. 2002) (holding that an "innocent bookseller [must] be afforded an opportunity for an adversarial hearing prior to execution of a search warrant seeking customer purchase records" (citing *In re Grand Jury Subpoena to Kramerbooks & Afterwords Inc.*, 26 Med. L. Rptr. 1599 (D.D.C. 1998))).

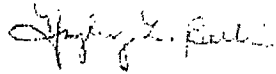
It does not appear, based on the amended complaint, that your client will be able to meet these standards. Google does not require users to provide their real names when signing up for an account or leaving a business review. Thus, the conclusion that the review must be "implicitly false" because your client has never treated a patient by the name of "Richard Hill" is fundamentally flawed.² Additionally, your client's claim that the defendant "likely resides" in a general area of Virginia, where your client claims to have no current or former patients, is mere conjecture that is unlikely to meet the required First Amendment safeguards.

² Your amended complaint states: "According to Google the negative review that gave rise to this lawsuit was published by Defendant under what Google contends is a legitimate pen name 'Richard Hill.'" Amend. Compl. at 4. Google has said nothing of the sort. Google has consistently objected that it is unable to identify a user by the name provided, thus your claim that Google "contends" that Richard Hill is a legitimate pen name is a mischaracterization of Google's objections.

Steven Abrams
April 7, 2017
Page 5

Please contact me if you would like to further discuss. Google preserves and does not waive any other available objections or rights.

Very truly yours,



Hayley L. Berlin

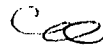


Exhibit C, Affidavit of Andrew C. Brack

which I have periodically taught a class to law students on how to use the Internet in business.

5. I received a bachelor's degree in 1983 from Duke University in psychology. I received a master's degree in journalism in 1988 from the University of North Carolina at Chapel Hill where my thesis concentration focused on the social responsibility of newspapers.
6. I was retained in the above captioned matter to serve as an expert in Internet culture and general practices. In my opinion, prior to the explosion of the Internet, people generally consumed media as a passive act. They watched television, brought to them by big companies. They read newspapers and listened to the radio, also owned by companies. When they wanted to know whether a particular brand of appliance would be good or whether a travel destination was fun, they would ask friends for recommendations, learn about alternatives from paid advertising or do some research of books, magazines and other media, also generally owned by companies. In short, media were a mostly one-way communications from the creators of content to particular audiences.
7. The Internet changed all of that, a revolution in communications as great – if not more pervasive – than Johannes Gutenberg's printing press and movable type from the 1400s. The Internet provides billions of people around the world with the opportunity to say what they think about anything without investment in expensive equipment or costly staff. It has changed the world of publishing from being controlled by companies to being, in one sense, controlled by individuals who can spout their opinions on anything from cute cats to political candidates via social media, blogs, emails, chat rooms and more. From the convenience of a

laptop in one's home, an individual easily can share opinions on any and every subject under the sun.

8. In this world of diverse online media, companies and individuals seek to get as many people as possible to read their information and view their sites. They advertise. They post "clickbait," or teasing headlines to get users to click on stories. And they use a host of interactive tools that have developed through the years to get people onto their sites, which generally provides the user with more opportunities to see more advertising, which increases revenues for online companies.
9. Interactive tools used by companies include comment sections at the bottom of articles in which users can provide opinion input, sometime anonymously or somethings not, depending on the website. Other sites make it even simpler, allowing purchasers of products or services to "rate" them on a scale of their choosing. For example, people who use Amazon.com to purchase a camera will see a five-star rating graphic next to products for sale. These ratings are customer reviews, which can be quick and easy – just a clicking of an appropriate button ranging from one star ("I hate it") to five stars ("I love it"). If the reviewing customer wants to go more into detail, he or she is given an opportunity to "write a review" in a text box.
10. These "review" functions range from products for purchase to services, such as whether a customer likes a hotel or what a student thinks of a professor or what a patient thinks of a doctor. From an Internet user or general customer standpoint, reviews can be helpful because they appear to offer bona fide experiences of other people who have used a product or service that the user finds interesting. If a new

user or customer is looking for a pair of loafers, he or she will find dozens of alternatives. If there's a pair of shoes that looks good, a potential customer might not want to buy it if several people have given low reviews of the shoes.

Similarly without ever seeing the shoes, they might purchase the footwear if it has a lot of positive reviews from other users with whom they have no personal relationship.

11. But there is a down side to these review sites. Because people who use the Internet have the ability to create pseudo-identities that may be anonymous or they can post reviews without saying who they are, there is an ability to concoct good or bad Internet reviews to make something seem like it is better or worse than it actually is. Take an example of a restaurant that really doesn't have great food. It wants more business, not less. But if it has a lot of negative reviews from customers, it may engage in an intentional effort via social media or Internet review sites to make the restaurant look like lots of people really love the restaurant.
12. It is not uncommon in the Internet culture to generate a review that may not reflect reality. Similarly, it is not uncommon for people to rate products, services or people with good or bad reviews or ratings to create false impressions of products, services or people. Such false reviews or ratings could be done for multiple reasons, ranging from luring people into a mediocre restaurant to injuring the reputation of someone a reviewer doesn't like.
13. I have opened the online rating of Dr. Mark D. Beale on Google Maps. A Google User self-identified as "Richard Hill" with no other identifying information has posted a rating of Dr. Beale as well as two other reviews and ratings.

14. Seven months ago, the user rated "Scrub-a-Dub Laundromat" in Newport News, Va., with five stars and a written review of "very nice atmosphere very nice employees." A five-star rating is the highest that the Google service allows.
15. Four months ago, the user rated "Great Clips" in Newport News, Va., with one star and a written review that included this language: "I wish you could put negative Stars." It also said, "I own businesses as well if my employees act like this I would fire them in a New York Minute." The one-star rating is the lowest offered by the Google service. Furthermore, the user's language indicates that he or she fully understands that the one-star rating is the lowest possible rating.
16. In the Internet culture, posting a one-star rating generally is considered a warning to others who might use a service or product. It is issued to try to discourage them from using the product or service. Conversely, a five-star rating indicates the highest recommendation.
17. Nine months ago, the user gave a one-star rating to Dr. Beale with no written comment. As highlighted in paragraphs 14 and 15, it is clear that the Internet user who rated Dr. Beale clearly understood the difference between a one-star rating and a five-star rating.
18. It is my belief that the user gave a one-star rating to Dr. Beale to cast him and his business in a negative light. Any reasonable person looking at the one-star rating would likely think of him and the business in a negative manner and might make a decision to not use his medical services because of the rating. In my opinion, Dr. Beale's professional reputation has suffered because of the one-star rating.

FURTHER THE AFFIANT SAYETH NOT!

Andrew Clayborne Brack

Andrew Clayborne Brack, M.A.

SWORN TO AND SUBSCRIBED BEFORE ME THIS

3, DAY OF July, 2017.

Steven M. Abney

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: May 16, 2022



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Mark Beale,

Civil Case No. 2017-CP-10-1097

Plaintiff,

v.

**NON-PARTY GOOGLE INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL**

John Doe,

Defendant.

FILED
2017 JUL 21 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT

I. INTRODUCTION

Plaintiff Mark Beale (“Plaintiff”) is a doctor seeking to enforce a South Carolina subpoena issued to non-party Google Inc. (“Google”) for identifying information regarding the author of a purportedly anonymous one-star online review of his medical practice that makes no factual or even textual statements about Plaintiff or his practice. *See* Ex. A to Plaintiff’s Motion to Compel (the “Subpoena”). The Subpoena is invalid because the Court does not have subpoena power over California-based Google’s out-of-state records custodians, *see John Deere Co. v. Cone*, 239 S.C. 597, 603 (1962), nor is Google subject to general personal jurisdiction in South Carolina merely because it has a presence in state. *See BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1559 (2017) (no general personal jurisdiction in Montana over a Texas-based company that had “over 2,000 miles of railroad track and more than 2,000 employees” in state).

Furthermore, anonymous speech on the Internet is presumptively protected by the First Amendment, *State v. Brockmeyer*, 751 S.E. 2d 645, 651 n.6 (S.C. 2013), as are statements of opinion, such as one’s views of a doctor’s practice, *see Woodward v. Weiss*, 932 F. Supp. 723, 725 (D.S.C. 1996). In order to overcome these presumptions a defamation plaintiff seeking to unmask an anonymous person must satisfy a summary judgment standard by submitting sufficient evidence to create a genuine issue of material fact for all elements of their claim. *See*

Doe v. Cahill, 884 A.2d 451, 463 (Del. 2005); *see also Brockmeyer*, 751 S.E. 2d at 652 n.10 (quoting *Cahill* as “setting forth ‘the appropriate test by which to strike the balance’ between the right to exercise free speech anonymously and the right to obtain the identity of the anonymous speaker”). Plaintiff purports to overcome the presumptive First Amendment protection afforded to the anonymous review of his practice by asking the Court to assume that because the reviewer may have taken steps to mask their identity or location that they have no firsthand knowledge of his practice and the review is unprotected by law. *See* Complaint, ¶ 9; Motion to Compel at 14. The First Amendment, however, makes precisely the opposite presumption. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341 (1995) (“the anonymity of an author is not ordinarily a sufficient reason to exclude her work product from the protections of the First Amendment.”). Plaintiff’s conjecture regarding the user’s true identity or location is therefore insufficient to satisfy the summary judgment standard. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 443 (2012). Plaintiff is not without recourse, however, as he “has available a very powerful form of extrajudicial relief” by “respond[ing] to the allegedly defamatory statements on the same site . . . [to] easily correct any misstatements or falsehoods, respond to character attacks, and generally set the record straight.” *Cahill*, 884 A.2d at 464.

For these reasons and those stated further below, Google respectfully requests that the Court deny Plaintiff’s motion to compel in its entirety.

II. FACTUAL BACKGROUND

Google is a Delaware corporation with its principal place of business in Mountain View, California. *See* Affidavit of Chi Nguyen ¶ 2 (“Nguyen Aff.”). Google has a workforce of approximately 72,000 full-time employees, well less than 1% of whom work at Google in South Carolina. *Id.* Google is registered to do business in South Carolina and maintains a data center in Berkeley County, South Carolina, but none of its records custodians who can access user

records are located in South Carolina. *Id.* Employees in Google’s data center do not have a mechanism to retrieve the requested information in this case. *Id.* For security reasons, Google does not publicly disclose the precise location where user data related to a specific user or service is stored. *Id.*

Plaintiff is a doctor who practices from his office at 669 St. Andrews Blvd., Charleston, South Carolina. *See* Amended Complaint, ¶ 4. Plaintiff alleges that on or about October 16, 2016 a person using the screen name “Richard Hill” posted a one-star review on the Google Maps site associated with Plaintiff’s medical practice. *Id.* ¶¶ 7-8. This one-star review is not accompanied by any explanatory text. *Id.* ¶ 16. Plaintiff claims on “information and belief” that he has never treated a patient named “Richard Hill,” and that the one-star review is therefore “implicitly false,” *id.* ¶ 9, because a purported non-patient would have “no legitimate basis for rating” Plaintiff. *Id.* ¶ 17.

On March 28, 2017, Plaintiff served the Subpoena on Google, which seeks non-content information in Google’s possession regarding the identity of “Richard Hill” and the date and time he posted his review of Plaintiff’s business. *See* Ex. A to Motion to Compel. The Subpoena does not identify a URL for the negative review or for the “Richard Hill” account, *id.*, and the display name “Richard Hill” is not a unique identifier of an account on Google’s system. *See* Nguyen Aff. ¶ 3.

On April 7, 2017, Google served timely objections to the Subpoena on the grounds that it was not domesticated in California, is vague,¹ and does not comport with the First Amendment

¹ Google understands from communications with Plaintiff’s counsel that the URL for the Google Maps site associated with Plaintiff’s medical practice is:

<https://www.google.com/maps/place/Charleston+Psychiatric+Associates:+Beale+Mark+D+MD/@32.786287,->

standard for identifying an anonymous speaker. *See* Ex. B to Motion to Compel. Plaintiff subsequently filed the instant motion to compel Google's production in response to the Subpoena.

III. ARGUMENT

A. The Subpoena must be domesticated in California

This Court does not have subpoena power over Google's out-of-state records custodians. *See John Deere Co. v. Cone*, 239 S.C. 597, 603 (1962) (rule to show cause issued against a foreign corporation registered to do business in South Carolina was invalid because "a subpoena duces tecum should be directed to the witness in whose control are the records or documents sought to be brought into court."). Google does not have records custodians nor employees in South Carolina who are authorized or have the mechanism to retrieve the requested information in this case. *See* Nguyen Aff., ¶ 2. For security reasons, Google does not publicly disclose the precise location where user data related to a specific user or service is stored, *id.*, but the storage location is irrelevant because *in rem* jurisdiction over a piece of property is meaningless without *in personam* jurisdiction over those who can retrieve and produce it. *Cf. R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 957 (4th Cir. 1999) ("injunctive relief ordered in an *in rem* action would be meaningless because things or property cannot be enjoined to do anything."); *see also id.* at 956 n.1 ("*Quasi in rem* jurisdiction is invoked as an interim step to obtain *in personam* jurisdiction.").

[79.9832517,17z/data=!3m1!4b1!4m5!3m4!1s0x88fe7bc12bb4e605:0x13b716d73fc6efff!8m2!3d32.786287!4d-79.981063?hl=en](https://www.google.com/search?q=79.9832517,17z/data=!3m1!4b1!4m5!3m4!1s0x88fe7bc12bb4e605:0x13b716d73fc6efff!8m2!3d32.786287!4d-79.981063?hl=en)

Google has further been able to identify the account that posted the one-star review, has preserved records responsive to the Subpoena, and has sent an email to the email address associated with that account in an effort to notify the user of these proceedings. *See* Nguyen Aff. ¶¶ 3-4.

The fact that Google has a registered agent, employees, and a data center in South Carolina does not change this analysis because Google is not subject to general personal jurisdiction in South Carolina simply because it has a presence in state. The Supreme Court has made clear that a corporation is not subject to general jurisdiction in a state's courts unless the corporation has its "place of incorporation and principal place of business" in the state. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014) (place of incorporation and principal place of business are the "paradigm" bases for general jurisdiction). Courts in other states may only exercise general jurisdiction in "exceptional cases" in which the corporation's affiliations with the state "are so continuous and systematic" that the corporation is "essentially at home" there. *Id.* at 754 (internal quotation marks and citations omitted); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

The Supreme Court recently reaffirmed these principles in *BNSF Ry. Co. v. Tyrrell*, a case involving a Texas-based corporation that challenged jurisdiction over it in Montana. 137 S.Ct. 1549 (2017). The Court held that the corporation was not "at home" in Montana for purposes of general personal jurisdiction despite having major operations and thousands of employees in state. *Id.* at 1559 (no general personal jurisdiction in Montana over a Texas-based company that had "over 2,000 miles of railroad track and more than 2,000 employees" in state). This approach reflects the reality that major corporations like Google "that operate[] in many places can scarcely be deemed at home in all of them." *Id.* (quoting *Daimler*, 134 S. Ct. at 762, n. 20). The Court's analysis of whether an assertion of personal jurisdiction comports with due process "applies to all state-court assertions of general jurisdiction" over nonresidents and "does not vary with the type of claim asserted or business enterprise sued." *BNSF Ry. Co.* at 1558-59.

Google has well less than 1% of its workforce in South Carolina, *see* *Nguyen Aff.*, ¶ 2, and is a non-party with no interest or stake in this litigation. This is not an “exceptional case” in which Google can be found “at home” in South Carolina. *Daimler*, 134 S. Ct. at 761 n.19; *see also BNSF Ry. Co.*, 137 S.Ct. at 1559 (corporation with “over 2,000 miles of railroad track and more than 2,000 employees” in Montana was not “so heavily engaged in activity in Montana as to render [it] essentially at home in that State.”) (internal quotation marks and citation omitted); *Companion Property and Casualty Insurance Company v. U.S. Bank National Association*, No. 3:15-cv-01300-JMC, 2016 WL 6781057, at *7 (D.S.C. Nov. 16, 2016) (a litigant asserting general personal jurisdiction over a corporation outside its place of incorporation or principal place of business “faces a heavy burden”).

South Carolina and California have both enacted the Uniform Interstate Depositions and Discovery Act, which provides the mechanism for litigants to seek discovery from out-of-state records custodians. *See* S.C. Code § 15-47-100, *et seq.*; Cal. Code Civ. P. § 2029.100, *et seq.* Accordingly, Plaintiff must comply with these procedures in order to obtain any documents from Google’s out-of-state records custodians.

B. Plaintiff has not satisfied the First Amendment standard for obtaining identifying information about an anonymous speaker

The South Carolina Supreme Court has stated “[i]t is clear that speech over the internet is entitled to First Amendment protection’ and that ‘[t]his protection extends to anonymous internet speech.’” *Brockmeyer*, 751 S.E. 2d at 651 n.6 (quoting *Cahill*, 884 A.2d at 456).² The Court in *Brockmeyer* did not reach the issue of the appropriate standard for obtaining discovery

² Google’s standing to raise its user’s First Amendment rights is undisputed. *See Brockmeyer*, 751 S.E. 2d at 651 n.7 (service providers have standing to assert free speech rights of their users); *see also Virginia v. American Booksellers Ass’n*, 484 U.S. 383, 392–393 (1988) (the rules of standing are relaxed in the First Amendment context such that one may challenge a potential infringement that “may cause others not before the court to refrain from constitutionally protected speech or expression.”).

regarding an anonymous Internet user under the First Amendment because the defendant did not properly preserve the issue, 751 S.E. 2d at 652-53, but the *Cahill* case quoted approvingly in *Brockmeyer* is instructive.

In *Cahill*, the Delaware Supreme Court observed that anonymous speech on the Internet serves an important purpose by “mak[ing] public debate in cyberspace less hierarchical and discriminatory than in the real world because it disguises status indicators such as race, class, and age,” while also acknowledging it “is clear that the First Amendment does not protect defamatory speech.” 884 A.2d at 456 (internal quotation marks and citations omitted). Accordingly, courts “must adopt a standard that appropriately balances one person’s right to speak anonymously against another person’s right to protect his reputation.” *Id.* In doing so the court stated it was “concerned that setting the standard too low will chill potential posters from exercising their First Amendment right to speak anonymously” because “[t]he possibility of losing anonymity in a future lawsuit could intimidate anonymous posters into self-censoring their comments or simply not commenting at all.” *Id.* at 457. While *Cahill* involved a public figure plaintiff, the court noted that requiring a private figure plaintiff to satisfy a mere motion to dismiss standard would still set the bar too low because “even silly or trivial libel claims can easily survive a motion to dismiss where the plaintiff pleads facts that put the defendant on notice of his claim, however vague or lacking in detail these allegations may be.” *Id.* at 459. Accordingly, in order to obtain identifying information about an anonymous speaker, the court held that any plaintiff must (1) undertake reasonable efforts to notify the anonymous speaker about his or her request for disclosure, *id.* at 460-61, and (2) satisfy a summary judgment

standard by submitting sufficient evidence to create “a genuine issue of material fact for all elements of a defamation claim *within the plaintiff’s control*.” *Id.* at 463 (emphasis in original).³

Plaintiff advocates a much lower standard announced by a Virginia trial court, *see* Motion to Compel at 11, but that Virginia trial court order was reversed by the Virginia Supreme Court, albeit on other grounds. *See In re Subpoena Duces Tecum to America Online, Inc.*, 52 Va. Cir. 26, 2000 WL 1210372 (Fairfax Co. Va. Cir Ct., 2000), *rev’d on other grounds sub nom, America Online, Inc. v. Anonymous Publicly Traded Co.*, 261 Va. 350, 542 S.E.2d 377 (2001). Even if the order had not been reversed, the standard used in *America Online* has been described as “perhaps the weakest” First Amendment standard adopted by any court, *Independent Newspapers, Inc. v. Brodie*, 407 Md. 415, 447 (2009), and one that “would inhibit the use of the Internet as a marketplace of ideas[.]” *Id.* at 455. The appropriate standard to be applied is the one described above in *Cahill*, a case that has not been reversed and has been quoted with approval by the South Carolina Supreme Court. *See Brockmeyer*, 751 S.E. 2d at 652 n.10 (quoting *Cahill*, 884 A.2d at 460 as “setting forth ‘the appropriate test by which to strike the balance’ between the right to exercise free speech anonymously and the right to obtain the identity of the anonymous speaker”).

With the appropriate standard thus established, Google submits that Plaintiff has not submitted sufficient evidence to create a genuine issue of material fact with respect to his defamation claim. The elements of a defamation claim are (1) a false and defamatory statement; (2) the unprivileged publication of that statement to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of

³ Google has attempted to satisfy the first *Cahill* requirement itself by sending an email to the email address associated with the review in an effort to notify the user of these proceedings. *See Nguyen Aff.*, ¶ 4.

special harm caused by the publication. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 441 (2012). Opinion statements, however, “as opposed to verifiable factual statements, are granted constitutional protection,” *Woodward v. Weiss*, 932 F. Supp. 723, 725 (D.S.C. 1996), and opinion statements therefore “are not actionable unless they contain provably true or false factual connotations.” *Id.* at 726. “The determination of what is constitutionally protected opinion and what is unprotected fact is an issue for the court.” *Id.* at 725.

In *Woodward* the court found that a doctor could not maintain a defamation suit against another doctor who opined that certain of his treatments were “excessive” and “patients would have most likely returned to normal sooner with the use of” a different treatment regimen. *Id.* at 726. In so holding, the court found “[t]here is no standard which could be used to render an objective, verifiable, factual answer” as to whether the treatments were appropriate. *Id.* Here, Plaintiff’s defamation claim involves a one-star review of a physician with no accompanying text, and thus involves even less evidence than the plaintiff presented in *Woodward* of a statement containing provably true or false factual connotations. On its face a “star” rating of a physician is a quintessential statement of opinion that cannot be proven true or false. As the court stated in *Woodward*, “[m]edicine, with all its great accomplishments, remains an inexact science.” *Id.* Depending on innumerable subjective factors, the appropriate “star” rating for a physician may be viewed quite differently by different people. Indeed, Plaintiff’s own expert witness describes such ratings as “opinion input.” *See* Affidavit of Andrew Brack, at ¶ 9 (“Interactive tools used by companies include comment sections at the bottom of articles in which users can provide opinion input, sometime [sic] anonymously or somethings [sic] not, depending on the website. Other sites make it even simpler, allowing purchasers of products or services to ‘rate’ them on a scale of their choosing.”) (Ex. C to Plaintiff’s Motion to Compel.).

Plaintiff purports to overcome the presumptive First Amendment protection afforded to such a statement of opinion by alleging on “information and belief” to have “never treated any patient named ‘Richard Hill’, thus the negative Google review is implicitly false,” Complaint, ¶ 9, and written “for no other purpose than to defame and damage [Plaintiff] in his profession,” *id.* ¶ 8. He further contends that the anonymous reviewer “most likely resides” in Newport News, Virginia and is therefore implicitly someone who has no “firsthand knowledge of his practice” because Plaintiff has no current or former patients or medical colleagues in Virginia. *See* Motion to Compel at 14. These arguments, however, turn the First Amendment on its head by asking the Court to assume that because the reviewer may have taken steps to mask their identity or location that his or her review is presumptively false and unprotected by the law. The First Amendment in fact makes precisely the opposite presumption. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341 (1995) (“the anonymity of an author is not ordinarily a sufficient reason to exclude her work product from the protections of the First Amendment.”); *cf. Awtry v. Glassdoor, Inc.*, No. 16-mc-80028-JCS, 2016 WL 1275566, at *15 (N.D. Cal. Apr. 1, 2016) (“if courts are willing to enforce subpoenas like [plaintiff]’s based on what amounts to speculation that the anonymous reviewer is only *posing* as a current or former employee, individuals who are in fact current or former employees are likely to be reluctant to post the candid reviews that [defendant] tries to offer its users.”) (emphasis in original). Plaintiff’s conjecture regarding the user’s identity or location is therefore insufficient to satisfy the summary judgment standard. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 443 (2012) (“purely conjectural interpretations” of an allegedly defamatory statement are insufficient to avoid summary judgment); *cf. Doe v. TheMart.com Inc.*, 140 F. Supp. 2d 1088, 1097 (W.D. Wash. 2001) (“the First Amendment

rights of [] Internet users . . . cannot be nullified by an unsupported allegation of wrongdoing raised by the party seeking the information.”).

Plaintiff is not without recourse, however, as he “has available a very powerful form of extrajudicial relief” by “respond[ing] to the allegedly defamatory statements on the same site . . . and thus, can, almost contemporaneously, respond to the same audience that initially read the allegedly defamatory statements.” *Cahill*, 884 A.2d at 464. Plaintiff “can thereby easily correct any misstatements or falsehoods, respond to character attacks, and generally set the record straight,” in addition to “mitigat[ing] the harm, if any, he has suffered to his reputation as a result of an anonymous defendant’s allegedly defamatory statements made on an internet blog or in a chat room.” *Id.* Plaintiff should pursue these remedies because the speculative and vague allegations in this matter do not support issuance of an order that would strip this and all other Internet users of their presumptive First Amendment right to post an anonymous review.

C. Injunctive relief and sanctions are not warranted

Plaintiff’s request for injunctive relief “preventing Google from altering or removing any of the subscriber information or IP logfile information” responsive to the Subpoena, *see* Motion to Compel at 16, is moot because Google has in good faith preserved responsive information despite the Subpoena’s failure to properly identify the account at issue and Plaintiff’s failure to meet and confer regarding the scope of any preservation. *See* *Nguyen Aff.* ¶ 4.

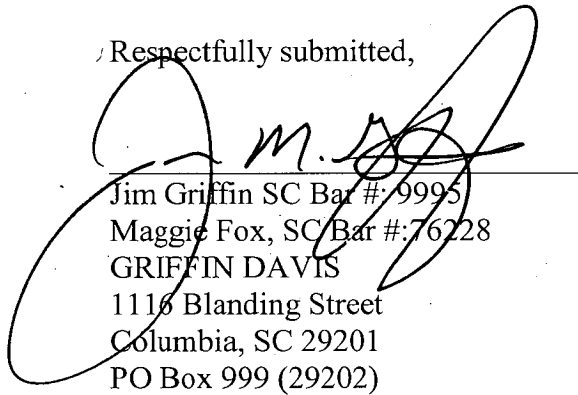
Plaintiff’s request for sanctions in the form of fees and expenses is also unwarranted because sanctions are not available when an opposition to a motion to compel is “substantially justified or . . . other circumstances make an award of expenses unjust.” S.C. R. Civ. P. 37(a)(4). Plaintiff’s motion should be denied in its entirety for the reasons stated, but if the Court grants the motion it should not award Plaintiff his fees and expenses because Google’s objections with

respect to subpoena power and the First Amendment are substantially justified based on the facts and legal authorities cited above. *See, e.g., Kelly v. Equifax, Inc.*, No. 8:12-cv-03095-MGL, 2013 WL 5954799, at *3 (D.S.C. Nov. 7, 2013) (litigant's position was "substantially justified" under Fed. R. Civ. P. 37 where "a reasonable person could think the motion had a reasonable basis in law and fact.").

IV. CONCLUSION

Google respectfully requests that the Court deny Plaintiff's motion to compel in its entirety.

Respectfully submitted,



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Maggie Fox, SC Bar #: 76228
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PO Box 999 (29202)
Tel.: 803-744-0800
Fax: 803-744-0805
JGriffin@griffindavislaw.com
MFox@griffindavislaw.com

Attorneys for Google Inc.

Dated: July 20, 2017

Affidavit of Chi Nguyen

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Beale,

Plaintiff,

v.

John Doe,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-1097

**AFFIDAVIT OF CHI NGUYEN IN
SUPPORT OF NON-PARTY GOOGLE
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL**

FILED
2017 JUL 21 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

1. I, Chi Nguyen, am a Legal Investigations Support Specialist at Google Inc. ("Google") in Mountain View, California. I am over 18 years of age, have personal knowledge of the following facts, and could testify competently thereto if called as a witness.

2. Google is a Delaware corporation with its principal place of business in Mountain View, California. Google has a workforce of approximately 72,000 full-time employees, well less than 1% of whom work at Google in South Carolina. Google is registered to do business in South Carolina and maintains a data center in Berkeley County, South Carolina, but none of its records custodians who can access user records are located in South Carolina. Employees in Google's data center do not have a mechanism to retrieve the requested information in this case. For security reasons, Google does not publicly disclose the precise location where user data related to a specific user or service is stored.

3. On March 28, 2017, Plaintiff Mark Beale ("Plaintiff") served a subpoena (the "Subpoena") on Google, which seeks non-content information in Google's possession regarding

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

the identity of "Richard Hill" and the date and time he posted a review of Plaintiff's business. A true and correct of the Subpoena is attached as Exhibit A to Plaintiff's Motion to Compel. The display name "Richard Hill" is not a unique identifier of an account on Google's system, but Google understands from communications with Plaintiff's counsel that the URL for the Google Maps site associated with Plaintiff's medical practice is:

<https://www.google.com/maps/place/Charleston+Psychiatric+Associates:+Beale+Mark+D+MD/@32.786287,-79.9832517,17z/data=!3m1!4b1!4m5!3m4!1s0x88fe7bc12bb4e605:0x13b716d73fc6efff!8m2!3d32.786287!4d-79.981063?hl=en>

4. Google has further been able to identify the account that posted the review, has preserved records responsive to the Subpoena despite Plaintiff's failure to meet and confer regarding the scope of preservation, and has sent an email to the email address associated with that account in an effort to notify the user of these proceedings.

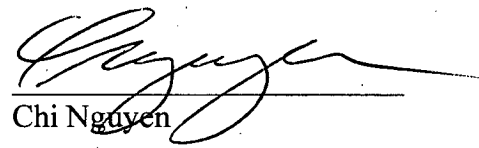
5. On April 7, 2017, Google served timely objections to the Subpoena, a true and correct copy of which are attached as Exhibit B to Plaintiff's Motion to Compel.

Sworn to before me this

19 day of July, 2017

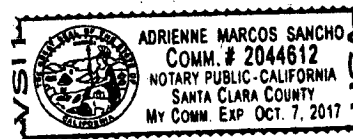
Adrienne Marcos Sancho

Notary Public, State of California


Chi Nguyen

State of California, County of SANTA CLARA
Subscribed and sworn to (or affirmed) before me on this
19 day of July, 2017, by CHI PHUONG NGUYEN
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Adrienne Marcos Sancho
(Signature of Notary)



2017-Cp-10-1097

CERTIFICATE OF SERVICE

I hereby certify this 20th day of July, 2017 that the foregoing was sent by email and overnight delivery to the following individuals:

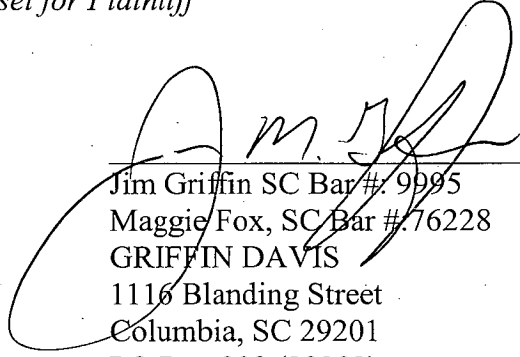
Steven Abrams
Abrams Cyber Law & Forensics, LLC
1154 Holly Bend Drive
Mount Pleasant, SC 29466
Tel.: 843-216-1100
Fax: 843-278-5107
steve@abramscyberlaw.com

Counsel for Plaintiff

AV
JULIE J. ARMSTRONG
CLERK OF COURT

2017 JUL 21 PM 4:11

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MFox@griffindavislaw.com

Attorneys for Google Inc.

July 20, 2017

VIA FEDERAL EXPRESS

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2210

RE: *Mark Beale v. John Doe*
Case No.: 2017-CP-10-1097

Dear Ms. Armstrong:

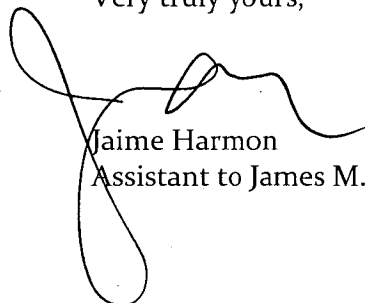
Enclosed please find an original and one copy of the Non-Party Google Inc.'s Opposition to Plaintiff's Motion to Compel, in connection with the above-referenced matter. Please file the original and return the clocked-in copy in the envelope provided.

By copy of this letter and as evidenced on the attached Certificate of Service, I am serving counsel of record with the same.

If you have any questions, please do not hesitate to contact this office.

With kind regards, I am

Very truly yours,



Jaime Harmon
Assistant to James M. Griffin

Enclosures

cc: Steven Abrams (Via Federal Express and Electronic Mail)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 MARK BEALE,)
)
 Plaintiff,)
)
 v.)
)
 JOHN DOE,)
)
 Defendant.)
)
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IN THE COURT OF COMMON PLEAS
 NINETH JUDICIAL CIRCUIT
 CASE NO: 2017-CP-10-1097

MB
AFFIDAVIT OF
MARK BEALE, M.D.
 JUDGE OF COURT
 2017 JUL 21 PM 12:14
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PERSONALLY appeared before me the undersigned who duly sworn and says as follows:

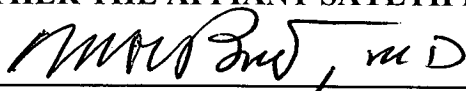
Background

1. My Name is Mark Beale. I am a licensed medical doctor in South Carolina. My field of expertise is Psychiatry. My practice is known as Charleston Psychiatric Associates. My office address is 669 St. Andrews Blvd, Charleston, South Carolina 29407.
2. I have been in private practice for 16 years at this location, and have a good reputation in the community. I have never practiced or been licensed in any other state.
3. I have not practiced in Virginia, nor have I ever been licensed there.
4. There are no physicians in Virginia who have ever practiced with me at Charleston Psychiatric Associates, and none who would have firsthand knowledge of my practice in Charleston.
5. To the best of my knowledge, I have no current or former patients in the Newport

News area of Virginia. I am certain that none of my patients that I have seen over the past five years resides in or around Newport News, Virginia.

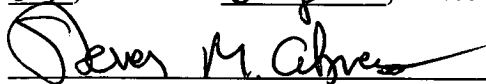
6. I have no current or former patients named "Richard Hill", nor do I know anyone by this name.
7. My mother, a retired criminal court judge, and my step-father, a retired pediatrician, reside in Newport News, Virginia. This is the same area in which "Richard Hill", the anonymous Google poster, appears to reside, based on his reviews of local businesses that were also posted to Google.
8. The one out of five-star review that was the genesis of this lawsuit was posted on Google several days after my step-father and I had conflicting views over the care of my mother.
9. The one out of five-star review given anonymously by "Richard Hill" has, and continues to, damage my reputation and my business, and causes me extreme and constant distress as it is so out of character with my other online reviews and my otherwise good reputation in the community.

FURTHER THE AFFIANT SAYETH NOT!



Mark Beale, M.D.

SWORN TO AND SUBSCRIBED BEFORE ME THIS
21, DAY OF July, 2017.



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: MAY 16, 2022