

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BOSTON MUNICIPAL COURT
CENTRAL DIVISION
C.A. NO.

)
PAM LERNER JEWELRY, INC. DBA)
PAGEO, AND GEORGE PELZ,)
 Plaintiffs,)
)
v.)
)
LINDA G. DOE,)
 Defendant.)
_____)

AFFIDAVIT OF TIMOTHY G. LYNCH

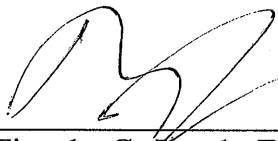
I, Timothy G. Lynch, do hereby attest to and depose the following:

1. I am the attorney representing the plaintiffs in the above manner.
2. I have made several attempts to resolve this matter with YELP, to no avail.
3. On March 3, 2015, I sent a Chapter 93A letter to YELP regarding the defamation on their webpage of my clients and noted that we can prove Linda G.'s defamation because her defamatory statements "are quite detailed and my clients have reviewed the statements and events mentioned and will testify that they are false and never took place." (Exhibit A).
4. YELP responded by way of "Freida" of "Yelp Support" via email. I showed how Linda G.'s defamation did not comport with Yelp's privacy policies. (Email of April 22, 2015). (Exhibit B).
5. "Freida" would not engage in any discussion and simply responded, after some repeated requests, that we needed to provide "a final judicial determination that

the contents of a review are defamatory.” (Email of May 5).

6. Yelp affiants do not inform the court that while they say they wanted to talk, they do not offer or supply a phone number to call.
7. When Attorney Levy called me, I immediately took his call even though I was running and immediately accommodated his request for a two week extension.
8. I conferred with Attorney Levy and rather than narrow issues, he simply raised additional ones. Attached is a complete email exchange between us. Exhibit C.
9. During my conversations with Attorney Levy, he informed me that he has spoken with Linda G. about this suit and this motion.

Signed under the Pains and Penalties of Perjury, this 14th Day of September, 2015.



Timothy G. Lynch, Esq.

EXHIBIT A

SWARTZ & LYNCH LLP

Counsellors at Law

Old City Hall

45 School Street • Boston, MA 02108

Telephone 617-367-2882 • Facsimile 617-367-2289

Via Certified Mail: 7011 0110 0001 3653 5323

Return Receipt Requested

April 6, 2015

President/ CEO
Yelp, Inc.
140 New Montgomery Street
San Francisco, CA 94105

RE: Pageo Jewelers

Dear Sir or Madam:

This office has been retained by Pageo Jewelers with respect to false and defamatory statements concerning them on your webpage. We have enclosed a copy of the defamatory statements as they appears on your webpage. We are writing pursuant to Massachusetts General Laws Chapter 93A to demand that you immediately take these defamatory statements off your webpage, posted an apology on your webpage to my clients, provide us with the identity (name and address) of the author of these statements, and monetary damages for the business harm suffered by my client.

Under Massachusetts law, language imputing a business person's or business corporation's honesty, credit or character can be found defamatory. The enclosed contains 3 'reviews.' My clients have no memory of "Cassandra of Waltham" and, therefore, statements in there are denied. However, the defamation by Linda G. of Boulder are quite detailed and my clients have reviewed the statements and events mentioned and will testify that they are false and never took place.

The publishing or communicating a defamatory statement is also a violation of Chapter 93A. A violation of Chapter 93A allows a party to seek double or treble damages when the conduct is outrageous, such as your conduct here.

April 6, 2015
Yelp, Inc.
Page Two

Under Massachusetts General Law Ch. 93A, § 9, you have an opportunity to make a reasonable written tender of settlement within thirty (30) days. Otherwise, should you fail to tender a reasonable offer of settlement, we will seek to recover the entire judgment from you and will move to treble the judgment, plus reasonable attorney's fees and costs. Given the outrageous conduct involved in this case, we expect to prevail and treble any judgment we obtain.

With regard to your opportunity to make a reasonable written tender of settlement, you may wish to take note of the case of *International Fidelity Insurance Co. v. Wilson*, 443 N.E.2d 1308, 1318 (1983). In that case, the Court stated:

Indeed, the conduct prescribed by the Statute is as much a failure to make a reasonable settlement offer as it is the substantive violation of Chapter 93A. Multiple damages are "the appropriate punishment" for forcing plaintiffs to litigate clearly valid claims.

Wilson, 443 N.E.2d at 1318; *see also Miller v. Risk Management Foundation*, 36 Mass.App.Ct. 411, 632 N.E.2d 841 (1994).

We are available to discuss this matter with you without waiving the thirty-day requirement of the statute.

Sincerely,

A handwritten signature in dark ink, appearing to read "Timothy G. Lynch", written in a cursive style.

Timothy G. Lynch

TGL/mad



USPS Tracking™



Customer Service >

Have questions? We're here to help.

Tracking Number: 70110110000136535323

Updated Delivery Day: Friday, April 10, 2015

Product & Tracking Information

Postal Product:

Extra Svc:
Certified Mail™

Available Actions

Text Updates

Email Updates

Return Receipt After Mailing

DATE & TIME	STATUS OF ITEM	LOCATION
April 10, 2015 , 3:12 pm	Delivered	SAN FRANCISCO, CA 94105

Your item was delivered at 3:12 pm on April 10, 2015 in SAN FRANCISCO, CA 94105.

April 10, 2015 , 8:26 am	Out for Delivery	SAN FRANCISCO, CA 94105
April 10, 2015 , 8:16 am	Sorting Complete	SAN FRANCISCO, CA 94105
April 10, 2015 , 6:58 am	Arrived at Unit	SAN FRANCISCO, CA 94105
April 10, 2015 , 5:08 am	Departed USPS Facility	SAN FRANCISCO, CA 94188
April 9, 2015 , 9:51 am	Arrived at USPS Facility	SAN FRANCISCO, CA 94188
April 8, 2015 , 8:35 am	Departed USPS Facility	BOSTON, MA 02205
April 7, 2015 , 11:11 pm	Arrived at USPS Facility	BOSTON, MA 02205

Track Another Package

Tracking (or receipt) number

Track It

EXHIBIT B

Tim Lynch

From: Tim Lynch
Sent: Monday, May 04, 2015 3:56 PM
To: Yelp HQ
Subject: RE: Message from Yelp HQ [3433816]

Importance: High

Freida

Kindly read my email of April 22 where I specifically dealt with your Privacy Policy and why under your policy you should disclose the information in question.

Again, please respond to my April 22 email.

Thank you

Tim Lynch

From: Yelp HQ [mailto:feedback@yelp.com]
Sent: Monday, May 04, 2015 1:45 PM
To: Tim Lynch
Subject: Message from Yelp HQ [3433816]

MAY 04, 2015 | 10:44AM PDT

Hi Tim,

Thanks for contacting us again.

As stated before, we don't disclose user information under these circumstances due to privacy concerns. Please see our Privacy Policy (<http://www.yelp.com/static?p=privacy>) for more information about how and when we might disclose this kind of information.

Yelp accepts properly served and lawfully issued subpoenas from California state courts, and the Northern District of California, at the following address:

Yelp Inc.
c/o National Registered Agents
818 W Seventh Street
Los Angeles, CA 90017

Regards,
Freida
Yelp Support
San Francisco, California

Yelp Official Blog | <http://officialblog.yelp.com>
Yelp Support Center | <http://www.yelp-support.com>
Yelp for Business Owners | <https://biz.yelp.com>

For your reference this is Case #: 3433816

Tim Lynch

From: Tim Lynch
Sent: Monday, May 04, 2015 1:26 PM
To: Yelp HQ
Cc: Fred Swartz
Subject: RE: Message from Yelp HQ [3433816]

Importance: High

Freida

Can you respond to my April 22 email?

Thanks

Tim Lynch

From: Tim Lynch
Sent: Wednesday, April 22, 2015 2:47 PM
To: 'Yelp HQ'
Cc: Fred Swartz
Subject: RE: Message from Yelp HQ [3433816]

Freida

Please understand our frustration here. You say you would review this if we provide you with a “final judicial determination that the contents of a review are defamatory.....” however, you do not provide the full name of the person Linda G so that we can sue her for her defamation. Linda G’s review has little to do with the business of selling jewelry. Moreover, her allegations are wholly untrue; she describes events that never took place, and, again, have nothing to do with the selling of jewelry.

Yelp’s own privacy policies, section 3.6(b) says you would disclose this information to prevent “wrongdoing” and defamation is clearly wrongdoing. Section 3.6(c) says you would disclose the information to “protect” the rights of users or the public. Again, defamation fits this description as well.

Kindly provide Linda G’s full name and address so that we can proceed with our defamation suit.

Thank you

Tim

From: Yelp HQ [<mailto:feedback@yelp.com>]
Sent: Thursday, April 16, 2015 12:46 PM
To: Tim Lynch
Subject: Message from Yelp HQ [3433816]

Hi Tim,

Thanks for writing back. We don't disclose user information under these circumstances due to privacy concerns. Please see our Privacy Policy (<http://www.yelp.com/static?p=privacy>) for more information about how and when we might disclose this kind of information.

Regards,

Freida

Yelp Support

San Francisco, California

Yelp Official Blog | <http://officialblog.yelp.com>

Yelp Support Center | <http://www.yelp-support.com>

Yelp for Business Owners | <https://biz.yelp.com>

For your reference this is Case #: 3433816

Tim Lynch

From: Yelp HQ <feedback@yelp.com>
Sent: Tuesday, May 05, 2015 11:11 AM
To: Tim Lynch
Subject: Message from Yelp HQ [3433816]

MAY 05, 2015 | 08:10AM PDT

Hi Tim,

As stated before, we will revisit your request if you provide to us a final judicial determination that the contents of a review are defamatory. In obtaining the final judicial determination, you may wish to seek the user's information through a subpoena, however we don't disclose user information readily under these circumstances due to privacy concerns.

Please read our Privacy Policy again as it states "to prevent, investigate, or identify possible wrongdoing in connection with the Service", with "the Service" referring to "[Yelp's] services, including those offered through our websites, emails, and mobile applications."

Our Privacy Policy can be found here: <http://www.yelp.com/static?p=privacy>

Regards,
Freida
Yelp Support
San Francisco, California

Yelp Official Blog | <http://officialblog.yelp.com>
Yelp Support Center | <http://www.yelp-support.com>
Yelp for Business Owners | <https://biz.yelp.com>

For your reference this is Case #: 3433816

EXHIBIT C

Tim Lynch

From: Paul Alan Levy <plevy@citizen.org>
Sent: Thursday, September 10, 2015 4:33 PM
To: Tim Lynch
Subject: RE: Subpoena to Yelp in Pam Lerner Jewelry, Inc. et al. v. Linda G. Doe

Thanks, Tim. See you Tuesday morning, then.

Our responsive papers have been filed; hard copies will be coming by hand, but I'll email them to you shortly so that you have them in soft form for convenience sake. Going forward, I'd be grateful for the same courtesy.

Paul Alan Levy
Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-7725
<http://www.citizen.org/Page.aspx?pid=396>
Twitter: @paulalanlevy
Public Citizen Foundation participates in the Combined Federal Campaign with the CFC Code 11168

From: Tim Lynch [mailto:tlynch@swartzlynch.com]
Sent: Thursday, September 10, 2015 2:12 PM
To: Paul Alan Levy
Subject: RE: Subpoena to Yelp in Pam Lerner Jewelry, Inc. et al. v. Linda G. Doe

Paul

We are going forward with the Motion on September 15. I simply made the offer to resolved this matter and obtain Linda G.'s information. It appears it will not, so I will see you on Tuesday.

Thanks
Tim

Tim Lynch
Swartz & Lynch, LLP
Old City Hall
45 School Street
Boston, MA 02108
617-367-2882
617-367-2289 – fax

tlynch@swartzlynch.com
www.swartzlynch.com

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dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you believe you have received this e-mail in error, please immediately notify Swartz & Lynch by telephone at (617) 367-2882. Thank you.

From: Paul Alan Levy [<mailto:plevy@citizen.org>]
Sent: Thursday, September 10, 2015 1:54 PM
To: Tim Lynch <tlynch@swartzlynch.com>
Subject: RE: Subpoena to Yelp in Pam Lerner Jewelry, Inc. et al. v. Linda G. Doe

Tim, I take it that what you are telling me is that you are not prepared to yield on the issue of subpoena jurisdiction but that you are ready to provide affidavits.

As I have said before, Yelp would be glad to look at your affidavits and evaluate whether they meet the Dendrite test. I certainly can't be in the position of telling you that, just because you send me an affidavit, that means that Yelp would conclude that the First Amendment rights of its user have been overcome, nor that it would resolve the subpoena jurisdiction issue. But certainly, if we can narrow the issues that need to be presented to the court for resolution, surely we ought to try to do that.

Moreover, at this juncture, Linda G. Doe ought to have the chance to review any affidavits your clients chooses to provide and decide whether she needs to try to find counsel in Massachusetts to oppose your motion to compel. The notice part of the Dendrite test is pretty universal.

Consequently, it seems to me that, at this juncture, if you want to meet the Dendrite test, the sound approach would be for you to withdraw your motion to compel while reserving the possibility of refiling after you and I have had the opportunity to meet and confer and after Doe has had notice of your evidence and a sufficient opportunity to move to quash or respond to your prospective motion.

Paul Alan Levy
Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-7725
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Twitter: @paulalanlevy
Public Citizen Foundation participates in the Combined Federal Campaign with the CFC Code 11168

From: Tim Lynch [<mailto:tlynch@swartzlynch.com>]
Sent: Wednesday, September 09, 2015 1:44 PM
To: Paul Alan Levy
Subject: RE: Subpoena to Yelp in Pam Lerner Jewelry, Inc. et al. v. Linda G. Doe

Paul

I've discuss this with my clients. As I've stated, we are happy to provide affidavits in support of our claims. If that will get us the information we have repeatedly asked for, that would be great. In any event, we will go forward on September 15 with our motion.

Thank you
Tim

Tim Lynch
Swartz & Lynch, LLP
Old City Hall
45 School Street
Boston, MA 02108
617-367-2882
617-367-2289 – fax

tlynch@swartzlynch.com
www.swartzlynch.com

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From: Paul Alan Levy [<mailto:plevy@citizen.org>]
Sent: Monday, August 31, 2015 5:34 PM
To: Tim Lynch <tlynch@swartzlynch.com>
Subject: Subpoena to Yelp in Pam Lerner Jewelry, Inc. et al. v. Linda G. Doe

Tim, thanks for taking my call this afternoon and to agreeing to call the Clerk to move the hearing date on your motion to compel from tomorrow to September 15.

As we discussed, the issue of subpoena jurisdiction is very important to Yelp, but California, where Yelp is located, makes it especially easy for out-of-state litigants to issue California process in support of litigation pending in courts in different states. California does not even require you to obtain a letter rogatory from the Massachusetts court: Per Section 2029.300 of the California Code of Civil Procedure, you'd need to fill out this form <http://www.courts.ca.gov/documents/subp030.pdf>, and attach the proposed subpoena using this form <http://www.courts.ca.gov/documents/subp010.pdf>. You need not be a California lawyer to do this; California has defined the issuance of such process not to constitute an appearance in the trial court, so that out-of-state lawyers can do this without retaining local counsel.

Beyond that, I just want to confirm what I told you – that if, in support of a California subpoena, your client is able to present admissible evidence establishing the elements of your claims against Linda G., Yelp would be happy to review those submissions to see if they potentially meet the standards set forth in Dendrite International v. Doe and similar authorities. Yelp does believe that it is important to give adequate notice of subpoenas to Doe defendants so that they can retain counsel to protect their interests, if they wish to do so.

I gather that, with the new hearing date, our opposition to your motion to compel is due on September 10. Consequently, if you have in mind to domesticate your subpoena in California, thus making it unnecessary for Yelp to oppose your motion to compel, I'd like to know as soon as possible.

Paul Alan Levy
Public Citizen Litigation Group
1600 20th Street, NW

Washington, D.C. 20009

(202) 588-7725

<http://www.citizen.org/Page.aspx?pid=396>

Twitter: @paulalanlevy

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