

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BOSTON MUNICIPAL COURT
CENTRAL DIVISION
C.A. NO. 2015 01 CV 1313

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

**PLAINTIFFS' REPLY TO NON-PARTY YELP'S OPPOSITION TO MOTION TO
COMPEL COMPLIANCE WITH SUBPOENA**

Plaintiffs Pam Lerner Jewelry, Inc. d/b/a as Pageo, and George Pelz submit this Reply to Non-Party Yelp Inc.'s Opposition to Plaintiffs' Motion to Compel Compliance with Subpoena for the purpose of addressing all the new issues and misstatements of law raised in Yelp's Opposition Motion.

This is an issue of a multinational corporation enabling and facilitating the online bullying of an individual and his small business. As it continues to do in litigation nationwide, non-party Yelp Inc. refuses to provide its readily available information to victims of defamation and bullying, effectively precluding a class of victims from having their day in court and confronting their anonymous tormentors. In its Opposition to Plaintiffs' motion, Yelp Inc. largely cites irrelevant case law, grossly distorts the series of events leading to this motion,¹ and neglects to acknowledge the blatantly defamatory remarks giving rise to this litigation against Defendant Linda G. Doe.

¹ In its Opposition, Yelp attempts to portray Plaintiffs' counsel as "ignoring" Yelp's "offer to meet and confer about the Subpoena" in violation of a BMC Standing Order. Yelp Opposition at 5. First, Yelp fails to disclose the prior email transactions counsel has had with Yelp, which are attached in their entirety to this motion. Second, Yelp did not provide any phone number to counsel "to confer." Further, Plaintiffs' counsel accommodated Yelp's request for postponement. Finally, the purpose of the Standing Order

In support of this Reply, please also see the attached Affidavits of Pam Lerner Swartz, George Pelz, and Timothy G. Lynch as well as Plaintiffs' Complaint filed on July 27th, 2015.

ARGUMENT

I. This court has jurisdiction to subpoena documents from Yelp.

Massachusetts Civil Procedure Rule 45(d) (2) states in pertinent part that:

...a nonresident of the Commonwealth when served with a subpoena within the Commonwealth may be required to attend or produce documents, electronically stored information, or tangible things only in that county wherein he is served, or within 50 airline miles of the place of service, or at such other convenient place as is fixed by an order of court. Mass.R.Civ.P. 45(d)(2).

In interpreting this rule, a Massachusetts court has determined that Mass.R.Civ.P. 45 clearly encompassed service of a subpoena duces tecum upon both non-residents and nonparties. *See Netezza Corp. v. Intelligent Integration Systems, Inc.*, 27 Mass.L.Rptr. 551 at 2 (Sussex Cy. Super Ct. Oct. 26, 2010). In that case, the court enforced the service of a subpoena on a non-party out-of-state corporation where plaintiff served that subpoena on the non-party's registered agent in the Commonwealth of Massachusetts. *Id.* Before this court today is the exact same set of facts; here, Plaintiffs seek to enforce a subpoena on non-party and out-of-state corporation Yelp, where Plaintiffs served a subpoena on Yelp's registered agent in the Commonwealth. As such, this Court should follow the decision in *Netezza* and enforce Plaintiffs' Motion to Compel Compliance with Subpoena. *Id.*

Yelp cites is to narrow issues between parties. In fact, Yelp is raising additional irrelevant issues and has no desire to compromise or negotiate with Plaintiffs in producing the information necessary to pursue this litigation.

Yelp attempts to distinguish *Netezza* on the dubious ground that Judge Hinkle, in her opinion, enforced the motion to compel solely because of the non-party's "substantial presence in the Commonwealth." Yelp Inc.'s Opposition to Motion to Compel Compliance with Subpoena at 11. Yet, the court in *Netezza* clearly bases its decision not because of the non-party's contacts with the Commonwealth, but rather on a plain reading of Rule 45(d)(2), concluding, "...it surely follows that rule 45 permits service of a subpoena upon a non-resident nonparty like IBM in this case." 27 Mass.L.Rptr. 551 at 3. Only after interpreting the plain meaning of the rule does Judge Hinkle discuss the non-party's maintenance of its substantial presence in the Commonwealth. *Id.* In fact, Judge Hinkle concludes by stating that non-party IBM, in its reading of Rule 45(d)(2), "elevate[s] form over substance." *Id.* Likewise, for Yelp to challenge the service of this subpoena on its registered agent in the Commonwealth of Massachusetts is to elevate "form over substance," because through the business it regularly transacts in the Commonwealth, Yelp, like IBM in *Netezza*, is "amenable to suit in Massachusetts by service upon its registered agent." *Id.*

Nowhere in any of the Affidavits provided by Yelp do they address the substantial contacts and revenue they derive from doing business in the Commonwealth and it is this business out of which this cause of action arises.

Because service on Yelp's registered agent was proper under Massachusetts law, and because Yelp regularly transacts business in the Commonwealth, this Court should enforce the compliance of the subpoena.

II. The First Amendment is not implicated in this Motion because defamatory language is not protected speech.

Although Yelp Inc. cites numerous seminal First Amendment cases, freedom of speech is not absolute and is not implicated in this action against Defendant Linda G. Doe. The Second Restatement of Torts outlines the elements of defamation as follows: first, a false and defamatory

statement concerning another; second, an unprivileged communication to a third-party; third, fault amounting to at least negligence on the part of the publisher (though the amount of fault changes depending on the status of the individual who was targeted by the defamatory speech); and fourth, some sort of damages or harm caused. *Restatement (Second) of Torts* § 558 (1977).

Libel is written defamation. *See Draghetti v. Chmiekewski*, 416 Mass. 808, 813 n.4 (1994). A statement is defamatory if it discredits the plaintiff or holds the plaintiff up to scorn, hatred, ridicule, or contempt in the minds of any considerable and respectable segment of the community. *See Amrak Prods., Inc. v. Morton*, 410 F.3d 69, 72 (1st Cir. 2005); *King v. Globe Newspaper Co.*, 400 Mass. 705, 718 (1987); *Sone v. Essex County Newspapers, Inc.*, 367 Mass. 849, 853 (1975). Allegations of dishonesty have been considered defamatory. *Restatement (Second) of Torts* § 570-574 (1977). Additionally, a corporation or business entity can be defamed by a report of its deceptive business practices or gross mismanagement. *See Dun & Broadstreet Inc. v. Greenmoss Builders Inc.*, 472 U.S. 749 (1985); *Finnish Temperance Soc’y v. Socialistic Publ’g Co.*, 238 Mass. 345, 352 (1921).

In a defamation action in which the target of the allegedly harmful speech is a non-public figure who has not thrust himself into the public sphere, the plaintiff need only prove that the speech was negligent by a preponderance of the evidence in order to recover in tort. *Gertz v. Robert Welch Inc.*, 418 U.S. 323 (1974). In the present set of facts, Plaintiff George Pelz is not a public figure; he is simply a small business owner and has taken no action to avail himself to public scrutiny. Pelz Affidavit ¶ 1. Mr. Pelz has been defamed personally by Linda G. Doe, who accused Mr. Pelz of “scamming” her and “taking advantage of abused women.” *Id.* at ¶ 8.

The Supreme Court of the United States has discussed at length the social and political value of the type of speech that is the subject of this litigation, and has emphatically concluded that it does not warrant complete protection under the First Amendment. *See Gertz* at 340. In *Gertz*, the Supreme Court reasoned that false statements about private individuals do not “advance society’s interest in ‘uninhibited, robust, and wide-open debate.’” *Id.* at 340. Rather, false statements “are no essential part of any exposition of ideas, and are of such slight social value...that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” *Id.*, quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). Further, the Court in *Gertz* clearly recognized a “legitimate state interest” in the “compensation of individuals for the harm inflicted on them, by defamatory falsehood” because an individual maintains the “right to the protection of his own good name.” *Id.* at 341.

In its Opposition to this Motion, after a prolonged foray into First Amendment Law 101, Yelp dubiously suggests that “...the Supreme Court of the United States has held that even false speech can be protected by the First Amendment unless the plaintiff shows that the statements can overcome the various hurdles imposed by the First Amendment for defamation liability,” citing *United States v. Alvarez*, 567 U.S. 2537, 2545 (2012). The Court in *Alvarez* explains that the “various hurdles” to which Yelp refers is that a statement pertaining to a public figure must be a knowing or reckless falsehood. *Id.* at 2545. Mr. Pelz is not a public figure, and Pageo is a boutique jeweler with three locations limited to the Commonwealth of Massachusetts. Lerner Swartz Affidavit ¶ 1. In order to succeed in a defamation claim against Defendant Linda G. Doe, then, Plaintiffs must only show by a preponderance of the evidence that Linda G. Doe was negligent in the making her statements. *Gertz*, at 366.

Through their Affidavits, Plaintiffs indeed make a prima facie case of such a showing. Defendant's narrative account of her experience with Plaintiffs is a complete fiction from start to finish. Lerner Swartz Affidavit ¶ 1-6; Pelz Affidavit ¶ 1-6. Given that Plaintiffs' jewelry store is a high-end boutique, they are familiar with most, if not all, long-term customers. Pelz Affidavit ¶ 4; Lerner Swartz Affidavit ¶ 4. **Defendant Linda G. claims to have spent "100s of thousands of dollars on some gorgeous but definitely way overpriced jewelry." Comp. ¶ 8. Yet, neither Mrs. Lerner-Swartz nor Mr. Pelz has any idea of the identity of Defendant, hence the reason for this subpoena. Lerner Swartz Affidavit ¶ 4; Pelz Affidavit ¶ 4. Further, Defendant claims she pawned jewelry with Mr. Pelz. Comp. ¶ 8. However, only rarely will Plaintiffs "allow clients to trade in prior purchases and have on very rare occasions purchased back jewelry." Pelz Affidavit ¶ 5. Given the rarity of this practice, one would reasonably expect Mr. Pelz or Mrs. Lerner Swartz to know the identity of Defendant. *Id.* Lastly, Linda G. bizarrely asserts that she attended a fundraiser for "abused women" at which she encountered Mrs. Lerner Swartz and Mr. Pelz, and indicates that Mr. Pelz and Mrs. Lerner-Swartz are brother-in-law and sister-in-law. Comp. ¶ 8. In fact, they are brother and sister, and anyone who regularly did business at Pagedo would know the nature of their relationship. Lerner Swartz Affidavit ¶6.**

Plainly, Linda G's statements are a bizarre series of convoluted fictions; there is simply not an iota of truth to her bizarre and fantastic account. She did not spend hundreds of thousands of dollars at Plaintiffs' business, she did not pawn her jewelry to Mr. Pelz, and she did not attend any fundraiser with Mrs. Lerner Swartz or Mr. Pelz. Lerner Swartz Affidavit ¶ 1-6; Pelz Affidavit ¶ 1-6. Several customers are aware of and have referenced Defendant's falsehoods in conversation to Mr. Pelz, and as a result of these statements Plaintiffs' business has suffered. Pelz Affidavit ¶ 8.

Additionally, Mr. Pelz has suffered physically and emotionally as a direct result of Linda G. Doe's targeted bullying and defamation. Pelz Affidavit ¶ 9-10.

Through their Complaint and the attached Affidavits, Plaintiffs have made a sufficient evidentiary showing that the statements about Plaintiffs are false, defamatory, and have caused damages. As such, this is not a First Amendment issue, because it is well established by our Supreme Court that these statements do not receive the protections of the United States Constitution. Therefore, this Court must not deny the enforcement of Plaintiffs' subpoena on First Amendment grounds.

III. There is no need to adopt the *Dendrite* standard because adequate remedies already exist to prevent frivolous lawsuits.

As outlined in great detail *infra*, Plaintiffs even satisfy the onerous *Dendrite* standard rejected by many Courts. However, there is no need for this Court to adopt prongs 2-4 of the *Dendrite* standard in determining whether to order the "unmasking" of an anonymous internet user, because Massachusetts law already adequately protects defendants and non-parties from frivolous lawsuits. *See* Mass.R.Civ.P. 11; *see also* M.G.L. ch.231 § 6F. Rule 11 requires a licensed attorney in the Commonwealth to certify in a pleading, by his signature, that "to the best of his knowledge, information, and belief there is a good ground to support [the pleading]..." Mass.R.Civ.P. 11(a). Further, under M.G.L. ch.231 § 6F:

Upon motion of any party in a civil action...the court may determine...that all or substantially all of the claims...made by any party who was represented by counsel...were wholly insubstantial, frivolous and not advanced in good faith.
M.G.L. ch.231 § 6F.

The statute provides that if a finding is made by a court with respect to frivolous claims, the court has the power to award attorney fees and other costs to the parties against whom those claims were made. *Id.* As such, a large portion of the *Dendrite* test is unnecessarily duplicative of existing Massachusetts law, as prongs 2-4 of the standard essentially seek to “weed out” frivolous claims advanced against anonymous internet users. *See Dendrite* 775 A.2d at 760-61; *See also* Mass.R.Civ.P. 11; *see also* M.G.L. ch.231 § 6F. Because the purpose of the *Dendrite* standard, discussed in greater detail below, is achieved through existing Massachusetts law, this Court need not adopt the standard. *See* Mass.R.Civ.P. 11; *see also* M.G.L. ch.231 § 6F.

IV. Numerous courts have rejected the *Dendrite* standard because, like Massachusetts, there are already adequate safeguards.

Because numerous appellate courts have rejected the *Dendrite* standard because like Massachusetts, they have procedural safeguards, the standard should not be applied to the present set of facts. *See Thomas M. Cooley Law Sch. v. Doe*, 300 Mich.App. 245 (2013) (rejecting *Dendrite* and holding that the Michigan’s court rules adequately protect defendant’s First Amendment interests in anonymity); *see also Maxon v. Ottawa Publ. Co.*, 929 N.E. 2D 666 (Ill.App. 2010) (holding that the *Dendrite* balancing test was not necessary); *see also John Doe No. 1 v. Cahill*, 884 A.2d 451 (2005) (the Supreme Court of Delaware rejecting *Dendrite* in favor of a “summary judgment” standard, holding that *Dendrite* provides unnecessary extra protection to anonymous internet users). Because numerous appellate courts have declined to adopt *Dendrite*, so too should this court

V. Plaintiffs have made the requisite showing to “unmask” its anonymous critic.

In its Opposition to Plaintiffs Motion to Compel Compliance with their Subpoena, Yelp suggests that this Court should adopt the onerous *Dendrite* standard in determining whether Plaintiffs have met the requirement in order for the Commonwealth to compel identification of

Defendant Linda G Doe. Yelp Opposition at 11. In fact, Plaintiffs easily satisfy the standard Yelp suggests this court adopt. *See Dendrite v. Doe*, 775 A.2d 756 (N.J. Super. App. Div. 2001).

As Yelp indicates, *Dendrite* established an elaborate and involved standard which only a few courts have adopted, and some courts have rejected. *Id.* at 760-61; *see also* Yelp Opposition at 11. Plaintiffs have satisfied this standard completely, and therefore are entitled to the documents and information sought from Yelp Inc. *See Dendrite* 775 A.2d at 760-61.

In such an action, plaintiffs, and sometimes the Internet Service Provider, must first make an effort to notify the anonymous speaker and withhold action to afford the anonymous speaker an opportunity to file and serve an opposition to the subpoena. *Id.* According to the *Dendrite* court, “These notification efforts should include posting a message of notification of the identity discovery request to the anonymous user on the ISP’s pertinent message board.” *Id.* Given the plaintiff’s lack of reliable identifying information for the defendant, the *Dendrite* court required only that the plaintiff provide indirect notice, by posting a message on the ‘pertinent message board.’ *See id.* According to Yelp’s counsel, **Yelp has been in contact with Defendant Linda G. Doe and she has been made aware of the legal proceedings against her.** *See* Lynch Affidavit ¶ 9. Additionally, Mr. Pelz satisfied this notice requirement by posting in direct response to Defendant on Yelp in the same message thread to Defendant’s wild fabrication. Yelp Opposition at 3. Mr. Pelz clearly stated:

“There is not a single word of truth in the Linda G. post...I was advised by yelp to not publicly respond to this post and to “Flag” it. They would deal with it within 5 business days. They have not. I hope Yelp does the right thing and remove [sic] this libel from their site.” Yelp’s Opposition at 3-4.

Indeed, Linda G. was made aware of Mr. Pelz's response and was therefore notified of the potential legal action against her and therefore was on direct notice of Plaintiffs' attempts to identify her. *Id.* 4. Defendant Linda G. responds to Mr. Pelz's post directly, and takes language from his post in her response. *Id.* Further, in her response, Defendant Linda G. readily admits that Mr. Pelz "would like to know [her] last name." Comp. ¶ 9; Yelp Opposition at 4. The *Dendrite* standard simply requires that a potential plaintiff notify an anonymous potential defendant by responding to the allegedly defamatory material. 775 A.2d at 760-61. Plaintiffs satisfied the notification requirement when he responded directly to Linda G., in which he articulated 1) the falsity of the statements; 2) his attempts to notify Yelp; 3) his intent to pursue legal action; and 4) the commencement of legal action against her. *See* Yelp Opposition at 3-4; Lynch Affidavit ¶ 9.

It should be noted that despite this notification requirement under *Dendrite* – a decision Yelp Inc. continuously relies on in its consistent opposition to subpoenas seeking to unmask anonymous defamers – Yelp administrators actually advised Mr. Pelz to not publicly notify the Defendant in this action. Yelp's Opposition at 3 bottom. Thankfully, Mr. Pelz did not heed Yelp's deliberately misleading advice. Presumably, had Mr. Pelz adhered to Yelp's advice, Mr. Pelz could not continue with this action because Plaintiffs would not have satisfied the first prong of the *Dendrite* standard. *See* 775 A.2d at 760-61.

Secondly, under the *Dendrite* standard, plaintiff must identify the exact statements alleged to constitute actionable speech before a court will enforce a subpoena to unmask the anonymous speaker. 775 A.2d at 760-61. Plaintiff, again, easily satisfies this requirement in their Complaint and Attached Affidavits. Plaintiffs' Complaint restates in its entirety the statements giving rise to this action. *See* Complaint ¶ 8-9. Further, the attached Affidavits of Mrs. Lerner Swartz and Mr. Pelz evidence the falsity of these statements, and the damages that have resulted. *See* Lerner Swartz

Affidavit; *See Pelz Affidavit*. In fact, as of this writing the statements made by Defendant remain on Yelp's website for the world to see. Because Plaintiff has identified in their Complaint and in their Affidavits the actionable language, this prong of the *Dendrite* test is also unequivocally satisfied. *See 775 A.2d at 760-61*.

Third, under *Dendrite*, the plaintiff must set forth a prima facie cause of action that is sufficient to withstand a motion to dismiss. *775 A.2d at 760-61*. A pleading in Massachusetts must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled." Mass.R.Civ.P.8. On this matter, Plaintiffs' Complaint speaks for itself. Plaintiff alleges with the requisite specificity the defamatory statements, as well as the harm is has caused them. Comp. ¶8-17. Because Plaintiffs have submitted to this Court a short and plain statement demonstrating plausible entitlement to relief, this prong is also satisfied. *See Dendrite 775 A.2d at 760-61*.

Fourth, Yelp interprets *Dendrite* as requiring an evidentiary showing requiring the plaintiff to produce evidence supporting each element of its claims. Yelp Opposition at 11. Again, the Affidavits of Mrs. Lerner Swartz and Mr. Pelz are more than sufficient to evidence a prima facie case of their action against Defendant Linda G. Doe. *See Lerner Swartz Affidavit; See Pelz Affidavit*. Briefly, to reiterate, these sworn statements clearly articulate that the Plaintiffs have no knowledge of transacting any business whatsoever with Defendant. *Id.* Further, the Affidavits reveal glaring inconsistencies, harmful and malicious lies, and distortions in Defendant Linda G's statements. *Id.* Even without the benefit of a discovery process, Plaintiffs have clearly satisfied this evidentiary showing through the sworn affidavits of Mrs. Lerner Swartz and Mr. Pelz. *See id.* Although Defendant Linda G. asserts an intimate and long term relationship with Plaintiffs, neither Mrs. Lerner Swartz nor Mr. Pelz have any idea of her identity. *See id.* Defendant Linda G. claims

to have pawned her jewelry to Mr. Pelz “for peanuts,” yet Pageo jewelry does not operate as a pawn shop. *See* Pelz Affidavit ¶ 5. Lastly, despite claiming to have encountered Mr. Pelz and Mrs. Lerner Swartz at a charity event for “abused women,” Mr. Pelz and Mrs. Lerner Swartz have no recollection of ever attending such event. *See id.* ¶ 6. The entire narrative account is a complete fiction, and the sworn affidavits are illuminating in this regard. As such, Plaintiffs have satisfied the requisite evidentiary showing under *Dendrite*. 775 A.2d at 760-61.

Lastly, under *Dendrite*, the court must “balance the defendant’s First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant’s identity to allow the plaintiff to properly proceed.” 775 A.2d 761. Under this portion of the test, a trial court judge has broad discretion in whether to grant the motion seeking the “unmasking” information of the anonymous internet defendant.² In the present set of facts, there is absolutely no First Amendment value to Defendant Linda G. Doe’s speech. Indeed, it is exactly the type of “irresponsible, malicious, and harmful communication...that anonymity affords...” that the First Amendment does not protect. *Quixtar Inc. v. Signature Mgmt. Team, LLC.*, 566 F.Supp. 2d 1205, 1214 (D.Nev. 2008). Defendant’s “review” of Pageo is a complete and utter fiction, and it continues lies that portray Plaintiffs in an unethical and predatory manner. *See* Lerner Swartz Affidavit; *See* Pelz Affidavit. Mr. Pelz, as an individual, has been personally hurt by these statements and has suffered emotional distress. *See* Pelz Affidavit ¶ 8-9. Additionally, customers of Pageo have referenced Defendant’s statements to Mr. Pelz on numerous occasions. *Id.* In performing this balancing test, the harm to Plaintiffs clearly outweighs the “benefit” of Defendant Linda G. Doe’s speech. *See Dendrite* 775 A.2d at 760-61.

² Stephanie Barclay, *Defamation and John Does: Increased Protections and Relaxed Standing Requirements for Anonymous Internet Speech*, 2010 B.Y.U.L. Rev. 1309, 1321 (2010).

For the aforementioned reasons, Plaintiffs meet all of the requirements for a court to enforce a subpoena seeking unmasking information of an anonymous internet Defendant. Yelp Inc. agrees that this standard is controlling in this action. Yelp Opposition at 11. As such, this honorable Court must grant Plaintiffs' Motion to Compel Compliance with the Subpoena served on non-party Yelp Inc.

VI. Plaintiff seeks to “unmask” Linda G. Doe in order to pursue a defamation action against her.

In its Opposition to this Motion, Yelp states that “Internet speakers may choose to speak anonymously for many reasons.” Yelp Opposition at 8. **Yet, in discussing this notion, Yelp does not reference cyber bullying, harassment, or damaging false statements in its musings on the value and importance of internet anonymity. One could certainly speculate that Linda G. is simply someone hired by a competitor of Pageo to damage Pageo’s business, and for that reason wishes to retain his or her anonymity.**

Yelp continues to imply that this motion to compel the unmasking information of Defendant is not a genuine effort to seek relief on behalf of Plaintiffs. Yelp Opposition at 9. Yelp states, “Indeed, in a number of cases, plaintiffs have succeeded in identifying their critics and then sought no further relief from the court.” *Id.* Yelp continues to cite a case in which “a lawyer who used subpoenas to identify anonymous defendants, not with any intention of litigating against them but in the hope of extorting quick settlements through the threat of public shaming” was sanctioned by the court. *Id.* Yelp concludes that this practice by plaintiff’s lawyers could ultimately chill Internet communications and basic First Amendment rights. *Id.* at 9-10. Further, courts have suggested bluntly that “there is reason to believe that many defamation plaintiffs bring suit merely to unmask the identities of anonymous critics,” as opposed to a genuine effort to seek monetary

relief for the harm incurred as a result of the defamatory remarks. *Doe No. 1 v. Cahill*, 884 A. 2d 451, 457 (Del. 2005).

In response, Plaintiffs has no knowledge as to whether some plaintiffs bring “unmasking” suits simply to embarrass, harass, or shame. However, these accusations against Plaintiffs are baseless and offensive. Plaintiffs have suffered harm as a result of Linda G. Doe’s false and malicious statements, and Plaintiffs therefore are entitled under Massachusetts law for compensation for their injuries. Plaintiffs unequivocally intend to pursue this relief. Further, non-parties such as Yelp maintain adequate remedies at law to combat the filing of frivolous lawsuits, discussed *supra*.

VII. Cyberbullying, which Yelp fosters and seeks to shelter by its actions in this motion, have been the subject of significant public concern.

The defamatory and malicious remarks targeted at Plaintiffs reflect the **type of behavior that a Massachusetts Anti-bullying statute seeks to prevent, albeit in a different context.** *See* Mass.Gen.Laws ch. 71, § 370(a). The Massachusetts legislature has defined cyber bullying as “bullying through the use of technology or any electronic communication...including...internet communications. *Id.* Indeed, this statute specifically contemplates as unlawful “the knowing impersonation of another person as the author of posted content or messages if the creation or impersonation” causes “physical or emotional harm to the victim or damage to the victim’s property.” *Id.*

Linda G. Doe – whoever he or she is – has engaged in the malicious behavior clearly contemplated as the type of conduct that the Massachusetts legislature sought to combat in its anti-bullying statute. *See* M.G.L. ch. 71, § 370(a). Linda G. Doe has created, assumed, or fabricated an online identity in order to intentionally and maliciously cause physical and

emotional harm to Mr. Pelz personally and to Pageo as a business. Lerner Swartz Affidavit ¶ 1-10; Pelz Affidavit ¶ 1-10. While Plaintiffs understand that this statute is limited to the application of Massachusetts schools, it is nonetheless notable that our legislature has recognized the problem of cyber bullying and has taken measures to protect victims in Massachusetts schools. As victims of cyber bullying, Plaintiffs are entitled to their day in court.

Lastly, Yelp's counsel, Paul Alan Levy, has stated that he has personally spoken to Defendant Linda G. Doe regarding this litigation generally and this motion specifically. Lynch Affidavit ¶ 9. Plaintiffs have sufficient grounds to speculate that Linda G. Doe could be an agent of a business competitor, or perhaps even an agent of Yelp as this has been the subject of recent publications.³⁴ Plaintiffs simply want their day in court. By its refusal to simply disclose the identifying information of Defendant so that Plaintiffs may have their day in court, Yelp is assisting in this miscarriage of justice.

Conclusion

The anonymous Defendant in this action claims that Plaintiffs are unethical, duplicitous, unfit to run their business, take advantage of 'abused women' and "scammers." Because of these remarks, Plaintiffs have suffered and continue to suffer economic damages and emotional distress. In short, Plaintiffs deserve their day in court. By refusing to comply with the subpoena served in accordance with Massachusetts law, Yelp is deliberately denying Plaintiffs their day in court. For

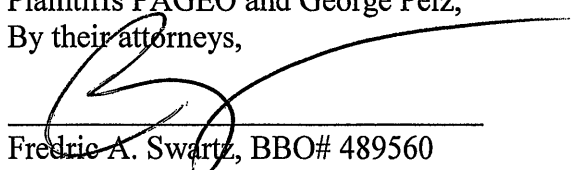
³ The Associated Press, *Review Site Yelp Battles Extortion Claims*, The New York Times, Oct. 13, 2014. (New York Times article details the legal efforts of various small businesses to prove that Yelp manipulates its reviews by dropping the ratings of small business owners who choose not to advertise on the site).

⁴ Reuters, *Yelp Shares Fall 4.7% After Claim in Film Trailer*, the New York Times, March 19, 2015 (New York Times article referencing a documentary currently in production titled "Billion Dollar Bully," which advances the thesis that Yelp extorts money from small businesses who do not wish to advertise on the site).

the foregoing reasons, Plaintiffs' Motion to Compel Compliance with Subpoena should be granted, and Yelp should be ordered to produce the information Plaintiffs seek.

Respectfully submitted,
Plaintiffs PAGEO and George Pelz,
By their attorneys,

Dated: September 15, 2015



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NOTICE OF MOTION AND CERTIFICATE OF SERVICE

I, Timothy Lynch, counsel for Plaintiffs, do hereby certify that on this 15th day of September 2015, I caused to be served a true copy of the foregoing document upon Yelp Inc., by hand delivery to its counsel of record:

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