

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

Index No.:

TIMOTHY C. PARLATORE, ESQ.,

Petitioner,

**AFFIRMATION AND
PETITION TO COMPEL
DISCLOSURE
(CPLR §3102(C))**

For an Order pursuant to section 3102(c)
Of the Civil Practice Law and Rules
To Compel Disclosure from

MICROSOFT CORPORATION,
GOOGLE, INC., and
CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS,

Respondents.

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The Petitioner, TIMOTHY C. PARLATORE, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms under the penalty of perjury, as follows:

The Parties

1. That at all relevant times herein, Petitioner Timothy C. Parlatore, Esq. (“Petitioner”) is an attorney, duly licensed in the state of New York, operating as a sole proprietorship at 260 Madison Avenue, 22nd Floor, New York, New York 10016, which is in the State of New York and in the County of New York.
2. Upon information and belief, respondent Microsoft Corporation (“Microsoft”) is a foreign business corporation, duly registered with the New York State Department of State (DOS ID #1768283).¹ Microsoft owns the email service MSN Hotmail (“Hotmail”).
3. Upon information and belief, respondent Google, Inc. (“Google,”) is a foreign business

¹ A printout of the entity information from the New York State Department of State website is annexed hereto at Exhibit “A.”

corporation, duly registered with the New York State Department of State (DOS ID #2949528).² Google operates a blog hosting service called Blogger or Blogspot (“Blogspot”).

4. Upon information and belief, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) is a foreign business corporation that regularly conducts business in New York State and whose address is 180 Washington Valley Road, Bedminster, NJ 07921.

Preliminary Statement

5. This special proceeding seeks an order (a) issuing pre-action Subpoenas *Duces Tecum*, pursuant to CPLR 3102(c), or authorizing Petitioner to do so, to each of the Respondents directing them each to provide certain Disclosures³; and (b) awarding Petitioner such other and further relief as this Court may deem just and proper, including, but not limited to, an award of costs and disbursements.

6. The Disclosures seek information required to enable Petitioner to ascertain the identity of the persons or entities responsible for publishing the false and defamatory blog about Petitioner entitled “Timothy Parlatore is a Payne: A blog dedicated to exposing the fraudulent Timothy Parlatore/Payne” (the “Blog”), which was initially published on the website, www.parlatore-is-a-payne.com, but appears to have since migrated to www.parlatore-is-a-payne.blogspot.com.⁴ These Disclosures are necessary to allow Petitioner to identify potential defendants and frame a complaint for defamation *per se*.

7. In the related petition of *Parlatore v. GoDaddy.com, et. al.*, 161479/14, Petitioner sought and obtained pre-action disclosure from Godaddy.com, LLC (“GoDaddy”) and Domains By Proxy, LLC, (“DBP”) who originally hosted the defamatory blog, but these disclosures have not

² A printout of the entity information from the New York State Department of State website is annexed hereto at Exhibit “B.”

³ Copies of the proposed subpoenas are annexed hereto at Exhibits “C,” “D,” and “E.”

⁴ A printout of the Blog is annexed hereto at Exhibit “F.”

yet revealed the identity of the perpetrator, as they used fake contact information. This petition seeks to continue the search, based on the information that was revealed as a result of the prior petition.

8. Absent the Disclosures, the parties responsible for this patent wrong against the Petitioner will continue to hide their identity and avoid facing the consequences of their wrongful conduct. Further, thus emboldened, they may continue to defame and injure the Petitioner by using the Blog.

The Defamatory Blog

9. On October 27, 2014, an unknown individual, or individuals, purchased the domain name Parlature-is-a-payne.com from GoDaddy.com and began to set the website up as a blog format which allows the owner to post articles and attachments. However, the purchaser used the services of DBP to hide their identity.

10. On November 3, 2014, the following was posted onto the website:

IN THE BEGINNING THERE WAS DECEPTION

In 2005, a man named Timothy Payne changed his name to Timothy Parlature. The name change is suspicious seeing as how it coincides with the criminal history of one Timothy Payne. Why the name change? What is Mr. Parlature hiding? His name change came after his numerous run-ins with the police in the Virginia Beach area. This name change then set him up with a clean slate for law school. His current name is not associated with any of his previous background so when he turned in his two Affidavits of Good Moral Character for the application process administered by the First Department's Committee on Character and Fitness ("the Committee") for the State of New York, he was not being truthful. His background proves that he is severely lacking in the good moral character that is required in order to be an upstanding member of the New York State Bar Association. He was deceitful enough to change his name before he took the bar because otherwise he would have had to appear before the court to justify his name change potentially barring him from ever practicing law. Tim Parlature has numerous aliases and only a man trying to hide something would need an alias.

11. This posting contains numerous false and defamatory statements.

12. First, the only “criminal history” that Petitioner has is a speeding ticket from almost ten years ago for driving 83 mph. The statement that there were “numerous run-ins with the police” is similarly false.

13. Petitioner did change his last name to his mother’s maiden name in May 2005. However, this was done legally, by court order. Petitioner retained the same social security number and driver’s license number.

14. The statement that Petitioner “was not being truthful” in his application to the bar is a complete fabrication, as Petitioner provided all the required information to the Second Department (not First, as claimed on the blog) Committee on Character and Fitness, including a copy of the court order and a copy of his Virginia driver’s abstract.

15. The allegation that Petitioner “has numerous aliases” is completely untrue.

16. Moreover, this posting included a pdf file, which is entitled “Proof of Name Change.” This document appears to be a page from a public records search, which includes Petitioner’s first five digits of his social security number, in direct violation of General Business Law §399-ddd, along with his partial date of birth.⁵

17. On November 6, 2014, the following was posted onto the website:

A VERY CRIMINAL HISTORY

Tim Parlatore has a known criminal history. A name change does not erase an individual’s inherent criminal mindset or past behavior. He has been in trouble with the law for the last decade. Anything from misdemeanors to tax warrants can be found scattered amidst his record. He has been in trouble with the law for reckless driving and speeding in the Virginia Beach area. Not only does he have an extensive sordid past, but his current partner has his own criminal record. His associate is best known as John Gotti’s attorney during the 1980’s and was arrested last year for punching a fellow diner for being too loud at a New York restaurant. Both men running this firm have known criminal backgrounds that can be easily tracked and searched. How can you trust a man who changes his name to hide his past

⁵ Because of the personally identifiable information, a copy is not being included as an exhibit.

indiscretions? As an attorney, how can you ethically represent a client if you are misrepresenting yourself? Tim's clients deserve to know the true Payne that Parlatore is.

18. This posting also contains numerous false and defamatory allegations. The statement that Petitioner "has been in trouble with the law for the last decade" along with the statement that multiple misdemeanors "can be found scattered amidst his record" is completely untrue. The only transgression that is true is that Petitioner got a speeding ticket for driving 83 mph in 2005.⁶

19. This posting's reference to Petitioner's former business partner Bruce Cutler's criminal record is similarly false. Petitioner represented Mr. Cutler for a successful dismissal of all charges in the incident described.

20. Like the first, this posting also contained a pdf file. This one is entitled "The History of a Criminal," which appears to be several pages from a public records search detailing traffic offenses. However, half of the records listed are for different people with similar names.⁷

21. On November 11, 2014, another posting was made stating that Petitioner is a "scam artist" and "a cheat and a criminal."

22. The false statements contained in these postings⁸ constitute defamation *per se*, in that they falsely allege criminal conduct, as well as stating false facts that tend to injure Petitioner in his business trade or profession.

Petitioner's Discovery of the Blog and Remedial Efforts

23. After Petitioner learned of the Blog, Petitioner attempted to determine who was responsible for the publication of the defamation against him. This effort has hit a dead end.

24. The rules established by the Internet Corporation for Assigned Names and Numbers

⁶ Under Virginia law, speeding over 80 mph is considered a misdemeanor. See Virginia Code § 46.2-862

⁷ Because of the personally identifiable information, a copy is not being included in this public filing.

⁸ The listed statements do not constitute the entirety of the defamatory statements, but rather are listed to establish the fact that Petitioner would have a meritorious cause of action, once the perpetrator is identified.

("ICANN"), require that identifying information about registrants of domain names (and other relevant information, including the person or entity who is responsible for paying for the domain) be made public and available on a "Whois" directory.

25. Petitioner initially determined, using the Whois directory that that the blog domain name had been purchased through GoDaddy using the services of DBP to mask the identity of the blogger.

26. Petitioner therefore filed a petition, pursuant to CPLR §3102(c) seeking pre-action disclosure from GoDaddy and DBP. *Parlatore v. GoDaddy.com, et. al.*, 161479/14.

27. Upon being served with the petition, GoDaddy and DBP provided a copy of the petition to their customer via email to provide them with the opportunity to contest the disclosure of their identity. The author of the Blog did not respond to their inquiry, nor contest the petition, but rather posted a new entry, dated December 9, 2014, mocking Petitioner and attaching a copy of the signed Order to Show Cause. *See Exhibit "F"*.

28. On December 18, 2014, Judge Mills granted this petition and DBP cancelled the account protecting the registration of the Blog.

29. With the anonymity provided by DBP removed, the Whois directory provided all of the contact information of the owner of the blog.⁹ However, further research shows that the name and address of the putative registrant is false. A Lexis public records search shows no person by the name of Russell Thornton at the listed Atlanta Georgia address and the listed phone number is a cell phone from Seattle.

30. However, the email address, russell.thornton.ga@hotmail.com appears to be a real email address that DBP used to send communications regarding Petitioner's complaint. These

⁹ A copy of the current Whois directory listing is annexed hereto at Exhibit "G."

communications are even acknowledged through postings on the Blog. This email address is hosted by Microsoft, who owns the hotmail.com email services.

31. On information and belief, Microsoft maintains records of all activity on its Hotmail accounts, including, but not limited to, subscriber info and Internet Protocol Logs (“IP logs”). These IP logs provide very specific information about when and where the individual accesses the email account and can be used to identify a specific physical address and computer that were used. Thus, even if all of the registration information provided is fake, the perpetrator can still be identified. On information and belief, these IP logs are kept for a period of 60 days, which would cover the entire relevant period of time, therefore this petition must be acted on immediately.

32. With the cloak of protection from DBP and GoDaddy removed, the Blog appears to have migrated to a new location at Parlatore-is-a-Payne.blogspot.com. “blogspot.com” is a popular blog hosting domain that is owned by Google. Because the domain name used is the blogspot.com domain, there is no applicable Whois directory to find the owner of the blog.

33. All of the posts on the blog are all attributed to James Williamson, which, on information and belief, is another fictitious name used in an online profile on Google Plus. All of the pdf documents from the blog are now hosted on Google Drive.

34. On information and belief, Google also maintains records of all activity on its blogspot, Google Plus, and Google Drive accounts, including, but not limited to, subscriber info and IP Logs (“IP logs”). On information and belief, these IP logs are kept only for a period of 60 days, which would cover the entire relevant period of time, therefore, this petition must be acted on immediately.

35. Finally, the phone number associated with the DPB account, 509-202-3492 is a cellular telephone number serviced by Verizon. On information and belief, Verizon maintains records on

the activity related to this phone number including, but not limited to, subscriber information, call logs, and cell site location data.

36. The information sought from these three Respondents is vital to identifying the individual, or individuals responsible for the Blog and will be used for the purpose of determining who Petitioner should name as a defendant to proceed against to recover for the injury to his reputation caused by the defamatory Blog.

Applicable Law

37. The law in New York governing pre-action discovery is well settled. *See Cohen v. Google, Inc.*, 25 Misc. 3d 945 (N.Y. County 2009). CPLR §3102(c) requires a court order for pre-action disclosure to aid in bringing an action or to preserve information. *Id. citing Matter of Uddin v. New York City Transit Authority*, 27 A.D. 3d 265 (1st Dept 2006).

38. As the Cohen Court has held “A petition for pre-action discovery should only be granted when the petitioner demonstrates that he or she has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong.” *Id.* at 427. *Matter of Uddin v. New York City Transit Authority*, *supra* at 266, 810 N.Y.S.2d 198 (quoting *Holzman v. Manhattan & Bronx Surface Transit Operating Authority*, 271 A.D.2d 346, 347 (1st Dept.2000)); *Matter of Peters v. Sotheby's Inc.*, 34 A.D.3d 29, 34, (1st Dept.2006); *Matter of Bliss v. Jaffin*, 176 A.D.2d 106, 108 (1st Dept.1991); *Matter of Stewart v. New York City Transit Authority*, 112 A.D.2d 939 (2nd Dept.1985). “As a general rule, the adequacy of merit rests within the sound discretion of the court.” *Matter of Peters v. Sotheby's Inc.*, *supra* (quoting *Mediavilla v. Gurman*, 272 A.D.2d 146, 148 (1st Dept.2000)).

39. The elements of a cause of action for defamation “are a false statement, published without privilege or authorization to a third-party, constituting fault as judged by, at a minimum, a

negligence standard, and, it must either cause special harm or constitute defamation *per se*.” *Dillon v. City of New York*, 261 A.D.2d 34, 38 (1st Dept.1999); *Salvatore v. Kumar*, 45 A.D.3d 560, 563, (2nd Dept.2007).

40. It is respectfully submitted that the statements about Petitioner on the Blogs are such that, if proven false, could form the predicate for a defamation *per se* claim as these statements are made with the undeniable intention of causing harm to Petitioner’s profession.

41. It is further submitted that by posting these web blogs, the Bloggers are broadcasting to anyone who can find the pages when searching for Petitioner. The intended purpose can only logically be a concerted effort to steer potential clients away from the Petitioner’s law practice.

42. Petitioner is unable to ascertain the identities of the Bloggers without a Court order, pursuant to the policies of the Respondents. As such, Petitioner will be unable to bring a defamation suit without knowing the identities of the Bloggers who he intends to sue. Thus, the information sought is material and necessary to the actionable wrong.

PRAYER FOR RELIEF

43. Petitioner is entitled to an order issuing a pre-action Subpoena *Duces Tecum*, pursuant to CPLR 3102(c), to each of the Subpoenaed Parties.

44. Petitioner has a meritorious cause of action against the author and/or publisher of the Blog, in that its contents are defamatory and defamatory *per se*. The pre-action disclosure sought in the Petition is material and necessary to identify any prospective defendants in a contemplated defamation action and aid Petitioner in framing his complaint.

45. Specifically, Petitioner respectfully request that this Court issue, or authorize the issuance of three pre-action Subpoenas *Duces Tecum*, which direct the Subpoenaed Parties to provide information and documents as follows:

1) Microsoft:

Any and all records associated with the email address russell.thornton.ga@hotmail.com. This includes, but not limited to, the identity of all entities and/or persons who would have been designated as the Registrant, Administrative Contact, Billing Contact and Technical Contact including all addresses, phone numbers, facsimile numbers and electronic mail addresses for each entity and/or person, as well as the Internet Protocol Logs (IP Logs) associated with the email address.

2) Google:

a) Any and all records regarding the following websites, blogs, and profiles:

- i) Parlatore-is-a-payne.blogspot.com;
- ii) James Williamson <https://plus.google.com/106223844002103653418>
- iii) <https://drive.google.com/file/d/0BzUsJlxBeU84YnRCczRuSHdGUlk/view>
- iv) <https://drive.google.com/file/d/0BzUsJlxBeU84aVk1bmdtUER2REk/view>
- v) <ps://drive.google.com/file/d/0BzUsJlxBeU84ZzVVQk5VYITU5bDQ/view>

This includes, but is not limited to, the following:

- i) the identity of all entities and/or persons who would have been designated as the Registrant, Administrative Contact, Billing Contact and Technical Contact including all addresses, phone numbers, facsimile numbers and electronic mail addresses for each entity and/or person.
- ii) Complete Internet Protocol Logs, including the identity of all Internet Protocol addresses (the "IP Addresses") that interacted with the above listed websites, and/or which were used to post and/or edit the Blog; and
- iii) The analytics showing the number of times that the above listed websites were viewed and all data collected as a result.

2) Verizon:

a) For the period of time of September 1, 2014 through the present, any and all records associated with the telephone number 509-202-3492, including, but not limited to, subscriber information and billing, telephone usage and cell site data.

46. It is critically important that the pre-action Disclosures be ordered and obtained by Petitioner as soon as possible.

47. First, pursuant to CPLR 215(3), the statute of limitations for an action to recover damages for libel is only one-year and Petitioners need to ensure that they ascertain the identities of prospective defendants in order to timely commence an action against them.

48. Second, some of the Disclosures may not be preserved for very much longer. On information and belief, the IP Logs are only kept for 60 days.

49. No prior application has previously been made to this or any other Court for the relief sought herein.

WHEREFORE, Petitioner respectfully request that this Court grant the Petition in its entirety and (a) issue a pre-action Subpoena *Duces Tecum*, pursuant to CPLR 3102(c), or authorize Petitioner to do so, to each of the Respondents directing them to provide the Disclosures in the form annexed as Exhibits C, D, and E; and (b) award Petitioner such other and further relief as this Court may deem just and proper, including, but not limited to, an award of costs and disbursements.

Dated: New York, New York
December 21, 2014

Respectfully submitted,



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CERTIFICATION PURSUANT TO 22 NYCRR Section 130-1.1(a)

Pursuant to 22 NYCRR§ 130-1.1a, the undersigned, an attorney admitted to practice in the Court of the State of New York, hereby certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: December 21, 2014
New York, New York

Respectfully submitted,



Timothy C. Parlato, Esq.

Petitioner

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General Information

Court	New York Supreme Court, New York County
Docket Number	162579/2014