

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

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DONALD J. TOBIAS,

Plaintiff,

-against-

MIA ARCE, being the stated name of the unknown
person that published a defamatory Google "review"
of the plaintiff herein,

Defendant,

and

GOOGLE INC.,

Non-Party.
-----X

Index No.

Date Purchased
and Filed:

Plaintiff designates
New York County as
the place of trial.

The basis of the venue
is Plaintiff's residence.

Plaintiff's Residence:
230 East 15th Street
New York, New York 10003

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to
serve a copy of your answer, or, if the complaint is not served with this summons, to serve a
notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons,
exclusive of the day of service (or within thirty (30) days after the service is complete if the
summons is not personally delivered to you within the State of New York); and in case of your
failure to appear or answer, judgment will be taken against you by default for the relief demanded
in the complaint.

Dated: New York, New York
November 14, 2016

DONALD J. TOBIAS
Attorney for Plaintiff
and Plaintiff Pro Se
1290 Avenue of the Americas
30th Floor
New York, New York 10104
(212) 759-4200

By: 

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VERIFIED COMPLAINT

DONALD J. TOBIAS, the plaintiff herein, as and for his complaint in this action,
respectfully alleges, as follows:

THE PARTIES

1. Donald J. Tobias, the plaintiff herein, is an individual that has been domiciled, at all
times relevant to this action, in the County and State of New York.

2. Defendant Mia Arce (the “Defendant”) is the name, as currently known to the plaintiff,
of the person that has engaged in the wrongful acts that are to be more fully described herein.

Upon information and belief, the Defendant is domiciled and/or has conducted and/or conducts
business in the County and State of New York. To the extent that another name for the person

that engaged in the wrongful acts described herein becomes known to the plaintiff in these or

subsequent proceedings, the complaint shall be deemed amended accordingly, pursuant to CPLR

1024.

3. Non-party defendant Google Inc. (The “Non-Party Defendant”) is a corporation, organized and existing under the laws of the State of Delaware, is authorized to conduct business in the State of New York and transacts business in the County and State of New York.

AS AND FOR A FIRST CAUSE OF ACTION

4. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 3, as if more fully set forth herein.

5. In or about the late spring or early summer of 2016, the precise date being unknown to the plaintiff and in the exclusive possession and control of the Defendant and the Non-Party Defendant, Defendant Mia Arce, or an unknown person using that name, posted a purported “Google” “review” of the plaintiff herein, an attorney at law, at URL <https://www.google.com/search?q=Tobias%20Donald%20J&ludocid=0x89c258e52f305a25:0x6d53492b1dd281aa#istate=kp:xpdd&lrd=0x89c258e52f305a25:0x6d53492b1dd281aa,1>, under the name “Mia Arce.” That purported professional “review,” which thereafter appeared and continues to appear at, among other places “Google Maps,” when any member of the public conducts a “Google” search of “attorney Donald Tobias,” states as follows: “It was horrible.”

6. The aforesaid purported “review” is false and fraudulent and was made with recklessness and malice in that the Plaintiff does not know anyone named Mia Arce and has had no relationship, professional or otherwise, with such a person, who is a complete and utter stranger to the Plaintiff.

7. The aforesaid false and fraudulent “review,” from a person that is wholly unknown to the Plaintiff, does not constitute an opinion of any kind since the Defendant is not simply

expressing an “opinion” of the Plaintiff but is rather stating, entirely without qualification, and without supplying even a semblance of factual detail, that the plaintiff **did** something “horrible” (i.e.—that “**it**” was “horrible” as opposed to “**he**” was horrible) and has with these three explosively damaging and defamatory words: (a) imputed some unspecified act of professional unfitness, misbehavior or worse to the plaintiff; and (b) created the impression that this “Mia Arce” knows some undisclosed facts that indicate that the Plaintiff, while serving as an attorney, engaged in some wholly unidentified “horrible” behavior and/or performed some wholly unspecified “horrible” act or acts.

8. In posting the aforesaid false and fraudulent “review” and publishing that “review” to third parties, the Defendant: (a) acted with knowledge of the untruthfulness and falsity of what had been stated and of the implications stemming therefrom and did so intentionally and with actual or presumed malice and/or with an utterly reckless disregard for the truth; or (b) with utter and total recklessness failed to take the proper steps to ascertain the accuracy of what was being posted and/or to take any reasonable steps to insure that the said posting had not been misdirected, to the detriment and damage of the Plaintiff.

9. These libelous acts have served to impugn the Plaintiff’s professional fitness, integrity, ability and competence, as well as his character and professional reputation, and serve in each case to disparage and damage the plaintiff in his profession. As such, they are libelous per se and pecuniary damages are presumed.

10. As a result of the foregoing, the Defendant is liable to the Plaintiff in the sum of Three Million Dollars (\$3,000,000.00) and the Plaintiff should be awarded, additionally, Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages.

AS AND FOR A SECOND CAUSE OF ACTION

11. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 10, as if more fully set forth herein.

12. Upon information and belief, the Defendant has received, via e-mail or regular mail, notice that the above referenced posting has been cast as a professional “review” of the Plaintiff herein, who is a complete and utter stranger to the Defendant. The foregoing notwithstanding, the Defendant continues, maliciously and intentionally, and with knowledge of its falsity, to allow the posting, cast as a purported professional “review” of the Plaintiff, to remain active and visible and to be published to third parties.

13. These libelous acts have served to impugn the Plaintiff’s professional fitness, integrity, ability and competence, as well as his character and professional reputation, and serve in each case to disparage and damage the plaintiff in his profession. As such they are libelous per se and pecuniary damages are presumed.

14. As a result of the foregoing, the Defendant is liable to the Plaintiff in the sum of Three Million Dollars (\$3,000,000.00) and the Plaintiff should be awarded, additionally, Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages.

AS AND FOR A THIRD CAUSE OF ACTION

15. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 14, as if more fully set forth herein.

16. The Defendant, in making the aforesaid false and fraudulent posting, appearing as a professional “review” of the Plaintiff herein, who was and is a complete stranger, and with whom

the Defendant had no dealings of any kind, made and perpetuated a wholly injurious falsehood that was published maliciously and with intent to harm the Plaintiff or was done recklessly and totally without regard to the consequences or damage that it would inflict upon the Plaintiff. The Defendant's conduct, as herein described, was palpably improper since any reasonable person would or should have anticipated the damage and harm that would have resulted from these actions, including without limitation the damage that has been suffered by the Plaintiff.

17. As a result of the foregoing, the Defendant is liable to the Plaintiff in the sum of Three Million Dollars (\$3,000,000.00) and the Plaintiff should be awarded, additionally, Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages.

AS AND FOR A FOURTH CAUSE OF ACTION

18. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 17, as if more fully set forth herein.

19. The foregoing actions, undertaken by the Defendant herein, including without limitation the intentional posting of a false and fraudulent professional "review" of the Plaintiff herein, was undertaken without excuse or justification, solely out of malevolence and to cause harm and damage to the Plaintiff. As such, it is an actionable prima facie tort.

20. As a result of the foregoing, the Defendant is liable to the Plaintiff in the sum of Three Million Dollars (\$3,000,000.00) and the Plaintiff should be awarded, additionally, Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages.

WHEREFORE, the Court should enter judgment as follows:

1. Awarding the Plaintiff judgment against the Defendant in the sum of Three Million Dollars (\$3,000,000.00) on the first cause of action, plus Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages;

2. Awarding the Plaintiff judgment against the Defendant in the sum of Three Million Dollars (\$3,000,000.00) on the second cause of action, plus Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages;

3. Awarding the Plaintiff judgment against the Defendant in the sum of Three Million Dollars (\$3,000,000.00) on the third cause of action, plus Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages;

4. Awarding the Plaintiff judgment against the Defendant in the sum of Three Million Dollars (\$3,000,000.00) on the fourth cause of action, plus Three Million Dollars (\$3,000,000.00) in punitive and exemplary damages;

5. Awarding the Plaintiff judgment against the Defendant for all of his costs, disbursement and attorneys' fees incurred in this action; and

6. Awarding the plaintiff such other and related relief as the Court may deem proper.

Dated: New York, New York
November 14, 2016

Yours, etc.

DONALD J. TOBIAS
Attorney for Plaintiff and
Plaintiff Pro Se
1290 Avenue of the Americas
New York, New York 10104
212-759-4200

By: 

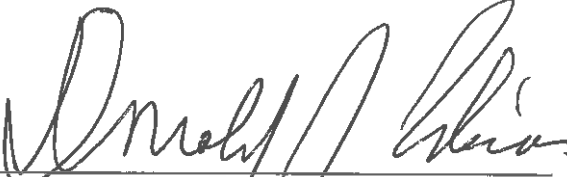
VERIFICATION

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

DONALD J. TOBIAS, being duly sworn, deposes and says that:

I am the plaintiff in the within action. I have read the foregoing Verified Complaint and know its contents.

The matters stated in the Verified Complaint are true except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.



DONALD J. TOBIAS

Sworn to before me this
^{14th} day of November , 2016


NOTARY PUBLIC

JOHN BURLEIGH
NOTARY PUBLIC, State of New York
No. 314916645
Qualified in New York County
Commission Expires December 2, 2018