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

In the matter of the Application of [redacted] individually and as principal on behalf of ARTIST & IDEA MANAGEMENT, LTD. *Petitioners*,	**AFFIRMATION IN SUPPORT OF ORDER COMPELLING DISCLOSURE OF IDENTITY WITH SUPPORTING MEMORANDUM OF LAW**
for an order pursuant to section 3102(c) of the Civil Practice Laws and Rules to compel pre-action disclosure from,	
VERIZON COMMUNICATIONS, INC., VERIZON NEW YORK, INC., AOL, INC. TIME WARNER CABLE INTERNET, LLC, TIME WARNER CABLE INC., GOOGLE, LLC And YOUTUBE, LLC *Respondents.*	**Index No. _____**

[redacted]., an attorney duly admitted to practice in the Courts of the State of New York, affirms under the pains and penalties of perjury, pursuant to Civil Practice Laws and Rules ("CPLR") §2106 that the following statements are true:

1. I am the attorney for Artist & Idea Management, Ltd. ("AIM") and [redacted], the Petitioners in the above-captioned petition, and that I am familiar with all the facts and circumstances set forth in this affirmation from my discussions with Petitioner Rose who had a first-hand account of facts stated herein, and from materials that the Petitioners have sent me for the file that I have kept on this matter in the ordinary course of business.

2. I submit this affirmation in support of Petitioners' application for an order pursuant to CPLR §3102(c), for pre-action disclosure, compelling AOL Inc. ("AOL"), Verizon Communications, Inc. and/or its subsidiary Verizon New York, Inc. (individually and collectively referred to hereinafter as "Verizon"), Time Warner Cable, Inc. and/or its subsidiary

Time Warner Cable Internet LLC (individually and collectively referred to hereinafter as "TWC"), and Google, LLC and/or its subsidiary YouTube, LLC (collectively referred to hereinafter as "YouTube"), to disclose the identity(ies) of the person or persons (individually and collectively referred to hereinafter as "Detractor") who published the various blog posts and e-mails described herein.

3. AOL, Verizon and TWC have been identified as the Internet Service Providers ("ISPs") responsible for carrying the various libelous e-mail transmissions described herein from the Detractor's e-mail addresses [redacted] and [redacted] Specifically, the Internet protocol addresses ("IP addresses") for the sender of seven of the e-mails in question were allocated to Verizon as follows: 108.5.42.110; 108.5.46.8; 108.5.200.7; 108.5.202.35; 108.5.45.29; 108.5.44.237; 141.153.244.22. Two more of the offending e-mails were sent from IP addresses controlled by AOL as follows: 64.244.117.153 and 205.188.166.5. One of the offending e-mails was sent from an IP address controlled by TWC, namely 67.244.117.153.

4. YouTube was the owner and host of the video and blog sites located at the two following uniform resource locators ("URLs") [redacted] and [redacted] where Detractor published several of her libelous blog posts as described below.

5. Briefly, the application should be granted because the unknown defendant(s) have begun a campaign via defamatory e-mails and blog posts which is directed against Petitioner [redacted] personally and professionally, and against the Petitioners' new TV show entitled 'Raw Travel' (the "Show"). While the e-mails have primarily targeted the Show's various national and local broadcasters, foreign sales agents, potential broadcasters, sponsors and Petitioners' professional peers and affiliates, the blog posts have been directed at the Show's potential audience.

6. On the blog, Detractor has posted entries which falsely state that Petitioner [redacted] and his co-producer are using the Show as a way of "[e]arning Ad $'s off the most defenseless people in the world... [by] mak[ing] videos to promote & applaud prostitution... in every country [they] ha[ve] been... [and] procur[ing] young girls, unpaid to photograph, v/tape in a sexually denigrating objectified way to promote to misogynists. They are being criminally investigated. They have placed photos of clients in their volunteer organizations on their music web site with sex workers & strippers." (*See* Exhibit 1 annexed hereto). On the same blog, Detractor also posted entries which falsely accused the Petitioners of various crimes including multiple counts of copyright infringement and mistreatment of the show's employees. (*See* Exhibit 2 annexed hereto).

7. Detractor's simultaneous anonymous e-mail campaign against the Show consists of grossly libelous "spam" e-mails which have been sent by Detractor on a regular basis starting on October 1, 2013 (i.e., immediately prior to the Show's initial broadcasts in the U.S.) from one of three different e-mail addresses, namely either [redacted], [redacted], or [redacted]. These spam e-mails have been sent to the Show's current and potential national, local and foreign broadcasters, as well as to many of Petitioners' staff, industry peers and affiliates and various charitable organizations who would otherwise have made ideal affiliates for the Show. These e-mails make egregious assertions of false facts including that Petitioner Rose and his co-producer are using the Show as a front for heinous crimes including, but not limited to, aiding and abetting sex trafficking of children and minors, aiding and abetting sexual tourism and child rape, slavery, employment law violations, various copyright violations, numerous criminal and wrongful business practices, violations of the Federal Communications Act with respect to wrongful in-show paid advertising plugs, etc.

8. This defamatory campaign is being undertaken in an overt attempt to have Petitioners' new Show taken off the air and to damage Petitioners' business reputations in the industry. Not only is this intent made evident by the fact that all of the e-mails have been sent directly to the Show's broadcasters, but the e-mails themselves flatly state such an intended effect. The e-mails to the Show's broadcasters have included statements such as, "[b]y broadcasting this show, the message you are going to send out to millions of people is not one of altruism, it's one of horrifying exploitation and abuse. Human Trafficking and Slavery." (*See* Exhibit 3, P. 6). The quoted e-mail was sent on October 1, 2013 and states in its opening paragraph, "[t]he show Raw Travel is advertised to broadcast on your station the first week of October." (*See* Exhibit 3, P. 1)

9. Upon information and belief, the malicious campaign against Petitioners and their new TV show have their origins in an obsessed fan of Petitioner Rose. This fan has identified herself in past e-mails as '[redacted]' '[redacted]' and '[redacted]' This fan used to post on Petitioner Rose's music blog PunkOutlaw.com and then she began e-mailing the Petitioner directly on December 26, 2009 (*see* Exhibit 5). The emails began as very complimentary fan mail but soon after turned into longwinded rants about society at large, men in particular and then against men of specific nationalities, professions, ethnicities and social groups, and finally, when Petitioner Rose stopped responding, the attacks turned against Petitioner Rose personally and with respect to his various music and television businesses and interests.

10. All of the initial e-mails from 2009 onward which were sent to the Petitioners, were sent from the e-mail address [redacted] When the Detractor began sending out the libelous e-mails to the Show's broadcasters as part of her campaign to get the Show taken off the air, she did so primarily from a new e-mail address of [redacted] However, it is evident from the content, style and tone of the e-mails, that they have all emanated from the

same individual formerly using the [redacted] e-mail address. The very first libelous e-mail sent out about the Show was sent to the Show's employees and co-producers from [redacted] on May 29, 2013 (*see* Affidavit of Robert Rose, ¶8). Additionally, one of the most recent spam e-mails, entitled "BIG BUCK$ - RAW TRAVEL – SELLING CHILDREN", which was sent to Petitioners' local and national TV broadcast syndicators and affiliates, was sent from [redacted]. Again, the style, content, message and nature of the accusations indicate that they are emanating from the same person (*see* Exhibit 6).

11. As of the drafting of this Affirmation, the most recent e-mail attack has come from yet another new e-mail address, namely [redacted] This most recent e-mail, bearing the subject line "RAW TRAVEL – UNICEF – ILLEGAL REVENUE – TRAFFICKED LABOR OF CHILDREN", is in the same exact style, and contains analogous, equally nonsensical, allegations of regarding the Show and Petitioner Rose and his co-producer Renzo Devia personally, further indicating that the Detractor is a single individual sending these e-mails out from multiple addresses. (*See* Exhibit 8).

12. In an e-mail that was sent to Petitioner affiliate TV Media Insights and others on November 11, 2013, [redacted] explained, "I am writing to you anonymously for your information, I do not want to be a victim of Robert Rose's abuse. He does not take kindly to any kind of criticism." (*See* Exhibit 7). This disclosure further supports Petitioners' position that the e-mail campaign and previous personal attacks are connected and that they emanate from the same individual(s).

13. Whether treated separately or as part of a unified attack, both the blog posts and the e-mail campaign are, in each instance, a clear example of defamation *per se*. They both charge Petitioners with serious crimes and they both seek to injure Petitioners in their business, trade or

profession insomuch as their stated purpose is to have the Petitioners' new show removed from the air. Petitioners have already begun to suffer damages as a result of the attacks (*see* Affidavit of Robert Rose, ¶¶11 - 13).

14. Prior to making this application, Petitioners made several attempts to ascertain the identity of the Detractor directly from AOL. However, Petitioners were ultimately informed that AOL, like all ISPs, has a privacy policy that prohibits it from disclosing such information unless compelled to do so by an order directing it to furnish identifying information about the person or persons who posted and/or e-mailed the allegedly defamatory remarks. (*See* Exhibit 9)

15. In this affirmation and the accompanying Affidavit of [redacted] in Support of Order to Show Cause Compelling Disclosure of Identity ("Affidavit of [redacted]"), Petitioners have set forth facts sufficient for this Court to compel AOL, Verizon, TWC and YouTube to disclose the identity(ies) of the anonymous Detractor(s) who has been publishing the aforementioned defamatory statements. It is respectfully submitted and will be demonstrated below that this application should be granted in all respects and result in orders requiring AOL, Verizon, TWC and YouTube to disclose the Detractor's name(s), address(es), e-mail address(es), phone number(s), IP address(es) and IP account history and any other information that it may possess that would assist in ascertaining the Detractor's identity(ies).

STANDARDS OF REVIEW

16. New York's CPLR §3102(c) allows a potential plaintiff to seek discovery of certain information prior to commencement of an action as follows: "Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration may be

obtained but only by court order." (CPLR §3102[c] [McKinney 2007]; *see also Admission Consultants, Inc. v. Google, Inc.*, [N.Y.Cty. Index No. 115190/07, Cahn, J.])

17. A request for pre-action disclosure is most properly sought by the commencement of a special proceeding (*see* CPLR §3102[c], Commentary C3102:6 [2007]; *see also Daly v. 26-28 Market St., Inc.*, 21 A.D.3d 853, 801 N.Y.S.2d 596 [1st Dep't 2005]). New York courts routinely grant pre-action disclosure under CPLR §3102(c) for the purpose of ascertaining the identities of defendants as necessary to bring an action (*see. e.g., Alexander v. Spanierman Gallery, LLC*, 33 A.D.3d 411, 822 N.Y.S.2d 506 [1st Dep't 2006]; *Toal v. Staten Island University Hospital*, 300 A.D.2d 592, 752 N.Y.S.2d 372 [2d Dep't 2002]; *Perez v. New York City Health and Hosps. Corp.*, 84 A.D.2d 789, 44 N.Y.S.2d 23 [2d Dep't 1981]).

18. In order to be entitled to the relief described in CPLR §3102(c), however, the movant "must first show that it has a meritorious cause of action and that the information being sought is material and necessary to the actionable wrong." *Liberty Imports, Inc. v. Borguet, et. al.*, 146 A.D.2d 535, 536 (1st Dep't 1989); *see also In the Matter of Greenbaum v. Google, Inc.*, 18 Misc.3d 185, 188 (Sup.Ct. N.Y.C. 2007).

19. With respect to using a CPLR §3102(c) petition to unmask persons who anonymously defame others via the Internet, New York Courts have held that it is appropriate for the respondent to "provide [the] petitioner with information as to the identity of the [persons], specifically that person's or persons' name(s), address(es), email address(es), IP address(es), telephone number(s), and all other information that would assist in ascertaining the identity of that person or persons." *Matter of Cohen v. Google, Inc.*, 25 Misc. 3d 945, 952, 887 N.Y.S.2d 424 (2009).

20. Where New York courts have denied petitions seeking to unmask anonymous Internet defamers, it has generally been as the result of the petitioner's failure to state causes of action for defamation (*see, e.g., In the Matter of Greenbaum v. Google, Inc.*, 18 Misc.3d at 188; *see also Admissions Consultants, Inc. v. Google, Inc.*, N.Y.L.J., 12/8/08, p. 18, col. 2 [N.Y.Cty. Index No. 115190/07, Cahn, J.]).

PETITIONER IS ABLE TO ESTABLISH A LIKLIHOOD OF SUCCESS ON THE MERITS BASED ON DEFENDANT'S DEFAMATORY STATEMENTS WHICH CONSTITUTE LIBEL PER SE

21. A CPLR §3102(c) "petitioner is entitled to pre-action disclosure of information as to the identity of [an] [a]nonymous [b]logger, [where] she has sufficiently established the merits of her proposed cause of action for defamation against that person or persons, and the information sought is material and necessary to identify the potential defendants." *Matter of Cohen v. Google, Inc.*, 25 Misc. 3d at 949, *citing to, Matter of Uddin v. New York City Transit Authority*, 27 A.D.3d 265 (1st Dep't 2006), and *Matter of Stewart v. New York City Transit Authority*, 112 A.D.2d 939 (2d Dep't 1985).

22. The elements of a cause of action for defamation consist of "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 Dep't 1999); *accord Salvatore v. Kumar*, 45 A.D.3d 560, 563 (2d Dep't 2007), lv. app. den. 10 N.Y.3d 703 (2008). Additionally, New York courts have recognized that in finding a cause of action for libel, the statements at issue must have been statements of fact, as opposed to statements of opinion (*see, e.g., Penn Warranty Corp. v. DiGiovanni*, 10 Misc.3d 998, 1002 (Sup.Ct. N.Y.C. 2005).

A. Factual Nature of the Defamatory Statements

23. When determining whether a given statement is an expression of opinion or an assertion of fact, the determination is to be made "on the basis of what the average person hearing or reading the communication would take it to mean." *Steinhilber v. Alphonse*, 68 N.Y.2d. 283, 290 (1986). Furthermore, in reaching such a determination, the "factors to be considered are: (1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to 'signal... readers or listeners that what is being read or heard is likely to be opinion, not fact.'" *Gross v. New York Times Co.*, 82 N.Y.2d. 146, 153 (1993), *quoting Steinhilber v. Alphonse*, 68 N.Y.2d. 283, 290 (1986).

24. The numerous egregious statements at issue in this case were clearly asserted not as mere opinions, but rather as facts, which were specifically designed to command the attention and immediate response of their intended readers. Statements such as those alleging that Petitioner Rose and his co-producer "are being criminally investigated" in connection with the Show (*see* Exhibit 1), constitute factual indictments. Statements are defamatory, in that they are statements of facts and not opinions where their tone is "straightforward and declaratory, and does not appear to be intended as a juvenile attempt to achieve humor." *Suarez v. Angelet*, 90 A.D.3d 906, 935 (2d Dep't 2011).

25. In the case of the e-mails, the very subject lines of those e-mails constitute libelous statements asserting false facts, including, but not limited to the following e-mail subject lines: "RAW TRAVEL TV SHOW, FCC VIOLATIONS, COPYRIGHT VIOLATIONS"; "RAW

TRAVEL TV SHOW – FCC VIOLATIONS – HUMAN TRAFFICKING"; "RAW TRAVEL TV – ILLEGAL – VIOLATES INTERNATIONAL HUMAN RIGHTS LAW"; "SEX OFFENDERS – Gender based Hate – Raw Travel/Punkoutlaw – Pure Hatred & Misogny" (sic); and "BIG BUCK$ RAW TRAVEL - SELLING CHILDREN". These subject lines were clearly intended to be perceived as statements of facts and the content within each of the respective e-mails was intended to lend credence to the indictments leveled in those subject lines.

26. Detractor routinely inserted quotations from Federal laws which Detractor alleged Petitioners to be violating (*see, e.g.*, Exhibits 8 and 10), as well as photographs from the Show's website which depict Petitioner Rose standing beside children. These photos are positioned in the e-mails beside photos of naked women, articles about child rape and third world prostitution. New York courts have held that captions posted with online photographs of a person can constitute defamation, even in a libel *per se* context, where those captions give a defamatory meaning to the otherwise benign or ambiguous images, this occurs where a reasonable person viewing the image would regard the captions as statements of fact about the person(s) thereby depicted and described (*see Matter of Cohen v. Google, Inc.*, 25 Misc. 3d 945 *supra.*).

B. Publication of the Statements

27. The libelous e-mail statements were sent (i.e., "published") directly to numerous targeted third party broadcasters, potential broadcasters and professional affiliates and peers of the Petitioners and their staff. These e-mails only reached the Petitioners upon being forwarded by the third party recipients.

28. The libelous blog statements were published on the Petitioner AIM's YouTube webpage which maintained trailers for the Show's new episodes.

29. By posting the writings on the YouTube website, the Detractor broadcasted the libelous statements on the Internet and clearly published and broadcasted the statements to many more people than just the Petitioners. They were broadcasting to anyone who could find the page or who was searching for information and/or trailers of the Show and its upcoming episodes.

30. As evidenced by the concerned e-mails and other correspondences that Petitioner Rose has attested to receiving from various third party broadcasters and foreign sales agents of the Show (*see* Affidavit of Robert Rose, ¶¶11 – 13), the libelous publications have reached third parties and caused concern among them.

31. As set forth in detail elsewhere hereinabove, the e-mail transmissions and blog posts were published with the specific and stated intention of ending the Show and harming the Petitioners personally and professionally.

C. False and Defamatory Nature of the Statements

32. The Court need only examine the specific statements made in the e-mails and blog posts and consider the manners and contexts in which they were published in order to determine that the postings and e-mails were defamatory. Petitioners will proceed under a theory that both the blog postings and each of the e-mails was libelous *per se*.

33. The definition of libel *per se* is "any written or printed article... [which] tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society." *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 42 N.Y.2d 369, 379 (1977). Furthermore, "[c]ertain statements are considered libelous per se. They are limited to four categories of statements that (1) charge plaintiff with a serious crime[,] (2) tend to injure plaintiff in its business, trade or

profession, (3) plaintiff has some loathsome disease, or (4) impute unchastity. Where statements are libelous per se, the law presumes that damages will result and they need not be separately proved." *Floyd Harbor Animal Hosp., v. Doran*, 2009 N.Y.Misc. LEXIS 5610, 19 – 20, 2009 N.Y. Slip. Op. 32868 (U) (*citing to Penn Warranty Corp. v. DiGiovanni*, 10 Misc.3d 998, 1002 [Sup.Ct. N.Y.C. 2005]).

34. The published statements complained of herein are libelous *per se* because each tended to injure the Petitioners in their business, trade or profession and many also charged Petitioners with serious crimes.

35. Among the e-mail statements that constitute libel *per se*, are those which assert: (a) that the Show's "content violates FCC regulations with regard to unlawful and illegal advertising; (b) that Petitioners are guilty of violations "of the fair use of copyright" and use of images "illegally for commercial purposes" in making the Show; (c) Petitioners have committed fraud; (d) Petitioners have engaged in slavery; (e) allegations of various non-specific criminal behavior by Petitioner Robert Rose making him unfit to act as host of the Show, or to work with children or charities; (f) violations of "every code of ethics of social workers"; (g) unfitness of Petitioner Robert Rose and his co-producer to belong to any U.S. volunteer organization; (h) sexual molestation and exploitation of children used on the Show; (i) sex trafficking of children; (j) illegal use of unpaid interns and staff; (k) aiding and abetting sex trafficking; (l) aiding and abetting sexual tourism in Guatemala and elsewhere in connection with the Show; (m) aiding and abetting prostitution and child rape; and various other actual and insinuated false and clearly libelous statements.

36. Sex trafficking, rape, slavery, aiding and abetting prostitution and various other crimes alleged in the published statements are all clearly serious crimes both in New York and

elsewhere. Additionally, false assertions of employment law violations, copyright violations and piracy as well as alleged violations of the Federal Communications Act, are not only damaging to Petitioners reputations professionally within their industries, those allegations also constitute crimes, the false assertions of which rise to the level of libel *per se*. Courts have held that serious misdemeanors may form the basis for a claim of libel per se (*see, e.g., DeFilippo v. Xerox Corp.*, 223 A.D.2d 846, [3rd Dep't 1996]).

37. Petitioner Rose, who is also a principal of Petitioner AIM and acting as its agent in this action, has sworn to the fact that the allegations in the published statements are completely untrue. (*See* Affidavit of Robert Rose, ¶20).

D. Injury to the Petitioners

38. As noted by the Court in *Dillon v. City of New York*, 261 A.D.2d at 38, *supra.*, where a plaintiff is able to prove defamation *per se*, they do not also need to prove injuries flowing from the defamation. (*See also, James v. Gannett Co., Inc.*, 40 N.Y.2d 415 [1976]). That being the case, "the law presumes damage to the [libeled] individual's reputation so that the cause is actionable without proof of special damages." *60 Minute Man v. Kossman*, 161 A.D.2d 574, 575 (2d Dep't 1990). Therefore, Petitioners "need not establish damages as an element of [their] defamation cause of action, and... failure to do so [would] not require [dismissal]." Id. at 576.

39. Although no proof of damages is necessary in the instant case, Petitioners have still demonstrated such damages in the Affidavit of Robert Rose. In summary, said damages include personal humiliation, mental anguish, damage to Petitioners' reputations in the television and ad sales industries, and also damages to the Show and potential returns therefrom including but not

limited to, downgraded time slots and possible non-pickups, lower ad sale prices, and decreased licensing and syndication fees resulting from the libelous publications.

40. The information prayed for herein is material and necessary, because, if Petitioners are unable to ascertain the identity(ies) of the Detractor, then Petitioners will be unable to bring a lawsuit for defamation, as they will not know who the defendant(s) is that they need to sue. Thus, the relief (i.e., the information) sought herein is not only material and necessary to the actionable wrong, but additionally, denial, of said relief would foreclose Petitioners' ability to bring this cause of action.

41. No prior applications have been submitted to this or any other court with respect to the matters complained of herein.

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CONCLUSION

42. For the foregoing reasons, Petitioners request that the Court (a) determine that Petitioners have made the requisite showing pursuant to CPLR §3102(c) concerning the existence of a meritorious cause of action; (b) order AOL, Verizon, TWC and YouTube to seek to attempt to notify the user of these proceedings in the event that he or she wishes to file an objection; (c) order AOL, Verizon, TWC and YouTube to provide pre-action disclosure to Petitioners with respect to the identity(ies) of the person(s) responsible for the various e-mails from the [redacted], [redacted] and [redacted] addresses and the blog posts discussed herein; and (d) grant such other and further relief as the Court deems proper under the circumstances.

Dated: Newton, Massachusetts
January 2, 2013

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By: _____

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