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Counsel for Petitioners

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

-----X	:	Index No.:
IN THE MATTER OF THE APPLICATION OF	:	
CARMEN EDELMAN AND ROGER AYUB,	:	
Petitioners,	:	AFFIRMATION OF
	:	ALEXANDER BROCHE IN
For An Order Pursuant to CPLR § 3102(c)	:	SUPPORT OF PETITIONERS'
To Compel Disclosure From:	:	APPLICATION UNDER CPLR
	:	§ 3102(c) TO OBTAIN PRE-
-against-	:	ACTION DISCLOSURE
	:	FROM GOOGLE, INC. AND
GOOGLE, INC., and YAHOO! INC.	:	<u>YAHOO! INC.</u>
	:	
Respondents.	:	
-----X	:	

ALEXANDER BROCHE, an attorney admitted to the Bar of the State of New York, hereby affirms under the penalty of perjury as follows:

1. I am associated with Lynch Daskal Emery LLP, counsel for Carmen Edelman and Roger Ayub.
2. I make this Affirmation, pursuant to N.Y.C.P.L.R. § 3102(c), for an Order authorizing the issuance of subpoenas duces tecum upon Google, Inc. ("Google") and Yahoo! Inc. ("Yahoo") for pre-action disclosure, and compelling each Respondent identified herein to disclose the identity of the person or persons discussed below.
3. Ms. Edelman is a natural person who resides and works in New York County, New York.

4. Mr. Ayub is a natural person who works in New York County, New York and resides in Nassau County, New York.

5. Ms. Edelman is the office manager for the law firm Edelman & Edelman, P.C. ("Edelman & Edelman"), located at 61 Broadway, Suite 3010, New York, New York.

6. Mr. Ayub is the Controller for Edelman & Edelman.

7. Mr. Ayub has a Bachelor's degree in Accounting and has over 22 years of professional experience. He has served as a controller for the last 18 years, 14 of which have been with Edelman & Edelman. In that role, Mr. Ayub manages all finance and human resource activities for Edelman & Edelman.

8. In November 2013, an anonymous individual or individuals began an email campaign to destroy Petitioners' personal and professional reputations and cause them significant harm.

9. On or about November 25, 2013, an anonymous individual using the email address fraudalertnycatty@gmail.com published an email to a third party that accused Mr. Ayub of "fraudulent acts" and "diverting funds by from [sic] Edelman accounts & making them appear as errors."

10. The statement is false and defamatory because it accuses Mr. Ayub of the commission of a crime and injures Mr. Ayub in his trade and occupation. Mr. Ayub has never committed fraud or diverted funds from Edelman & Edelman accounts.

11. On or about December 30, 2013, an anonymous individual using the email address cm1965bk@yahoo.com published an email to Martin Edelman, Ms. Edelman's husband and the managing partner of Edelman & Edelman, claiming that Mr. Ayub is not a "competent accountant," that "if Mr. Ayub spent less time on the phone with his gold-digging wife and his

daughter, he'd get some work done instead of blaming his office-mate," that Ms. Edelman's behavior at Edelman & Edelman is "atrocious" and that Ms. Edelman is "despised by everyone in the office."

12. The statements contained in the December 30, 2013 email are false and defamatory as to Mr. Ayub because they are intended to harm Mr. Ayub's professional reputation in the eyes of his superior, Martin Edelman, when in fact Mr. Ayub is a competent accountant who completes his work in a timely and accurate manner.

13. The statements contained in the December 30, 2013 email are false and defamatory as to Ms. Edelman because they are intended to harm Ms. Edelman's professional and personal reputation in the eye of the firm's management and employees, when in fact Ms. Edelman is a highly effective manager of people and is well-respected at Edelman & Edelman.

14. On or about September 19, 2014, an anonymous individual using the email address drakarnoirr@gmail.com published an email to Ms. Edelman accusing her of "illegal" practices in connection with Ms. Edelman's management of Edelman & Edelman employee salaries.

15. The statement is false and defamatory because it accuses Ms. Edelman of the commission of a crime and injures Ms. Edelman in her trade and occupation. Ms. Edelman has never done anything illegal in her management of the salaries of Edelman & Edelman's employees.

16. Prior to the actions of the anonymous individual(s), Mr. Ayub was held in high regard by his fellow colleagues at Edelman & Edelman for both his accounting acumen and his integrity.

17. The defamatory and disparaging comments cause Mr. Ayub harm and damage his professional and personal reputation.

18. Prior to the actions of the anonymous individual(s), Ms. Edelman was held in high regard by her fellow colleagues at Edelman & Edelman.

19. The defamatory and disparaging comments cause Ms. Edelman harm and damage her professional and personal reputation.

20. The anonymous individual(s) repeated and continuous publication of disparaging comments about Petitioners to Petitioners' employer demonstrates an intent to harm Petitioners and constitutes actual malice.

21. The anonymous individual(s) has actively concealed his or her identity by using the email addresses fraudalernycatty@gmail.com, cm1965bk@yahoo.com and drakarnoirr@gmail.com. Petitioners have no way to identify the anonymous individual(s) but through the filing of this action.

22. According to the privacy policies of Google and Yahoo, Google and Yahoo will not release the identifying information Petitioners seeks without a legal order.

23. The identifying information sought to be discovered is attached to this Affirmation as Exhibit A.

24. Neither Google nor Yahoo is a potential adverse party. The information sought is the only means of identifying the potential adverse parties in the potential action.

Applicable Law

25. The law in New York governing pre-action discovery is well settled. See *Cohen v. Google, Inc.*, 25 Misc. 3d 945, 887 N.Y.S.2d 424 (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, 810 N.Y.S.2d 198 (1st Dept 2006).

26. 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.” *Matter of Uddin v. New York City Transit Authority*, 810 N.Y.S.2d 198 (quoting *Holzman v. Manhattan & Bronx Surface Transit Operating Authority*, 271 A.D.2d 346, 347, 707 N.Y.S.2d 159 [1st Dept.2000]).

27. 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, 704 N.Y.S.2d 1 (1st Dept.1999); *accord Salvatore v. Kumar*, 45 A.D.3d 560, 563, 845 N.Y.S.2d 384 (2nd Dept.2007).

28. It is respectfully submitted that the statements about Carmen Edelman and Roger Ayub on the emails are such that, if proven false, could form the predicate for a defamation claim as these statements are made with the undeniable intention of causing harm to Ms. Edelman’s and Mr. Ayub’s professions.

29. Ms. Edelman and Mr. Ayub are unable ascertain the identities of the individuals using the email addresses fraudalertnycatty@gmail.com, cm1965bk@yahoo.com and drakarnoirr@gmail.com absent a Court order. Thus, the information is material and necessary to the actionable wrong.


30. A proposed order is attached as Exhibit B for the Court’s consideration.

31. No prior request for relief has been made for the relief sought herein.

WHEREFORE, it is respectfully requested that this Court issue an Order pursuant to CPLR § 3102(c), authorizing Petitioner to obtain the required discovery by issuing third party subpoenas to Google and Yahoo.

Dated: New York, New York
November 10, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Broche", is written over a horizontal line.

James R. Lynch, Esq.
Alexander Broche, Esq.
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Counsel for Petitioners

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Year 2014

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

In the Matter of the Application of Carmen Edelman and Roger Ayub,
Petitioners,

For An Order Pursuant to CPLR § 3102(c)
To Compel Disclosure From:

-against-

GOOGLE, INC., and YAHOO! INC.

Respondents.

**AFFIRMATION OF ALEXANDER BROCHE IN SUPPORT OF PETITIONERS'
APPLICATION UNDER CPLR § 3102(C) TO OBTAIN PRE-ACTION
DISCLOSURE FROM GOOGLE, INC. AND YAHOO! INC.**

LYNCH DASKAL EMERY LLP

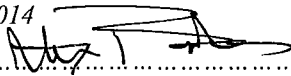
Counsel for Petitioners

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

Dated: November 10, 2014

Signature.....



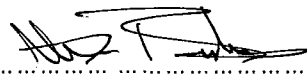
Print Signer's Name.....

Alexander Broche

Service of a copy of the within

Dated: November 10, 2014

is hereby admitted.


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Attorney(s) for Petitioner

General Information

Court	New York Supreme Court, New York County
Docket Number	161186/2014