IN THE COURT OF COMMON PLEAS
JEFFERSON COUNTY, OHIO

CODY SALTSMAN, a minor child, by his natural parents and legal guardians JAMES AND JOHNA SALTSMAN, et al.	)	**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AUTHORIZATION TO OBTAIN IDENTITIES VIA DISCOVERY AND PROPOSED ORDER**
Plaintiffs	)	
-vs-	)	
ALEXANDRIA GODDARD *aka "prinnie", Et al.*	)	2012-CV-00544
	)	JUDGE DAVID E. HENDERSON
Defendants	)	

I. Introduction

Plaintiffs filed a Motion for Authorization to Obtain Identities Via Discovery on November 16, 2012 ("Motion for Authorization") in response to Defendant Alexandria Goddard's ("Defendant Goddard") counsel's letter objecting to Plaintiffs' subpoenas to obtain the identities of the anonymous defendants in this case. Because Internet Service Providers ("ISPs") routinely delete the information needed to identify these defendants, it is imperative that Plaintiffs move forward with this discovery as soon as possible. Thus, to bring this issue before the Court's attention, and resolve this issue expeditiously, Plaintiffs have filed the Motion for Authorization.

This memorandum addresses Defendant Goddard's purported objections in further detail, and explains why proceeding with discovery is appropriate and necessary. As explained below, contrary to Defendant Goddard's assertions, there is no First Amendment bar to obtaining the identities of the anonymous defendants in this case. Courts have repeatedly held that Plaintiffs are entitled to conduct discovery of the identities of the anonymous individuals on the Internet in circumstances, such as this, where the anonymous defendants have defamed the plaintiffs on the

Internet. *See e.g*, *In re Anonymous Online Speakers*, 611 F.3d 353 (9th Cir. 2010); *Sony Music Entm't Inc. v. Does 1-40*, 326 F. Supp. 2d 556 (S.D.N.Y. 2004); *Krinsky v. Doe 6*, 72 Cal. Rptr. 3d 231 (Cal. Ct. App. 2008) (finding that the statements at issue were merely opinion, but recognizing that a plaintiff could "unmask an anonymous poster"); *Matrixx Initiatives, Inc. v. Doe*, 42 Cal. Rptr. 3d 79 (Cal. Ct. App. 2006); *Doe I v. Individuals*, 561 F. Supp. 2d 249 (D. Conn. 2008) (finding that, although the poster had a First Amendment right to speak anonymously, this right was outweighed by plaintiffs' need for discovery to redress alleged wrongs).

Further, because Defendant Goddard does not even have standing to assert objections on behalf of the anonymous defendants, it does not make sense to delay discovery based on her objections. Here, the Proposed Order explicitly provides procedures (that have been endorsed by other Courts) whereby the anonymous defendants will be notified of the subpoenas and the opportunity to object to those subpoenas, should they choose. While Plaintiffs believe that any objections by the anonymous bloggers lack merit, and would be denied based on the applicable case law, the appropriate procedure (as set forth in the Proposed Order) is to serve the subpoenas on the ISPs (thus preserving the information) and ask the ISPs to provide notice to the anonymous defendants and opportunity for them to assert any objections on their own behalf.

Based on Defendant Goddard's prior conduct, Defendant Goddard's recent objections appear to be simply another tactic designed to delay discovery until the ISPs no longer have the pertinent information. Upon receiving notice of the Complaint, Defendant Goddard deleted all the Internet Protocol from the website host, and moved her website off shore. Defendant Goddard then went to great efforts to evade service, thus further delaying resolution of any of the discovery issues in this case. And now, Defendant Goddard's own attorney still refuses to accept

service on her behalf. At this point, the ISPs are the only possible sources of information related to the defendants' identities. Because the ISPs only keep this information a short time, it is imperative that Plaintiffs proceed with serving subpoenas on the ISPs in accordance with the terms in the attached Proposed Order.

II. Background

As outlined in the First Amended Complaint, Defendant Goddard and a number of anonymous bloggers ("anonymous bloggers" or "John Doe Defendants") made a host of defamatory statements on Defendant Goddard's website accusing Plaintiff Cody Saltsman of the heinous crime of rape, and Plaintiffs James and Johna Saltsman of covering up the crimes. Defendants, for example, falsely claim that Cody Saltsman is a "gang rape participant," that he was the "mastermind" behind a rape, that he should go to jail, that he "need[s] to pay for what he has done," and that his parents were able to cover up his crime and obtain immunity. Defendants even repeatedly refer to Plaintiff Cody Saltsman as Cody "Manson," comparing him to the serial criminal "Charles Manson." All of these statements are unequivocally false, and constitute defamation per se. Given the heinous nature of these allegations and their widespread dissemination on the Internet, Plaintiffs have suffered incredible harm to their reputations.

III. Discovery is Necessary to Discover the Identities of the Anonymous Bloggers.

In order to pursue their claims against the anonymous defendants, Plaintiffs need to obtain defendants' identities through discovery. As an initial step, the Plaintiffs have already subpoenaed the host of www.prinnified.com, HostGator.com, LLC ("HostGator") for the Internet Protocol ("I.P.") Addresses of the anonymous bloggers. HostGator subsequently produced the IP Addresses for the anonymous bloggers. To obtain the actual identities of the individuals behind these addresses, Plaintiffs now need to send subpoenas to the ISPs that have

the information relating to the identities of the individuals who use these IP addresses. When the ISPs receive the subpoenas, they typically notify the anonymous persons of whose identities are being sought that such a subpoena has been served, and give the anonymous person time to file a motion to quash the subpoena. If the anonymous person files no objection, the ISP will provide the identifying information. If the anonymous person does object, the ISP will wait until the Court has decided the motion to quash before producing the identifying information. This procedure gives an anonymous person the ability to submit any objections concerning the production of his or her identity, and at the same time ensures that the ISP will preserve the relevant information.

IV. Defendant Goddard's Attorney Submits Baseless Objections to this Discovery Procedure to Delay Discovery Until the Identities of the Anonymous Bloggers Become Unavailable.

Defendant Goddard's attorney has transmitted correspondence to Plaintiffs' counsel containing baseless objections and requesting that Plaintiffs' counsel return all the IP addresses that Plaintiffs obtained from HostGator to HostGator, and destroy those in its possession. Defendant Goddard's counsel claims that Plaintiffs are required to return this information in response to his objection because it is protected under First Amendment grounds. There are several problems with this demand. First, Defendant Goddard's claim that the information Plaintiffs seek is protected by the First Amendment is meritless. Second, if Plaintiffs cannot use the information obtained from HostGator to subpoena the ISPs in the very near future, there is a substantial likelihood that Plaintiffs will not be able to ever obtain the information. Third, Defendant Goddard does not even have standing to object to the discovery of the identifies of the other anonymous defendants. And, fourth, each of the John Doe Defendants will have every opportunity to object to the production of his or her identity in response to the subpoenas served

on the ISP. Accordingly, Plaintiffs respectfully request permission to proceed with serving the subpoenas on the ISPs in accordance with the procedures in the attached Proposed Order.

A. This Discovery is Not Banned on First Amendment Grounds

First Amendment does not protect defamation. The Supreme Court has recognized that "as a general matter false factual statements possess no intrinsic First Amendment value." *See Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612, 123 S. Ct. 1829, 155 L. Ed. 2d 793 (2003) ("Like other forms of public deception, fraudulent charitable solicitation is unprotected speech"); *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 531, 122 S. Ct. 2390, 153 L. Ed. 2d 499 (2002) ("[F]alse statements may be unprotected for their own sake"); *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 52, 108 S. Ct. 876, 99 L. Ed. 2d 41 (1988) ("False statements of fact are particularly valueless; they interfere with the truth-seeking function of the marketplace of ideas, and they cause damage to an individual's reputation that cannot easily be repaired by counterspeech, however persuasive or effective").[1] Courts have also recognized the special harm that defamation on the Internet, like the statements posted by Defendants here, can cause where "speed and power of internet technology makes it difficult for

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[1] The Supreme Court has well-established that false statements of fact are not protected speech. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984) ("There is 'no constitutional value in false statements of fact'" (*quoting Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974))); *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743, 103 S. Ct. 2161, 76 L. Ed. 2d 277 (1983) ("[F]alse statements are not immunized by the First Amendment right to freedom of speech"); *Brown v. Hartlage*, 456 U.S. 45, 60, 102 S. Ct. 1523, 71 L. Ed. 2d 732 (1982) ("Of course, demonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements"); *Herbert v. Lando*, 441 U.S. 153, 171, 99 S. Ct. 1635, 60 L. Ed. 2d 115 (1979) ("Spreading false information in and of itself carries no First Amendment credentials"); *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976) ("Untruthful speech, commercial or otherwise, has never been protected for its own sake"); *Gertz, supra*, at 340, 94 S. Ct. 2997, 41 L. Ed. 2d 789 ("[T]he erroneous statement of fact is not worthy of constitutional protection"); *Time, Inc. v. Hill*, 385 U.S. 374, 389, 87 S. Ct. 534, 17 L. Ed. 2d 456 (1967) ("[T]he constitutional guarantees [of the First Amendment] can tolerate sanctions against calculated falsehood without significant impairment of their essential function"); *Garrison v. Louisiana*, 379 U.S. 64, 75, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964) ("[T]he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection").

the truth to 'catch up' to the lie." *Anonymous Online Speakers v. United States Dist. Court (In re Anonymous Online Speakers)*, 661 F.3d 1168, 1176 (9th Cir. 2011).

Accordingly, courts have repeatedly held that plaintiffs in cases such as this one are entitled to conduct discovery related to the identity of unknown defendants when these unknown defendants are defaming or conducting other illegal acts against the plaintiffs. *Cahill v. Doe*, 879 A.2d 943, 956 (Del. Super. Ct. 2005); *see also In re Anonymous Online Speakers*, 611 F.3d 353 (9th Cir. 2010); *Sony Music Entm't Inc. v. Does 1-40*, 326 F. Supp. 2d 556 (S.D.N.Y. 2004); *Krinsky v. Doe 6*, 72 Cal. Rptr. 3d 231 (Cal. Ct. App. 2008) (finding that the statements at issue were merely opinion, but recognizing that a plaintiff could "unmask an anonymous poster"); *Matrixx Initiatives, Inc. v. Doe*, 42 Cal. Rptr. 3d 79 (Cal. Ct. App. 2006); *Doe I v. Individuals*, 561 F. Supp. 2d 249 (D. Conn. 2008) (finding that, although the poster had a First Amendment right to speak anonymously, this right was outweighed by plaintiffs' need for discovery to redress alleged wrongs). Indeed, this type of discovery is considered proper: "[p]roceeding with discovery to obtain the identity of Doe defendants so that they may be served is proper and within the scope of permissible discovery." *Raw Films*, 2012 U.S. Dist. LEXIS 41645, at *6 (E.D. Pa., March 26, 2012). "When a plaintiff can, in good faith, allege that a user has put the internet to use as a tool for defamation, the internet user will forfeit his right to anonymity in favor of the injured party's right to seek redress for the damage caused by the defamatory speech." *Id*; *See also Immunomedics, Inc. v. Doe*, 342 N.J. Super. 160, 167 (N.J. App. Div. 2001); *Stone v. Paddock Publications, Inc.*, No. 2009 L 5636 (Ill. Cir. Ct., Cook County, Nov. 9, 2009).

While there are no published Ohio decisions addressing this exact issue, courts around the country have followed a test laid out by the New Jersey Appellate Court in *Dendrite Int'l,*

Inc. v. Doe No. 3, 775 A.2d 756 (N.J. Super. A.D. 2001) when addressing the question of obtaining the identities of anonymous Internet posters. Under the *Dendrite* standard, courts typically allow Plaintiffs to conduct discovery to identify the anonymous defendants if Plaintiffs (1) attempt to provide notice to the anonymous defendants of that their identities are being sought, and explain how to present a defense; (2) quote verbatim the allegedly actionable online speech; (3) allege all elements of the cause of action; (4) present evidence supporting the claim of violation; and (5) show the court that, on balance and in the particulars of the case, the right to identify the speaker outweighs the First Amendment right of anonymous speech.[2] Here, Plaintiffs meet all of the elements in the *Dendrite* test.[3]

1. Plaintiffs Will Ensure The Defendants Receive Notification Of Plaintiffs' Request For Discovery.

Plaintiffs will take several different steps to notify Defendants of their attempts to discover the John Doe Defendants' identities prior to the production of such information. Specifically, the Plaintiffs will instruct the ISPs who receive the subpoenas to notify the persons about whom the subpoenas request information, and to refrain from producing the information for 14 days to allow any of the Defendants time to file a motion to quash related to those

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[2] A number of courts around the country have used the *Dendrite* test either in its exact form, or as a basis for creating their own tests. *See Doe v. Individuals,* 561 F. Supp. 2d 249, 256 (D. Conn. 2008); *Sony Music Entm't Inc. v. Does 1-40*, 326 F. Supp. 2d 556 (S.D.N.Y. 2004); *Mobilisa, Inc. v. Doe*, 170 P.3d 712 (Ariz. App. Div. 1, 2007); *Highfields Capital Management, L.P. v. Doe*, 385 F.Supp.2d 969 (N.D. Cal., 2005).

[3] The other common test courts use to determine if Plaintiffs should be permitted to conduct discovery related to the identities of anonymous Internet posters was elucidated by the Delaware Supreme Court in *Doe v. Cahill*. 884 A.2d 451 (Del. 2005). In *Cahill*, the Delaware Supreme Court outlined an arguably more stringent test, holding that the Plaintiff must meet a summary judgment standard, holding that the plaintiff must (1) make reasonable efforts to notify the defendant and (2) submit sufficient evidence to establish a genuine issue of material fact for each essential element of its claim within the plaintiff's control. *Id.* at 460 - 61. Here, as outlined further below, Plaintiffs certainly meet these elements. First, as addressed in Section III.A.2.a, Plaintiffs will make more than a reasonable effort to notify the John Doe Defendants of the pending subpoenas. Secondly, as outlined in Sections III.A.2.b-e, Plaintiffs can certainly meet the summary judgment standard, in that the comments made by the John Doe Defendants were defamatory per se, and thus Plaintiffs have viable claims against the John Doe Defendants. To the extent the John Doe Defendants argue that any of the statements are privileged, or subject to a defense, such as truth, Plaintiffs vehemently deny this argument, and thus a genuine issue of fact exists and the summary judgment standard is met.

subpoenas. Since the ISPs have the contact information for the persons who are the subject of the subpoenas, this is the best procedure for putting the anonymous defendants on notice of the subpoenas.

In an abundance of caution, Plaintiffs will also notify Defendant Goddard's counsel of the subpoenas served on the ISPs and instruct Defendant Goddard to notify any individual that Defendant Goddard knows made a comment included in the FAC of this pending discovery. This will provide yet another method of notifying the John Doe Defendants of the discovery that is being sought and provide them the opportunity to object to such discovery.

2. Plaintiffs have Quoted Verbatim the Online Speech

As outlined in the Complaint, as well as the FAC, Plaintiffs have identified verbatim the online speech that is the subject of this litigation. (See Complaint ¶18, FAC ¶23). Indeed, in these paragraphs, Plaintiffs have quoted, verbatim, the statements that are at issue in this litigation. Thus, Plaintiffs meet the second element of the *Dendrite* test.

3. Plaintiffs Have Alleged All Elements of the Cause of Action.

As outlined in the FAC, Plaintiffs allege all elements of the causes of action related to the John Doe Defendants, including defamation. (See FAC ¶¶ 28 – 19). As with the second factor, Plaintiffs have alleged all elements of the various causes of action they allege in their Complaint, including defamation, false light, and intentional infliction of emotional distress, thus meeting the third element of the *Dendrite* test.

4. Plaintiffs Have Presented Sufficient Evidence For All Elements Of All Their Defamation Claims.

To establish a prima facie case of defamation, Plaintiffs have the burden of providing that: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4)

either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Lawson v. AK Steel Corp.*, 121 Ohio App. 3d 251, 256 (Ohio Ct. App., Butler County 1997).

Here, Plaintiffs are easily able to make a prima facie showing of their defamation claim. First, Defendants' statements are false and are concerning Plaintiffs. (*See* FAC at ¶¶ 23, 24). Indeed, each of the Defendants of whom Plaintiffs seek relevant information pertaining to their identities have posted numerous false and defamatory statements regarding the Plaintiffs on the website www.prinniefied.com, namely, that Plaintiff Cody Saltsman participated in the rape of a young woman. The Defendants have posted the following false and actionable statements:

Defendant Goddard, *aka "prinnie"* posted:

- "Student[] by day . . . gang rape participant by night . . ."

The poster who uses the screenname "mammabear" posted the following false statements:

- "...Cody's dad said they were offering him immunity..."
- "...my mind went nuts to the thought of Cody possibly walking after everything he has done."
- "Cody Saltsman .... her exboyfirend who played a major role in this on top of sending the victims father a picture of her being carried unconscious by her wrists and ankles that said 'look at your whore daughter now.'"
- "BECAUSE THEY WERE THERE!!!" – *responding to why Cody Saltsman's name is being mentioned on the Internet blog*
- "...the only crime photo I have ever seen is the original that was sent to her father by Cody..."
- "Anyway lets talk about Cody Manson for a second. First, planned revenge and got his friends involved. When said plan was being carried out he sent a picture to victims father that said friends sent him so he knew his plan was being carried out.....When word starts to get out mom tries to clear all phones of data, even considers getting him a new phone, Then police get involved, AND (what I am about to write I heard on here I do not

know if its true) phone mysteriously disappears?????? Aside from the picture he sent her dad....the picture is GROSS and horrible when you know the context of it (made me hurle when I first saw it) BUT she is clothed.....nothing sexual is happening in it. THEY HAVE NOTHING ON HIM! Then there is word of a lunch between parents...hmmmm The only way they would get this SON OF A BITCH is by one of the others rolling on him...and I would bet my ASS that meeting was all about making sure that didn't happen!!!!!!!!!! I KNEW THAT PIECE OF SHIT WAS GOING TO FIND A WAY OUT OF THIS WITH HIS HANDS CLEAN. I FREAKIN KNEW IT!!!!!!!!!!!!!!!!!!!!!!!!! I am so mad right now I could spit fire. If they are not going to prosecute based on Twitter and You Tube THEY HAVE NOTHING ON HIM. I hate him...then end"

- "You told her you loved her. You called yourself her boyfriend. Showered her with gifts and corny thinks high school kids do. Then something changed. You begin to break her down. Tell her who she can talk to. Tell her who her friends are. Tell her what to wear. Make her feel like nothing. You hit her emotionally and physically, and then she FINALLY gets away from you. May you vowel on twitter for the whole world to see that "payback is a bitch".......The plan began. Your friend will pretend to like her. You will have him bring her to a party where she can be drugged....kidnapped, raped, sodomized, defecated on, photographed, videoed, HUMILIATED publicly OVER and OVER again. You send her father a photograph of YOUR planned revenge and call his daughter a whore....call her sloppy. YOU ARE DISGUSTING!!! You're mother...after realizing she what you have done and that she has raised a MONSTER tries to delete everything on your phone....tries to change your phone numbers.....but low and behold ALL of your family phones are taken d/t being on the same plan. NOW YOU ARE GIVEN IMMUNITY?????????????? BRAVO jeff co for YET again fucking things up. You r letting the KINGPIN...MASTERMIND walk away.......... NO ONE IS SAFE HERE ANYMORE!!!!!!!!! HORRIFYING is what this is, and as for you CODY SALTSMAN, you r a vile human being and may think you have gotten away with this, but one day you will face your maker and that will be the day YOU WILL BURN FOR AN ETERNITY IN HELL!!!!! you make me sick!!"

Likewise, the poster using the screen name "3AngelsMommy" posted:

- "CS is in my opinion the worst one of the whole bunch. He needs mental help. ... His parents have got to know their son was involved in some way and their lack of action shows exactly why they did this to begin with."

Similarly, the poster using the screen name "concernedmom123" posted:

- "Get CS and his possy off the field and problem solved."
- "What would you think if Charles Manson was allowed to walk free, while his followers who did the dirty work were the only ones rotting in prison?............I feel the same way about CS walking free today."

- "The kid who masterminded (CS) this crime is not only running free but has 'lost' his cell phone."

The poster using the screen name "completelyunbelievable" posted:

- "She WAS dating Cody Saltsman and dumped his ass because he was a pig, very verbally and physically abusive, when she broke up with him he said 'Nobody breaks up with Cody Saltsman, I will ruin that bitch'. YES that is a QUOTE."

- "a few things i would like to ask of everyone on here, first can we please quit calling him Cody Manson (although this name suits him to a tee) However, I would like everyone to speak this sick monsters real name....Cody Saltsman.....over and over and over. His name and his parents names and all the others names should spoken and written very clearly for the entire world to know. The family deserves justice. This ass put her through hell for the entire relationship not just after they broke up. He has a black heart/soul. As far as how Cody Saltsman's parents feel about their sons acts...well, they decided that the best form of punishment for their son was to go out and get his pretty little car a new tint job.....That's their "that a boy" pat on the back for not getting busted mantallity. On to the next request, Please please please tweete, facebook, email, whatever it takes to get as many people to boycot all businesses that are owned, operated, or even employees the parents of these sicko's. The family shouldnt have to look at these faces for the rest of their lives. The parents of the vic shouldnt have to work with the mother of Cody Saltsman. I wouldn't let that dumb woman touch one of my loved ones. They need to be run out of town. Let them know they have no place here anymore. That we don't want a bunch of rapist running our streets because mommy and daddy's pocket book was deep enough to cover the bill to keep them out of prisson."

Likewise, the poster using the screen name "AbbyLane" posted:

- "...two despicable psychopaths on the loose...Saltsman and Nodianos. Do you know where your daughters are tonight?"

- "They have no choice but to suspend them now. But not Cody Manson.... such the little master mind of this entire drama. I hope his mother reads this blog or that someone has the guts to let his family know what a pig he really is... at least the rest of the town knows now. You can run Cody, but you can never hide. This will haunt you forever."

The poster using the screen name "DM" posted:

- "...but this year CS saw a way to turn it into personal revenge and in the process turned it into a violent crime?"

Likewise, the poster using the screen name "Elliot N" posted:

- "Yet amazingly STILL Cody S has NOT been charged even with the very very obvious charge of 'Telephone Harrassment.'"

The poster using the screen name "lakindo" posted:

- "The rumor I heard regarding CS, and I stress rumor is that his local business owner dad brought in a lawyer from New York that cost somewhere in the vicinity of $10,000."

The poster using the screen name "disheartening" posted:

- "CS father owns Fort Steuben Plumbing/Maintenance" – *responding to: "What is this business because I* never *want to spend my money there"*

The poster using the screen name "truth be told" posted:

- "CS father owns Fort Steuben Plumbing/Maintenance" – *responding to: "What is this* business *because I never want to spend my money there"*

Likewise, the poster using the screen name "Pete Basil" posted:

- "...CS the mastermind, orchestrator of the entire incident still walks free amongst his peers as if he is invincible!!"

The poster using the screen name "madgrandma" posted:

- "...Cody Saltsman needs to be benched too!!! How convenient that he was the MASTERMIND and wasn't there when this girl was RAPED! He needs in Jail with his 2 Monster Buddies!!!"

- "Cody needs to suffr some consequences too!"

- "...they need to bench THE MASTERMIND CODY SALTSMAN!"

Similarly, the poster using the screen name "Needanswers" posted:

- "CS does need to pay for what he has done, no doubt about that."

The poster using the screen name "HEARTSICK" posted:

- "I think if the legal system does not get Cody, someone will take it upon themselves to 'get him.'"

Likewise, the poster using the screen name "Scott" posted:

- "The only justice that young lady and her family will ever get is when a pissed off law-abiding citizen hands down some street justice on these rapists, also to include Saltsman..."

These statements are all completely false, and defamatory. All of these statements are unprivileged, and were made to millions of third parties on the Internet. (*See* FAC at ¶ 30). And, the Defendants published these statements with a requisite degree of fault, amounting to at least negligence. Indeed, as outlined in the FAC, Defendant Goddard admitted that "she did not have all the facts." (FAC at ¶ 20). This statement was made on her blog, yet the John Doe Defendants continued to post false and defamatory statements regarding Plaintiffs, even without "all the facts." There is absolutely no basis to state that the Plaintiffs raped someone, that Plaintiffs covered this up, that Plaintiff Cody Saltsman is comparable to the serial killer Charles Manson, or that Plaintiff Cody Saltsman was the mastermind of the rape. Such statements go far beyond negligence, rising to the level of malicious, willful, and reckless.

Lastly, the Plaintiffs meet the fourth and final element for a claim for defamation as the Defendants' statements are actionable irrespective of special harm. Indeed, defamation per se in Ohio is defined any statement that "reflects upon the character of [the plaintiff] by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession." *Becker v. Toulmin*, 138 N.E.2d 391, 395 (Ohio 1956). Defendants' statements clearly meet a prima facie showing of defamation per se. As set forth in Paragraph 23 of the FAC, the Defendants falsely accuse Plaintiff Cody Saltsman of raping a young woman. This clearly meets the standard of defamatory per se under Ohio law as it alleges he committed a criminal act and therefore reflects upon his character "by bringing him into ridicule, hatred or contempt." *Becker*, 138 N.E.2d at 395. Ohio courts have found that such allegations are sufficient to constitute defamatory per se. *Ratkosky v. CSX Transp., Inc.*, 8th Dist. No. 92061, 2009 Ohio 5690, ¶ 44 ("[Defamation per se] consist[s] of words which import an indictable criminal offense involving moral turpitude or infamous punishment..."); *Wilson v. Wilson*, 2d Dist. No. 21443, 2007 Ohio 178, ¶ 13

("[Plaintiff's] claim, if proven, constituted defamation per se because the assertion of pedophilia involves a charge of moral turpitude and is an indictable offense."); *Radcliff v. Steen Elec., Inc.*, 9th Dist. No. 23460, 2007 Ohio 5117, ¶17 ("[T]he statements made by [defendant] fit within the classic definition of defamation per se as they impute a crime to [plaintiff].") Thus, Plaintiffs have presented sufficient evidence for their claims of defamation.[4]

5. The Harm Plaintiffs Have Suffered Outweighs Defendants' First Amendment Rights.

Courts have repeatedly held that where defendants defame the plaintiffs on the Internet, the plaintiffs' right to seek a remedy for defendants' illegal conduct outweighs defendants' First Amendment rights. This is because, as outlined above, the "the First Amendment does not protect defamatory speech." *John Doe No. 1 v. Cahill*, 884 A.2d 451 (Del. 2005). As such, Courts have recognized that there is a "distinction between using the internet to exchange ideas and opinions and using it as a cover to defame others." *Cahill v. Doe*, 879 A.2d 943, 956 (Del. Super. Ct. 2005). In the latter case, "when a plaintiff can, in good faith, allege that a user has put

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[4] In addition to defamation claims, Plaintiffs also have sufficient evidence to meet the elements of their claims of intentional infliction of emotional distress and the tort of false light. In Ohio, the four elements for a claim of intentional infliction of emotional distress are as follows: "(1) that the defendant intended to cause emotional distress to the plaintiff; (2) that the defendant's conduct was so extreme and outrageous as to go beyond the bounds of decency and was such that the conduct can be considered utterly intolerable in a civilized society; (3) that the defendant was the proximate cause of the plaintiff's psychiatric injury; and (4) the mental anguish suffered by the plaintiff is so serious and of a nature no reasonable man could be expected to endure." *Ashcroft v. Mt. Sinai Med. Ctr.* (1990), 68 Ohio App.3d 359, 366, 588 N.E.2d 280, 284. Here, Plaintiffs have properly presented evidence that the John Doe Defendants intended to cause emotional distress, and that the John Doe Defendants' conduct, namely, accusing a minor child of rape of another minor child, with absolutely no basis in fact, was beyond the bounds of decency and considered utterly intolerable in civilized society. Further, the Plaintiffs have properly shown that the postings by the Defendants are the proximate cause of Plaintiffs' injuries, and that the mental anguish, unsurprisingly, is so serious and of a nature that no reasonable person could be expected to endure. Further, in Ohio, one who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Welling v. Weinfeld* (2007) 113 Ohio St. 3d 464, 473. Here, the John Doe Defendants have placed Plaintiffs in a false light on the Internet, which is highly public. This false light, namely, that Plaintiff Cody Saltsman was involved in the rape of a young woman and that his parents covered up the fact, is obviously highly offensive to a reasonable person. Further, the Defendants, as outlined in Paragraph 20 of the FAC, "did not have all the facts," thus, the Defendants acted in reckless disregard as to the falsity of the publicized matter.

the internet to use as a tool for defamation, the internet user will forfeit his right to anonymity in favor of the injured party's right to seek redress for the damage caused by the defamatory speech." *Id.; see also Immunomedics, Inc. v. Doe*, 342 N.J. Super. 160, 167 (N.J. App. Div. 2001) ("Although anonymous speech on the Internet is protected, there must be an avenue for redress for those who are wronged. Individuals choosing to harm another or violate an agreement through speech on the Internet cannot hope to shield their identity and avoid punishment through invocation of the First Amendment.").

In the present case, the Defendants' statements are extremely defamatory (rising to the level of defamatory per se), were made with the sole purpose of hurting the Plaintiffs' reputations, and were not based upon any type of privilege. Indeed, it is clear that none of the Defendants had any kind of factual information relating to the alleged rape, Plaintiff Cody Saltsman's alleged involvement in such a heinous crime, or Plaintiffs James and Johna Saltsman's alleged cover-up of such a heinous crime. As a result, the Plaintiffs' right to enjoin the defamatory conduct and recover the appropriate damages far outweighs any First Amendment concerns. See Pilchesky (recognizing that in "balancing the equities" the court should examine the "defamatory nature of the comments, the quantity and quality of the evidence presented, and whether the comments were privileged.").

B. Plaintiffs Must Serve The Subpoenas on the ISPs as Soon as Possible to have a Reasonable Chance of Obtaining the Identities of the John Doe Defendants.

Defendant Goddard's request that Plaintiffs refrain from using the HostGator information to serve subpoenas on the ISPs will also unfairly prejudice the Plaintiffs by creating a substantial likelihood that Plaintiffs can never identify the anonymous bloggers. Since most IP Addresses are dynamic and change relatively regularly, ISPs only keep the information necessary to identify the subscriber to a particular IP Address for a short period of time, often only six months

or less. Here, the postings at issue were made over two months ago, and thus time is of the essence to obtain the identifying information related to the IP Addresses before the ISPs delete the essential information. At this point, every day that passes before the Plaintiffs serve subpoenas on the ISPs increases the risk that the ISPs will no longer have responsive information when they eventually receive the subpoenas. Plaintiffs therefore should be authorized to serve the subpoenas on the ISPs as soon as possible.

It is also worth noting that Defendant Goddard has substantially increased the risk that Plaintiffs may never obtain the identities of the anonymous bloggers if Plaintiffs do not serve the ISPs as soon as possible. Plaintiffs made every effort to serve Defendant Goddard with a copy of the Complaint, Summons, and the subpoenas to HostGator, but Defendant Goddard has repeatedly evaded service. (*See* Affidavits attached as Exhibit A to Motion for Authorization). Had Defendant Goddard accepted service of the Complaint and the HostGator subpoena, and made her objections in a timely manner, the risk that the ISPs would have deleted the responsive information would have been far less. However, now that she has avoided service for months, and only now attempts to object to the HostGator subpoenas, she has created a substantial risk that the ISPs will no longer have the relevant information if she is permitted to further delay this discovery.

Furthermore, through Defendant Goddard's spoliation of evidence, outlined in the FAC, Defendant Goddard has made it imperative that Plaintiffs obtain the discovery of the anonymous bloggers through the subpoenas to the ISPs. It is undisputed that once Defendant Goddard became aware of the filed lawsuit, she moved her website to an off-shore host and deleted the Internet Protocol log information. As a result, the only possible place where Plaintiffs can now obtain the identities of the anonymous bloggers is from the ISPs. Given that the ISPs are the

only source for this information, and that they routinely delete this information, it is imperative that the Plaintiffs serve their subpoenas on the ISPs as soon as possible.

C. Defendant Goddard Does Not Have Standing to Object to the Discovery of the Identifies of the Other Anonymous Bloggers.

To the extent Defendant Goddard objects to the disclosure of personally identifying information related to the John Doe Defendants of anonymous posters that are not her, she lacks standing to make such a challenge. Defendant Goddard only has the Constitutional right to assert standing on behalf of herself.[5] The Supreme Court has recognized that a person "generally must assert his own legal rights and interests, and cannot rest his claim on the legal rights or interests of third parties." *Secretary of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 955 (1984). There is an exception to this general rule, which only applies when: practical obstacles prevent a party from asserting rights on behalf of itself; a third party has sufficient injury-in-fact to satisfy Art. III case-or-controversy requirement; and, a third party can reasonably be expected properly to frame the issues and present them with the necessary adversarial zeal. *Id.* at 956.

Generally, none of these exceptions apply where an individual attempts to assert Constitutional objections on behalf of another anonymous online speaker. *See Matrixx Initiatives, Inc. v. Doe*, 138 Cal. App. 4th 872 (Cal. App. 2006); *Quixtar Inc. v. Signature Management Team, LLC*, 566 F. Supp. 2d 1205, 1216 (D. Nev. 2008) ("Court will not consider any further objections based on anonymity unless there is a factual basis for finding that objecting [third party] has standing to raise the objection.").

Here, Defendant Goddard has failed to present any evidence to support a factual basis for a finding that she has standing to raise an objection to the discovery seeking the John Doe

[5] For this reason, as outlined above, Plaintiffs will request that Defendant Goddard notify any persons that she knows wrote any statements in Paragraph 23 of the FAC of their right to file a motion to quash or amend the subpoena within 30 days." This gives any person about which Plaintiffs seek his or her identity (i.e., the individual with standing) the ability to anonymously object to the subpoena insofar as it seeks his or her identity.

Defendants' identities. Indeed, she has presented no evidence that the John Doe Defendants are incapable of asserting rights on behalf of themselves, that she has a sufficient injury-in-fact from the disclosure of the John Doe Defendants' identities, or that she can reasonably be expected to properly frame the issues and present them with the necessary adversarial zeal. To the extent Defendant Goddard's counsel's November 14, 2012 correspondence can be considered an objection to Plaintiffs' discovery, any such objection must be ignored, since Defendant Goddard lacks standing to object to such discovery.

D. The Anonymous Bloggers Will have the Opportunity to Object to the Production of their Identities in Response to the Subpoenas Served on the ISPs.

Defendant Goddard's objection to the current discovery is unwarranted provided that the John Doe Defendants will have the opportunity to file objection to the subpoenas prior to the release of their identities. Pursuant to the attached Order, the ISPs will notify the John Doe Defendants of the subpoenas, instruct the John Doe Defendants to object, and provide the John Doe Defendants 14 days to file an objection. This will allow the John Doe Defendants to assert any objections and is the appropriate procedure given that, unlike Defendant Goddard, they actually have standing to assert objections to the disclosure of their identities. This procedure has been approved by numerous courts dealing with discovery questions like the one presented here. *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 146919, *7-8 (E.D. Cal. Oct. 11, 2012) (allowing plaintiffs to serve subpoena on ISP, but mandating that the ISP provide notice to the subscriber and withhold the personally identifiable information for a time period to allow the subscriber time to object); *London-Sire Records, Inc. v. Doe 1*, 542 F. Supp. 2d 153, 161 (D. Mass. 2008) (noting that in a previous Order in this case, the Court had ordered that the ISP provide the individual users with notice of the lawsuit and a short statement of some of their

rights before revealing their identities to the plaintiffs and that the ISP may not respond to the subpoena for 14 days after each defendant has received notice). Thus, while Plaintiffs believe any objections will ultimately be denied, the fact that the individuals with actual standing to object will have an opportunity to do so prior to the production of the identifying information, demonstrate all the more why Plaintiffs should be authorized to proceed with serving subpoenas on the ISPs.

V. The Proposed Order Provides Authorization for Plaintiffs to Serve Subpoenas on Comcast Cable, MI-Connection, and Jefferson County Cable for Personally Identifying Information under the Cable Privacy Act

The Proposed Order contains specific language authorizing the cable companies that Plaintiffs intend to subpoena to release information in their possession once the anonymous defendants have had the opportunity to object. The Court's authorization to obtain this discovery is required under the Cable Privacy Act, 47 U.S.C. § 551. In particular, 47 U.S.C. § 551(c)(1) provides that a "a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber..." However, pursuant to 47 U.S.C. § 551(c)(2)(B), a "cable operator may disclose such information if the disclosure is...made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed."

Courts have held that disclosure is permitted under 47 U.S.C. § 551(c)(1) upon a showing that "(1) [the plaintiff] had a legitimate, good faith basis upon which to bring the underlying claim; (2) that the identifying information sought was directly and materially related to their claim; and (3) that the information could not be obtained from any other source." Indep. Newspapers, Inc. v. Brodie, 407 Md. 415, 444 (Md. 2009) (quoting Doe v. Cahill). As outlined in the FAC, Plaintiffs certainly meet all three of these requirements and thus, this Court should

authorize the three cable companies to disclose the subscribers' personally identifiable information.

Plaintiffs have a legitimate good faith basis to bring the underlying claim given that Defendants have made a host of false and defamatory statements on the Internet that Plaintiff Cody Saltsman committed rape, and that his parents attempted to cover up the rape. Secondly, Plaintiffs simply want to identify the very parties who are responsible for the unlawful conduct alleged in the FAC, in order to serve those parties with the FAC. The identities of the John Doe Defendants are not just materially related to Plaintiffs' claims, but are essential to the continued prosecution of this action. Lastly, the identities of the John Doe Defendants cannot be obtained from any other source. Indeed, it is clear that the John Doe Defendants have no intention of voluntarily identifying themselves, and Defendant Goddard, who may or may not know the identities of some or all of the John Doe Defendants, refuses to even accept service of the Complaint. Here, all the Plaintiffs have are the IP Addresses of the John Doe Defendants, and to obtain the identifying information needed to properly name these Defendants in the Complaint and pursue their claims against these Defendants, the three cable companies must be authorized to release the personally identifiable information Plaintiffs seek. Attached hereto as Exhibits A, B, and C are court orders granting authorization for release of this information under the Cable Privacy Act in similar cases.

V. Conclusion

Plaintiffs seek authorization of this Court to conduct discovery that is imperative to the pursuit of their viable claims. Without the information relating to the John Doe Defendants' identities, Plaintiffs will not be able to move forward with their case against these Defendants. Plaintiffs therefore respectfully request that this Court authorize the discovery relating to

personally identifiable information associated with the IP Addresses of the John Doe Defendants, and that this Court further authorize Comcast Cable, MI-Connection, and Jefferson County Cable Company to release the personally identifiable information associated with their subscribers, pursuant to 47 U.S.C. § 551(c)(2)(B). A Proposed Order is attached hereto for the Court's consideration.

Respectfully Submitted,

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