S235968

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DAWN L. HASSELL and HASSELL LAW GROUP, P.C.,
Plaintiffs and Respondents,

v.

YELP, INC.,
Appellant.

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233
Appeal from the Superior Court of the State of California,
County of San Francisco, Case No. CGC-13-53025,
The Honorable Donald J. Sullivan and the Honorable Ernest H. Goldsmith, presiding

AMICUS CURIAE BRIEF OF EUGENE VOLOKH ([redacted]REDACTED; MOTION TO FILE UNDER SEAL PENDING)

SCOTT & CYAN BANISTER FIRST AMENDMENT CLINIC
UCLA SCHOOL OF LAW
Eugene Volokh (Bar No. 194464)
405 Hilgard Ave., Los Angeles, California 90095
(310) 206-3926*

* *Amicus* would like to thank Alexandra Gianelli, Kristin Halsing, and Ashford Kneitel, UCLA School of Law students who worked on this brief.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Amicus is unaware of any entity or person who must be listed under Rule 8.208.

DATED: April 17, 2017

Respectfully Submitted,

By: s/ Eugene Volokh
Eugene Volokh
Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

INTEREST OF *AMICUS CURIAE*

Eugene Volokh has taught and written about Internet law and First Amendment law for over 20 years, and has written over 40 law review articles on one or both subjects. Since August 2016, he has been investigating fraud and other misbehavior related to the Internet libel takedown system.

At the petition for review stage, he submitted an *amicus* letter on behalf of several law professors, including himself; that letter focused on traditional doctrinal explanations of why the Court of Appeal erred. With the permission of his colleagues and clients on that letter, he is now submitting this very different brief, solely on his own behalf, to explain how the findings of his recent research bear on the question before the court.

INTRODUCTION AND SUMMARY OF ARGUMENT

Injunctions aimed at removing or deindexing allegedly libelous material are a big practice area, and big business. At least hundreds are entered each year throughout the country.[1] Companies advertise such services, and charge thousands of dollars for them.[2]

Some such injunctions, like the one in this case, are sent to sites such as Yelp or the blog host WordPress, asking them to remove

---

[1] *See* http://lumendatabase.org, which archives such injunctions; at least about 1000, mostly over the past five years, are from the U.S.

[2] *See, e.g.*, Affordable Reputation Management, *Guaranteed Removal Pricing*, http://affordablereputationmanagement.com/removal-pricing ($12,000 for "de-indexing main link" for items on pissedconsumer.com, $5000 for "news sites/blogs," other prices for other sites).

supposedly defamatory material from their sites. Others are sent to search engines such as Google, asking them to remove links to such material from their indexes. (The injunctions aimed at deindexing by Google appear to be especially common, but procedurally they are analogous to those aimed at direct removal by Yelp and similar sites: Neither Yelp nor Google are parties to the original case, but both could equally be seen as "aiders and abettors" under the Court of Appeal's reasoning.)

But this process appears to be rife with fraud and with other behavior that renders it inaccurate. And this is unsurprising, precisely because many such injunctions are aimed at getting action from third parties (such as Yelp or Google) that did not appear in the original proceedings. The adversarial process usually offers some assurance of accurate factfinding, because the defendant has the opportunity and incentive to point out the plaintiff's misstatements. But many of the injunctions in such cases are gotten through default judgments or stipulations, with no meaningful adversarial participation.

As other briefs in this case point out, basic remedies principles, the Due Process Clause, and the First Amendment should keep such injunctions from being legally binding on companies such as Yelp or Google.[3] This brief will aim to show why those legal principles make eminent practical sense. Even if the plaintiffs in this

---

[3] Yelp Opening Br. on Merits 16–33; *Amicus Curiae* Br. Of Google Inc.; *Amici Curiae* Br. of First Amendment & Internet Law Scholars.

case were being completely honest and forthright, many plaintiffs in similar cases appear not to be. And if such injunctions are made legally binding, this will only offer more incentive for shenanigans.

In particular, this brief will discuss:

(1) injunctions gotten in lawsuits brought against apparently fake defendants;

(2) injunctions gotten using fake notarizations;

(3) injunctions gotten in lawsuits brought against defendants who very likely did not author the supposedly defamatory material;

(4) injunctions that seek the deindexing of official and clearly nonlibelous government documents—with no notice to the documents' authors—often listed in the middle of a long list of website addresses submitted to a judge as part of a default judgment;

(5) injunctions that seek the deindexing of otherwise apparently truthful mainstream articles from websites like CNN, based on defamatory comments that the plaintiffs or the plaintiffs' agents may have posted themselves, precisely to have an excuse to deindex the article;

(6) injunctions that seek the deindexing of an entire mainstream media article based on a source's supposedly recanting a quote, with no real determination of whether the source was lying earlier, when the article was written, or is lying now, prompted by the lawsuit;

[redacted]

Online service providers, such as Yelp and Google, that get these orders are the first line of defense against such behavior, so long as they have no legal obligation to comply with such orders issued against third parties. The service providers can exercise their discretion to conclude that some orders appear untrustworthy. They can demand more documentation from people who submit the orders. And if their concerns about their orders are not adequately resolved, they can decline to enforce the orders.

But under Plaintiffs' view, the service providers would be legally required to deindex or remove any material that has been ruled defamatory, even when they have had no chance to participate in the defamation lawsuit. What if Google sees that the order includes an article in the *Davis Enterprise,* the *Ventura County Star*, or *Inc.* magazine (even though those publications were not parties to the case)?[4] It would still have to deindex that article. What if Google sees that the order includes a Web page on the California Department of Real Estate site, or a federal district court order hosted on a federal government computer, or a court decision listed on findlaw.com?[5] Google would have to deindex that, too.

---

[4] For examples of injunctions that people were using to try to deindex material from those publications, see *infra* Parts I and VI.

[5] For examples of injunctions that people were using to try to deindex such material from those sites, see *infra* Part III.

Google would only be able to protect online speech against such deindexing by formally intervening in the suspicious lawsuit, and trying to reopen the judgment. But this would be practically infeasible. It would at least require spending large sums of money to hire local counsel across the country to litigate such matters. And such reopening might be procedurally unavailable in many places.

Yelp, the Court of Appeal held, could be required to abide by the injunction in this case because the injunction "was issued following a determination at trial that those statements are defamatory." *Hassell v. Bird* (2016) 247 Cal. App. 4th 1336, 1360. This brief will aim to show that such "determination[s]" are far too vulnerable to manipulation to be trustworthy.

ARGUMENT

I. Stipulated Injunctions Involving Apparently Fake Defendants

Say that a plaintiff wants a critical article about her removed from the Internet. The plaintiff could identify the author, sue the author, and get a judgment stating that the article is false. (That may well be what plaintiffs in this case did.)

But say the plaintiff hires a "reputation management company," especially one that promises "guaranteed removal"[6] (i.e., no

---

[6] *See, e.g.*, Profile Defenders, *Profile Defenders Lawsuit Removal Service Takes Down Defamatory Webpages*, https://pressreleasejet.com/newsreleases/2015/profile-defenders-lawsuit-removal-service-takes-down-defamatory-webpages/ ("A defamation removal law firm and online reputation management company combine. Profile Defenders Lawsuit Removal service honors a guarantee to take down and defamatory or unwanted webpages

payment if the removal does not happen). And say that company is willing to cheat—as is indeed likely if it is to make a "guarantee[]" work as a business model.

Say the company therefore files a libel lawsuit in the plaintiff's name against a *fake* defendant, seeking an injunction, and accompanies the complaint with a stipulation supposedly signed by this defendant (but in reality produced by the company itself). The trial judge sees that the parties agree on the injunction, and therefore signs the injunction without much further scrutiny. And the reputation management company then sends this order to Google or Yelp, asking for deindexing or removal of the material that the order has ostensibly found to be defamatory.

That appears to have been attempted in at least 25 cases across the country. (See Appendix A for a full list.) The cases appear to be connected; they are all ostensibly filed *pro se*, but they share certain unusual legal boilerplate. Most of the 25 cases include the defendant's supposed address,[7] but there appears to be no person with the defendant's name present at that address.[8] While not all of them have been thoroughly investigated in court, in at least

---

from search results as long as they meet specific criteria. A guarantee is priced in and year to date out of 375 cases only 1 has not been successful.").

[7] See Appendix A.

[8] Eugene Volokh & Paul Alan Levy, *Dozens of Suspicious Court Cases, with Missing Defendants, Aim at Getting Web Pages Taken Down or Deindexed*, The Volokh Conspiracy [Wash. Post] (Oct. 10, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/10/10/dozens-of-suspicious-court-cases-with-missing-defendants-aim-at-getting-web-pages-taken-down-or-deindexed.

two—*Smith v. Garcia* and *Patel v. Chan*—there is solid record evidence of fraud.

A. *Smith v. Garcia*

The clearest example is *Smith v. Garcia*, a Rhode Island federal district court case. Bradley Smith supposedly sued a "Deborah Garcia," alleging that "Garcia" wrote defamatory comments attached to two posts on a consumer advice organization's blog (GetOutOfDebt.org).[9] Smith and "Garcia" supposedly signed a consent motion, and the court issued a stipulated injunction, which included an order that could be submitted to search engines for deindexing.[10]

It seems likely that the real goal of the lawsuit was to deindex the blog posts, which came from a credible organization (Myvesta, which owns GetOutOfDebt.org), and which sharply criticized a company owned or co-owned by Smith. The comments by "Garcia" were the tail that was used to try to wag the dog.

---

[9] C.A. No. 16-144 S, at 1 (D.R.I. Mar. 23, 2016), http://www.law.ucla.edu/volokh/hassell/FedDRISmithvGarcia.pdf. For convenience, many of the citations to trial-level court documents in this brief include a URL of a copy of the document that *amicus* has placed on the Internet; but all of the documents are also available from court records [redacted].

[10] *Id.*

Several months later, Myvesta learned of the deindexing, and moved to intervene and vacate the injunction. Myvesta had secured the help of lawyer Paul Alan Levy of Public Citizen, a noted public interest law firm.[11]

When Levy tried to contact "Deborah Garcia" by mail at the address listed on the consent motion, the letter was returned as undeliverable.[12] Public records searches revealed no Deborah Garcia associated with that address.[13] Levy did reach Bradley Smith's attorney, who stated that Smith had not authorized the filing of the case in his name, and had not signed the court papers.[14]

Faced with this information, the court allowed Myvesta to intervene, and vacated the original injunction, citing "evidence that the Consent Judgment was procured through fraud on the Court."[15] Myvesta also sought to get sanctions for this alleged fraud, and sought to get discovery of who was behind it. That person appears to have been Richart Ruddie, owner of the reputation management companies SEO Profile Defender Network LLC and RIR1984 LLC.[16]

---

[11] *Smith v. Garcia*, C.A. No. 16-144 S, 2017 WL 412722 (D.R.I. Jan. 31, 2017).

[12] *Id.* at *1.

[13] Volokh & Levy, *supra* note 8.

[14] *Smith v. Garcia*, 2017 WL 412722, at *1.

[15] *Id.*

[16] Eugene Volokh, *Apparently-Fake-Defendant Libel Lawsuit Watch: Richart Ruddie & SEO Profile Defender Network LLC Paying $71,000 to Settle Claim*, The Volokh Conspiracy [Wash. Post] (Mar. 14, 2017), https://www.washingtonpost.com/news/volokh-

Ruddie ultimately settled the case in exchange for $71,000, chiefly consisting of Myvesta's legal fees (a good measure of how much it would have cost Google to challenge the injunction, had it had a legal obligation to comply with it).[17] Ruddie also agreed to ask Florida and Maryland courts to vacate three other court orders that called for the deindexing of Myvesta posts related to Smith's companies, *Smith v. Levin*, *Financial Rescue LLC v. Smith*, and *Rescue One Financial LLC v. Doe*.[18] In *Smith v. Levin*, court records included Levin's ostensible address (the common practice in Maryland); no-one with that name could be found at that address.[19]

---

conspiracy/wp/2017/03/14/apparently-fake-defendant-libel-lawsuit-watch-richart-ruddie-seo-profile-defender-network-llc-paying-71000-to-settle-claim/.

[17] *Id.*

[18] Settlement Agreement, *Smith v. Garcia*, C.A. No. 16-144 S, at 1 (D.R.I. Feb. 28, 2017), http://www.law.ucla.edu/volokh/hassell/FedDRISmithvGarcia.pdf; Sanctions Order (Apr. 13, 2017), *id.* *See also* Paul Alan Levy, *Richart Ruddie Settles Anti-SLAPP Claims, Makes Restitution; but the Guilty Companies Remain Unpunished*, Consumer Law & Policy Blog (Mar. 14, 2017), http://pubcit.typepad.com/clpblog/2017/03/richart-ruddie-settles-anti-slapp-claims-makes-restitution-but-the-guilty-companies-remain-unpunishe.html; *Smith v. Levin*, 24-C-15-004789 (Md. Cir. Ct. Baltimore City Oct. 16, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreSmithvLevin.pdf; *Financial Rescue LLC v. Smith*, No. 15-006119-CI (Fla. Cir. Ct. Pinellas Cnty. Oct 5, 2015), http://www.law.ucla.edu/volokh/hassell/FlPinellasFinancialRescuevSmith.pdf; *Rescue One Financial LLC v. Doe*, No. CACE-14-024286 (Fla. 17th Cir. Ct. Broward Cnty. Dec. 22, 2014), http://www.law.ucla.edu/volokh/hassell/FlBrowardRescue1FinancialvDoe.pdf.

[19] Volokh, *supra* note 16.

The court also sent information about this apparent fraud to the U.S. Attorney's office for investigation.[20] The investigation appears to still be in progress.

B. *Patel v. Chan*

Another case that fits the same pattern as *Smith v. Garcia*, and shares some of the same legalese, is *Patel v. Chan*. (Indeed, *amicus* learned of *Smith v. Garcia* by searching in Bloomberg Law for dockets that contained similar language to that in *Patel v. Chan*[21]—*Patel* was the first such case brought to *amicus*'s attention.)

Matthew Chan, a Georgia resident, posted critical Yelp reviews of Mitul Patel, a Georgia dentist.[22] A few months later, Chan received an email from Yelp explaining that Yelp was considering taking down his review because a Maryland court concluded it was defamatory.[23] But Matthew Chan of Georgia was actually never

---

[20] *Smith v. Garcia*, C.A. No. 16-144 S, 2017 WL 412722, at *1 (D.R.I. Jan. 31, 2017).

[21] This was done using Bloomberg Law searches for phrases that appeared in the *Patel* papers, such as "Consent Motion For Injunction and Final Judgment" and "Dated, so respectfully." Though such phrases could of course appear in unrelated cases, looking through results revealed that many of the orders that use one of the phrases also use several others, and thus appear to come from the same source (even though all are ostensibly *pro se* lawsuits).

[22] Volokh & Levy, *supra* note 8.

[23] *Id.*

sued.[24] Rather, the defendant in the suit was "Mathew Chan," a supposed Baltimore resident.[25]

The court issued a stipulated judgment between the Baltimore "Mathew Chan" and Mitul Patel, expressly contemplating that the order be sent to Yelp so that it could remove the review.[26] But a private investigator's search through public records found no "Mathew Chan" in Baltimore;[27] and in any event, the actual author of the Yelp review was the Georgia Matthew Chan. After Chan moved to intervene and vacate the injunction, Mitul Patel moved to voluntarily dismiss the case, claiming that the reputation management company he hired had filed the lawsuit without his knowledge or authorization, and had forged his signature.[28]

Following the press coverage of these orders, an injunction in a Philadelphia case that fit the similar pattern was as also vacated.[29]

---

[24] *Id.*

[25] *Id.*

[26] *Patel v. Chan*, No. 24-C16003573 (Md. Cir. Ct. Baltimore Cnty. July 22, 2016), http://www.law.ucla.edu/volokh/hassell/MdBaltimorePatelvChan.pdf.

[27] Volokh & Levy, *supra* note 8.

[28] Motion to Intervene, Motion to Strike Judgment, and Answer to Defendant Mathew Chan's Motion to Vacate Consent Judgment/Order, *Patel v. Chan*, No. 24-C-16-003573 (Md. Cir. Ct. Baltimore Cnty. Sept. 21, 2016), http://www.law.ucla.edu/volokh/hassell/MdBaltimorePatelvChan.pdf.

[29] Order Granting Consent Motion for Injunction and Final Judgment, *Callagy v. Roffman*, No. 160603108 (Ct. Com. Pl. Phila. Cnty. July 1, 2016), http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaCallagyvRoffman.pdf. The proceedings to vacate the

In another similar Philadelphia case, the supposedly stipulated motion for an injunction was denied.[30] A similar Florida case, which was pending at the time, was voluntarily dropped the day that the Washington Post blog post about the cases went up.[31]

C. California cases

Several of the cases that fit this pattern have been filed in California; here is one example.[32]

---

order began a month before the press coverage, likely because *amicus* had informed the Philadelphia Court of Common Pleas of the possible problem.

[30] *Murtagh v. Reynolds*, No. 160901262 (Pa. Phila. Ct. Com. Pl. injunction denied and docket entered Oct. 26, 2016).

[31] Consent Motion for Injunction and Final Judgment, *Carter v. Quinn*, No. 2016-021440-CA-01 (Fla. 11th Cir. Ct. Miami-Dade Cnty. Aug. 23, 2016), http://www.law.ucla.edu/volokh/hassell/FlMiamiDadeCartervQuinn.pdf; *Carter v. Quinn*, No. 2016-021440-CA-01 (Fla. 11th Cir. Ct. Miami-Dade Cnty. Aug. 23, 2016) (order granting consent motion for injunction and final judgment), http://www.law.ucla.edu/volokh/hassell/FlMiamiDade-CartervQuinn.pdf; Eugene Volokh, *Another of the Suspicious Missing-Defendant Cases Goes Away*, The Volokh Conspiracy [Wash. Post] (Oct. 25, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/10/25/another-of-the-suspicious-missing-defendant-cases-goes-away/.

[32] Others are *Lyman v. Bernard*, No. LC104275 (Cal. Super. Ct. Los Angeles Cnty. June 6, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesLymanvBernard.pdf, which led to an injunction that called for the deindexing of an article on the *Investment News* site; *Serenbetz v. McDonald*, No. BC621992 (Cal. Super. Ct. Los Angeles Cnty. June 6, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesS-erenbetzvMcDonald.pdf, which was aimed at deindexing a copy of a federal court decision posted on http://leagle.com; and *Williams v. Li*, No. L15-03752 (Cal. Super. Ct. Contra Costa Cnty. Dec. 18,

In 2013, a *Davis Enterprise* newspaper article reported that a Shasta County parent placed false signatures on a petition asking a school not to change its gifted education program.[33] Two and a half years later, a "Robert Castle" posted a comment underneath the article, accusing the parent of taking bribes.[34]

Within a few months, a person apparently bearing the parent's name purportedly sued "Robert Castle" in Shasta County and sought an injunction to compel him to remove the review.[35] The plaintiff also supposedly filed a consent motion, with a signature purportedly from Castle.[36]

Instead of simply granting the injunction, the court set a hearing on its own motion, noting that there was no proof of service of the complaint, consent motion, or proposed order.[37] The docket does not indicate that a hearing was ever held, which is consistent with the suspicion that "Castle" does not exist.[38] A public records

---

2015), http://www.law.ucla.edu/volokh/hassell/CaContraCosta-WilliamsvLi.pdf, which led to an injunction that called for the de-indexing of posts critical of Profile Defenders, a company owned by Richart Ruddie, who seems to be behind these cases.

[33] Volokh & Levy, *supra* note 8.

[34] *Id.*

[35] Complaint, *Glatter v. Castle*, No. 184324 (Cal. Super. Ct. Shasta Cnty. Mar. 3, 2016), http://www.law.ucla.edu/volokh/hassell/CaShastaGlattervCastle.pdf.

[36] Order Setting Hearing Date on Consent Motion, *Glatter v. Castle*, No. 184324 (Cal. Super. Ct. Shasta Cnty. Mar. 8, 2016), http://www.law.ucla.edu/volokh/hassell/CaShastaGlattervCastle.pdf.

[37] *Id.*

[38] Volokh & Levy, *supra* note 8.

search revealed no "Robert Castle" in Shasta County, even though court filings included a Shasta County address.[39]

Yet about two months later, a similar complaint with the same supposed plaintiff and defendant was filed in Los Angeles County.[40] This time, the stipulated injunction was granted without a hearing.[41] (Note that it is possible that the ostensible plaintiff might not have authorized or expected anything untoward: A person who hires a reputable-seeming "reputation management company" might well assume that its work will not involve fraudulent court filings,[42] and indeed some ostensible plaintiffs in the cases discussed in this Part have claimed that they did not authorize the filing of the lawsuits.[43])

For some reason, it appears that this particular injunction was never actually submitted to Google with a request to deindex the *Davis Enterprise* article, even though the injunction specifically

---

[39] *Id.*

[40] Complaint, *Glatter v. Castle*, No. SC125890 (Cal. Super. Ct. Los Angeles Cnty. May 23, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesGlattervCastle.pdf.

[41] Order Granting Consent Motion for Injunction & Final Judgment, *Glatter v. Castle*, No. SC125890 (Cal. Super. Ct. Los Angeles Cnty. June 24, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesGlattervCastle.pdf.

[42] Profile Defenders had been mentioned in reputable publications, *e.g.*, Johnny Diaz, *Refreshing Your Digital Identity /Reputation Managers Scrub Dirt From Companies' Online Profiles*, Chi. Trib., Aug. 22, 2012, at C4; Angus Loten, *Hoping to Fix Bad Reviews? Not So Fast*, Wall St. J., July 26, 2012, at B5.

[43] Volokh & Levy, *supra* note 8.

contemplated such a submission.[44] And even if had been submitted, Google may well have noticed that there was something fishy about an attempt to deindex an article in a credible news source.

But under Hassell's theory, Google could have been legally obligated to hide the *Davis Enterprise* article from the world, so long as the plaintiff had asked the court to treat Google as an aider and abettor of the supposed author (much as the Court of Appeal viewed Yelp as an aider and abettor). Indeed, similar lawsuits were brought in attempts to deindex articles in the *Charleston Post & Courier*[45] and *Investment News*,[46] as well as a court decision included in full on a case law distribution site, *leagle.com*.[47]

* * *

---

[44] "If the Defendant cannot remove the Defamation from the Internet, the Plaintiff shall submit this Order to Google, Yahoo, Bing, or any other Internet search engine so that the link can be removed from their search results pursuant to their existing policies concerning de-indexing of defamatory material." Order Granting Consent Motion for Injunction & Final Judgment, *Glatter v. Castle*, No. SC125890, at 2 (Cal. Super. Ct. Los Angeles Cnty. June 24, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesGlattervCastle.pdf.

[45] *Carter v. Quinn*, No. 2016-021440-CA-01 (Fla. 11th Cir. Ct. Miami-Dade Cnty. Aug. 23, 2016), http://www.law.ucla.edu/volokh/hassell/FlMiamiDadeCartervQuinn.pdf.

[46] *Lyman v. Bernard*, No. LC104275 (Cal. Super. Ct. Los Angeles Cnty. June 6, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesLymanvBernard.pdf.

[47] *Serenbetz v. McDonald*, No. BC621992 (Cal. Super. Ct. Los Angeles Cnty. June 6, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesSerenbetzvMcDonald.pdf.

It is a truism that lack of opportunity for an adversary presentation makes factfinding unreliable. These cases, and those below, show the truth of that truism.

If Yelp or Google had actually been a party to the proceedings, it may well have noticed that the ostensible defendants were likely fake. But in the cases described above, there was apparently no real party other than the entity that wanted the material taken down or deindexed. As a result, courts were apparently duped into entering the orders. And if Google or Yelp were held to be legally bound by such orders, the incentive to engage in such fraud would only increase.

II. Stipulated Injunctions Involving Fake Notarizations

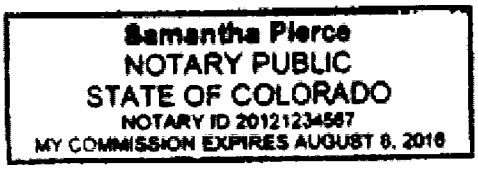
One means of verifying that a defendant actually exists is to get the defendant's signature notarized. But who will verify the verifiers? What if the notarization is itself forged?

Consider *Chinnock v. Ivanski*, a case in which the complaint identified the defendant as "an individual who resides in Turkey."[48] However, on the Amended Order for Permanent Injunction, the defendant's signature was notarized by a Samantha Pierce of Colorado, and here is a copy of her notary stamp:[49]

---

[48] Complaint & Application for Injunctive Relief, *Chinnock v. Ivanski*, No. CV2016-094256 (Ariz. Super. Ct. Maricopa Cnty. Aug. 23, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopaChinnockvIvanski.pdf.

[49] Amended Order for Permanent Injunction, *Chinnock v. Ivanski*, No. CV2016-094256 (Ariz. Super. Ct. Maricopa Cnty. Aug. 23, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopaChinnockvIvanski.pdf.



20121234567 appears suspicious, and in this instance appearances do not deceive: There is no Samantha Pierce listed on the Colorado notary site, with that notary ID or any other.[50] Likewise, on the earlier, pre-amendment Stipulated Order for Permanent Injunction, the notary for Ivanski's signature is said to be Amanda Sparks of Fulton County, Georgia.[51] Again, there is no Amanda Sparks of Fulton County on the Georgia notary website.[52]

Similarly, in *Lynd v. Hood*, the notary listed for the defendant's signature is Jose Garcia from Harris County, Texas and his license is said to expire on March 2, 2016.[53] However, there is no Jose Gar-

---

[50] Verify a Notary, Colorado Secretary of State, https://www.sos.state.co.us/notary/pages/public/verify-Notary.xhtml (Type Pierce as last name and Samantha as first name).

[51] Stipulated Order for Permanent Injunction, *Chinnock v. Ivanski*, No. CV2016-094256 (Ariz. Super. Ct. Maricopa Cnty. Aug. 23, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopa-ChinnockvIvanski.pdf.

[52] Notary Index Search, Georgia Superior Court Clerks' Cooperative Authority, https://www.sos.state.co.us/notary/pages/public/verifyNotary.xhtml (Type Sparks, Amanda as name and select Fulton as county).

[53] No. CV2015-009398 (Ariz. Super. Ct. Maricopa Cnty.), http://www.law.ucla.edu/volokh/hassell/AzMaricopaLyndvHood.pdf.

cia listed on the Texas notary website with the same license expiration date.[54] (The injunction in *Lynd* also called for the deindexing of a professional media item, a *San Antonio Express-News* article describing plaintiff's split from his family business.[55]) *Chinnock v. Ivanski* and *Lynd v. Hood* were both filed by lawyers from one small Phoenix firm. That firm also litigated *Welter v. Does*, discussed in Part VI.B below; and one of the lawyers in that firm was also the beneficiary of one of the Richart-Ruddie-linked orders discussed in Part I,[56] though there is no evidence that Ruddie was involved with the fake-notarization cases.

III. Injunctions Against a Defendant Who Likely Is Not the Real Author: The Government Document Cases

Say that a judgment involves a real defendant, who stipulates to the injunction. How can we know that this stipulating defendant is the real author of the allegedly defamatory material? Often we

---

[54] Notary Search, Texas Secretary of State, https://direct.sos.state.tx.us/notaries/NotarySearch.asp (Type Jose for first name, Garcia for last name, and Harris for County).

[55] Stipulated Order for Permanent Injunction, *Lynd v. Hood*, No. CV2015-009398, at 2 (Ariz. Super. Ct. Maricopa Cnty. Jan. 27, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopaLyndvHood.pdf. *See also* Eugene Volokh, *Libel Takedown Injunctions and Fake Notarizations*, The Volokh Conspiracy [Wash. Post] (Mar. 30, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/30/libel-takedown-injunctions-and-fake-notarizations/.

[56] *Ruddie v. Kirschner*, No. 24C15005620 (Md. Baltimore City Cir. Ct. injunction issued Dec. 14, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreRuddievKirschner.pdf.

cannot know for sure, especially unless the real author somehow learns of the injunction and comes forward.

But sometimes the judgment involves a supposed finding—in an order that was likely submitted by the plaintiff's lawyer for the court's signature—that the defendant is the author of something that turns out to be a government document, such as a judicial or administrative order. The defendant could not have written the document, and the document is in any event absolutely privileged against defamation liability. And the plaintiff is thus seeking to hide a government document from public view, based on what appears to be an inaccurate statement.

A. Consider *Fertel v. Saul*. A Maryland lawyer represented Maryland author Morton Fertel, the author of DVDs that offered marriage counseling. Jan Davidson, apparently a disappointed customer who lived in California, posted criticisms of Fertel's company. The lawyer sued Davidson in Maryland federal district court, seeking to get an order that could be used to deindex three posts, but the court dismissed the claim because of lack of personal jurisdiction over Davidson.[57]

The lawyer then filed a lawsuit in Maryland state court against one Seemah Saul, who had allegedly posted various comments critical of Fertel.[58] The lawsuit sought to use the comments as a basis

---

[57] *Fertel v. Davidson*, Civ. No. CCB-13-2922, 2013 WL 6842890 (D. Md. Dec. 18, 2013).

[58] *Fertel v. Saul*, No. 24-C-14-003049 (Md. Cir. Ct. Baltimore Cnty. Apr. 16, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreFertelvSaul.pdf.

for deindexing over twenty posts, including all three that were the targets of the unsuccessful *Fertel v. Davidson* case.[59] Saul's comments were actually much less negative than the posts: The comments generally said things like "Mort Fertel plagiarized Dr. Harley's book. Mort has the best program out there . . . it works, but it's plagiarized,"[60] while the posts accused Fertel of refusing to honor money-back guarantees and the like.[61] Consumers of marriage counseling advice would likely be much more put off by claims that a product does not work, or cannot be returned if it does not work, than by claims about plagiarism (especially when the claims also state that the program is "the best program out there").

Saul did not appear at trial and did not actively contest the case; but the lawyer's memorandum in support of the judgment stated that the lawyer had "determined" that defendant Saul was in fact the person responsible for various defamatory statements.[62]

---

[59] *Id.*

[60] Ripoff Report #769548, http://www.ripoffreport.com/reports/software-mort-fertel-mort-fertel-marriage-max-marr-769548 (ellipsis in original, capitalization added for clarity). *See also* Order, *Fertel v. Saul*, No. 24-C-14-003049, at 2 (Md. Cir. Ct. Baltimore Cnty. Apr. 16, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreFertelvSaul.pdf (listing the URL for Ripoff Report #769548).

[61] Ripoff Report #769548, http://www.ripoffreport.com/reports/software-mort-fertel-mort-fertel-marriage-max-marr-769548.

[62] Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, *Fertel v. Saul*, No. 24-C-14-003049 (Md. Cir.

On the strength of these allegations, the court issued a default judgment against the defendant, which necessarily assumes that the defendant is actually responsible for the statements in question, and that the statements in question are, in fact, defamatory.[63]

Yet here are some of the sites that the injunction included, as supposedly being defamatory and having been written by Saul:

18) http://www.survivinginfidelity.com/forums.asp?tid=486004

19) http://www.mdd.uscourts.gov/Opinions/Opinions/Mort%20Fertel%20v.%20Jan%20Davidson%2018%20Dec%2013.pdf

20) http://www.ripoffreport.com/r/Marriage-Fitness-With-Mort-Fertel/Baltimore-Maryland-21215/Marriage-Fitness-Mort-Fertel-Marriage-Fitness-DO-NOT-ORDER-THIS-IF-YOU-MAY-WANT-TO-RETUR-546374

21) http://www.ripoffreport.com/r/Marriage-Fitness-with-Mort-Fertel/Baltimore-Maryland-21215/Marriage-Fitness-with-Mort-Fertel-Marriage-Max-Cancellation-ripoff-one-SOLUTION-to-gett-765645

Item 19 on the list of 29 supposedly defamatory web pages was the district court order in *Fertel v. Davidson*, the earlier case that plaintiff and plaintiff's lawyer had lost. The plaintiff's lawyer then sent an order to Google requesting that it deindex the URLs listed in the order.[64]

Ct. Baltimore Cnty. Apr. 16, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreFertelvSaul.pdf.

[63] Order, *Fertel v. Saul*, No. 24-C-14-003049, at 2 (Md. Cir. Ct. Baltimore Cnty. Apr. 16, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreFertelvSaul.pdf.

[64] Letter from David E. Fink, P.A., to Google Inc. (Apr. 28, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreFertelvSaul.pdf.

The order was not written by defendant Saul. Even if it contained factual errors, it could not have been libelous because it is privileged. It is an official federal government document. Yet plaintiff's lawyer was trying to get it hidden from the public, on the strength of a default judgment against Saul.

B. Likewise, in *Taplin v. Williams*, a default judgment called for deindexing a California Department of Real Estate page imposing discipline on plaintiff Steve Taplin (a real estate agent), as well deindexing as a judicial opinion from the Georgia Court of Appeals.[65] The two were buried in a list of 14 URLs, as items 12 and 13; here is the tail end of that list:

- http://www.ripoffreport.com/r/TapRealtyAzcom/Scottsdale-Arizona-85260/TapRealtyAzcom-Steve-Taplin-SteveTaplincom-TapRealtyAzcom-NationalSEOexpertsc-1265072
- http://www.ripoffreport.com/r/american-loan-restructuring-llc/scottsdale-arizona-/american-loan-restructuring-llc-alr-flr-or-fhn-or-steve-taplin-stole-3000-dollars-and-r-482251
- http://www.dre.ca.gov/files/pdf/loanmods/H5500SAC.pdf
- http://caselaw.findlaw.com/ga-court-of-appeals/1598650.html
- http://www.outscam.com/tap-realty-54

C. Similarly, in *Karosa v. Killian*, the default judgment calls for deindexing an administrative order that mentioned a case brought against plaintiff; a judicial opinion in a case brought by plaintiff;

---

[65] Default Judgment, No. CV2015-053547 (Ariz. Super. Ct. Maricopa Cnty. Aug. 30, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopaTaplinvWilliams.pdf. The judgment stated that "[p]laintiff may request removal or deindexing of all content from Google and other search engines." *Id.*

and an order imposing a fine on plaintiff in a disciplinary proceeding—all buried in a long list of URLs, as items 117, 121, and 123:[66]

> 116) http://www.judysbook.com/reportabuse/25797166
>
> 117) http://www.clarkcountycourts.us/media/releases/ao15-1.pdf
>
> 118) http://www.ripoffreport.com/r/names-redacted-due-to-perceived-harassment-cyberstalking-cyberbullying-revenge-post/redacted-nevada-redacted/names-redacted-due-to-perceived-harassment-cyberstalking-cyberbullying-revenge-1055412
>
> 121) http://nv.findacase.com/research/wfrmdocviewer.aspx/xq/fac.20110909_0004484.dnv.htm/qx
>
> 122) http://www.ripoffreport.com/r/names-redacted-due-to-perceived-harassment-cyberstalking-cyberbullying-revenge-post-put-redacted/redacted-select-stateprovince-redacted/names-redacted-due-to-perceived-harassment-cyberstalking-cyberbullying-revenge-1073550
>
> 123) http://mld.nv.gov/uploadedfiles/mldnvgov/content/enforcement/2014/2014-07-29scottallan-consentorder.pdf

And these are just some sample cases. There are others: *Ramsthel v. Penny* sought to deindex, among other things, a public notice published in a local legal newspaper announcing the lawsuit itself.[67] Likewise, in *Intravas, Inc. v. Metcalf*, the same law firm as in *Ramsthel* sought to deindex—on the grounds that they were supposedly defamatory—posted copies of documents in the same case, including of a subpoena that it had itself submitted.[68]

---

[66] Order Granting Default Judgment, No. A-12-670259-C at 9–10 (Nev. Dist. Ct. Clark Cnty. Nov. 1, 2016), http://www.law.ucla.edu/volokh/hassell/NvClarkKarosavKillian.pdf.

[67] Default Judgment, *Ramsthel v. Penny*, No. CV2014-093104 (Ariz. Super. Ct. Maricopa Cnty. Sept. 24, 2014), http://www.law.ucla.edu/volokh/hassell/AzMaricopaRamsthelvPenny.pdf.

[68] Stipulated Order for Permanent Injunction, *Intravas, Inc. v. Metcalf*, No. CV2012-013872 (Ariz. Super. Ct. Maricopa Cnty. Oct. 9, 2013), http://www.law.ucla.edu/volokh/hassell/AzMaricopaIntravasvMetcalf.pdf.

IV. Injunctions Against a Defendant Who May Not Be the Real Author: The Out-of-State California Notarization Cases

There are also several sets of stipulated judgments from Texas and from Ohio (in over 15 cases put together) that share an unusual property. All of the cases say that the defendant resides (or at least "may reside") in Texas or in Ohio; presumably that is the justification for the cases being filed in those states. But in every one of these cases, the defendant's signature was notarized in California (in all but one case, in the Bay Area-Sacramento corridor).

Now it is of course possible that, in one case, a defendant may get a signature notarized while traveling. But seven such cases from one Houston lawyer, three from another Houston lawyer, and five from an Ohio lawyer? We hear about eco-tourism, medical tourism, and even sex tourism—but we never hear about notarization tourism, even to lovely Northern California. The likelier inference is that there is something odd afoot. One possibility, though *amicus* acknowledges that it is speculative, is that some "reputation management company" hired by plaintiffs has lined up local defendants who incorrectly claim to have written defamatory material, and then stipulate to the issuance of an injunction that could then be sent to Google with a deindexing request.

In one set of these cases, one Texas lawyer represented plaintiffs in seven 2016 cases where the court and the defendant's address were in Texas, but the defendant's signature on the Waiver

of Service, Affidavit, or Answer was notarized in Northern California.[69] (According to Houston court records, these are the only defamation cases that this lawyer has ever filed in Houston district courts.[70]) Another Texas lawyer has represented plaintiffs in three

---

[69] *BCI Property Management v. Ramos*, No. 2016-29570 (Tex. Harris Cnty. Dist. Ct. filed May 5, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisBCIvRamos.pdf; *Eccentric Holdings v. Largo,* No. 2016-61892 (Tex. Harris Cnty. Dist. Ct. filed Sept. 22, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisEccentricvLargo.pdf; *Fox & Assocs. v. Wallace*, No. 2016-06674 (Tex. Harris Cnty. Dist. Ct. filed Feb. 1, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisFoxAssocsvWallace.pdf; *Grisak Properties v. Baroro*, No. 2016-46539 (Tex. Harris Cnty. Dist. Ct. filed July 14, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisGrisakvBaroro.pdf; *Holdren v. Ortega*, No. 2016-49421 (Tex. Harris Cnty. Dist. Ct. filed July 26, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisHoldrenvOrtega.pdf; *Kosage v. Nelson*, No. 2016-39989 (Tex. Harris Cnty. Dist. Ct. filed June 9, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisKosagevNelson.pdf; *Tax Help Services v. Smalls*, No. 2016-12697 (Tex. Harris Cnty. Dist. Ct. filed Feb. 29, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisTaxHelpServicesvSmalls.pdf. The defendants' signatures in these cases were notarized in Alameda, Contra Costa, Sacramento, or Solano counties.

[70] This information is available by searching Harris County court records at http://www.hcdistrictclerk.com/Edocs/Public/search.aspx, and searching for the lawyer's bar number, with case type "defamation."

2016 cases that fit the same pattern.[71] Three other Texas lawyers have done the same in one or two cases each.[72]

One Ohio lawyer likewise represented plaintiffs in five 2015–16 Ohio cases, with the complaints stating that the defendant is believed to reside in Ohio, or at least "may reside in" Ohio.[73] There

---

[71] *Amovious Networks v. Edwards*, No. 2016-45988 (Tex. Harris Cnty. Dist. Ct. filed July 28, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisAmoviousNetworksvEdwards.pdf; *Med Link Networking Solutions v. Jones*, No. 2016-24479 (Tex. Harris Cnty. Dist. Ct. filed Apr. 29, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisMedLinkvJones.pdf; *Somerset v. Galvan*, No. 2016-07791 (Tex. Harris Cnty. Dist. Ct. filed Feb. 5, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisSomersetvGalvan.pdf. The defendants' signatures were likewise notarized in Alameda, Contra Costa, or Solano counties.

[72] *RF Holdings v. Tibay*, No. 2015-67469 (Tex. Harris Cnty. Dist. Ct. filed Dec. 18, 2015), http://www.law.ucla.edu/volokh/hassell/TxHarrisRFHoldingsvTibay.pdf; *RBJ Enters. v. Alexander*, No. 1071267 (Tex. Harris Cnty. Dist. Ct. filed Dec. 14, 2015), http://www.law.ucla.edu/volokh/hassell/TxHarrisRBJEnterprisesvAlexander.pdf; *MB Ventures v. Medina*, No. DC-16-05087 (Tex. Dallas Cnty. Dist. Ct. filed Apr. 29, 2016), http://www.law.ucla.edu/volokh/hassell/TxDallasMBVenturesvMedina.pdf; *Schwartzapfel v. Guidry*, No. 2014-42698 (Tex. Harris Cnty. Dist. Ct. filed July 25, 2014), http://www.law.ucla.edu/volokh/hassell/TxHarrisSchwartzapfelvGuidry.pdf. The defendants' signatures were notarized in Contra Costa, Solano, and Los Angeles counties; the Los Angeles notarization was the only one in any of these cases not from the Bay Area-Sacramento corridor.

[73] *See ASIAUSA v. Williamson*, No. CV-15-841465 (Ohio Cuyahoga Cnty. Ct. Com. Pl. Apr. 3, 2015), http://www.law.ucla.edu/volokh/hassell/OhCuyahogaASIAUSAvWilliamson.pdf; *Dr-Max Limited v. Kahapeachow*, No. CV-16-858256 (Ohio Cuyahoga Cnty. Ct. Com. Pl. Mar. 10, 2016), http://www.law.ucla.edu/volokh/has-

are also similar cases in Florida[74] and in Maryland;[75] the Florida case was filed by a lawyer at the same firm where the Ohio lawyer was practicing at the time, and the Maryland case was apparently submitted to Google by the Ohio lawyer.[76]

It is not clear who was responsible for procuring the notarizations. It is possible that neither the lawyers nor the plaintiffs were involved in that process, but just accepted documents from a reputation management company, expecting that the defendants had been properly identified and were indeed the authors of the allegedly defamatory posts. But in any event, there is reason to doubt that the posts litigated in these cases were actually all written by people in Northern California.

---

sell/OhCuyahogaDr-MaxLimitedvKahapeachow.pdf; *Gossels Casting v. Dinsdale*, No. CV-2015-05-2812 (Ohio Summit Cnty. Ct. Com. Pl. June 18, 2015), http://www.law.ucla.edu/volokh/hassell/OhSummitGosselsCastingvDinsdale.pdf; *Premiere Casting Events v. Valencia*, No. 16CV005975 (Ohio Franklin Cnty. Ct. Com. Pl. Aug. 16, 2016), http://www.law.ucla.edu/volokh/hassell/OhFranklinPremiereCastingEventsvValencia.pdf; *Shatsman v. Peralto*, No. CV-2015-12-5717 (Ohio Sumit Cnty. Ct. Com. Pl. Jan. 21, 2016), http://www.law.ucla.edu/volokh/hassell/OhSummitShatsmanvPeralto.pdf. The defendants' signatures were notarized in Contra Costa, Santa Clara, and Solano counties.

[74] *Blue Haven Nat'l Mgm't v. Galvan*, No. 2016CA2880 (Fla. 4th Cir. Ct. Duval Cnty. June 16, 2016), http://www.law.ucla.edu/volokh/hassell/FlDuvalBlueHavenvGalvan.pdf. The defendant's signature was notarized in Solano county.

[75] *Groza v. Handley*, No. C-16-71540 (Md. Carroll Cnty. Cir. Ct. Aug. 9, 2016), http://www.law.ucla.edu/volokh/hassell/MdCarrollGrozavHandley.pdf. The defendant's signature was notarized in San Francisco.

[76] https://www.lumendatabase.org/notices/12982683.

V. Default Judgments Obtained Without Genuine Attempts at Locating Defendants

The examples given so far involved alleged stipulated judgments; these judgments are convenient in part because they can be obtained quickly. In two cases, a permanent injunction was entered four days after a complaint was filed together with a stipulation.[77]

Yet plaintiffs can also get default judgments, whether against identified defendants or pseudonymous ones. These judgments can often be legitimate, and indeed can often be the best that an honest plaintiff can get.

But they can also be obtained without any real attempt to serve or even identify the true defendant. The point of these default judgments, after all, is just to get an order that can be sent to Google, Yelp, or some other organization. It is much more convenient if the real author of the material is never identified, and never has an opportunity to contest the case. In a traditional libel case, the plaintiff wants to find the defendant, so that the defendant can be forced to pay damages. In a libel takedown case, the plaintiff who is seeking an order that would be sent to a third party would rather that the real author stay far away.

---

[77] *See Talson v. Martinez*, No. 160603109 (Pa. Phila. Cnty. Ct. Com. Pl. July 1, 2016), http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaTalsonvMartinez.pdf; *Callagy v. Roffman*, No. 160603108 (Pa. Phila. Cnty. Ct. Com. Pl. July 1, 2016), http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaCallagyvRoffman.pdf.

It is impossible to tell just how often plaintiffs fail to take easy steps to find the alleged defamer. But one case well illustrates the peril.

In 1999, Laurence Sharos pleaded guilty to "criminal sexual abuse" in Illinois.[78] Based on court records, his crime was likely unwanted sexually motivated fondling.[79] The website SexOffenderRecord.com gathered this information from public records and published it.[80]

Years later, Sharos sued, and got a default judgment concluding that the website's pages were "false and defamatory" because they labeled him a "sex offender."[81] Sharos was indeed a sex offender, but Sharos argued that the "sex offender" label—coupled with a reference on SexOffenderRecord.com pages to each listed person's "registration status"—falsely conveyed that he is a *registered* sex

---

[78] Eugene Volokh, *Default Judgment Aimed at Deindexing Apparently Accurate Information About Person Convicted of Sex Offense*, The Volokh Conspiracy [Wash. Post] (Feb. 9, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/02/09/default-judgment-aimed-at-deindexing-apparently-accurate-information-about-person-convicted-of-sex-offense/.

[79] *Id.*

[80] *Id.*

[81] Memorandum in Support of Plaintiff's Motion for Default Judgment, *Sharos v. www.sexoffenderrecord.com*, No. CV-16-870167 (Ohio Cuyahoga Cnty. Ct. Com. Pl. Jan. 5, 2017), http://www.law.ucla.edu/volokh/hassell/OhCuyahogaSharosvwww.sexoffenderrecord.com.pdf.

offender, when in fact he has only been convicted of a sex offense and is not a registered sex offender.[82] And the court agreed.[83]

This conclusion might well have been wrong as a matter of law, and perhaps an adversary presentation (followed, if necessary, by an appeal) would have shown it to be wrong. But there was no adversarial proceeding, only a default judgment. Sharos' lawyers claimed that SexOffenderRecord.com "provide[d] no means to contact it,"[84] and that they could not find the site's owners; according to one of Sharos's lawyers (who was cocounsel with the Ohio lawyer described in Part IV, who filed several Ohio lawsuits with Northern California notarizations):

> 2. Prior to filing the Complaint in this matter, I conducted a search to determine the address for Defendant www.sexoffenderrecord.com, also known as www.sorarchive.com. I reviewed Defendant's website but it does not contain any address or other identifying information such as a telephone number or contact information. Additionally, the "contact" page on the website is blank, has no form or any information to send any communication to the site. Therefore, the website provides no means to contact it.
>
> 3. I also conducted multiple searches on the Internet to try and determine the owner of the website and/or its location and also looked at various secretary of state websites. Through these efforts, I was unable to

---

[82] *Id.*

[83] Order for Default Judgment, *id.*

[84] Memorandum in Support of Plaintiff's Motion for Default Judgment, *Sharos v. www.sexoffenderrecord.com*, No. CV-16-870167 (Ohio Cuyahoga Cnty. Ct. Com. Pl. Jan. 5, 2017), http://www.law.ucla.edu/volokh/hassell/OhCuyahogaSharosvwww.sexoffenderrecord.com.pdf.

> identify the address of Defendant or to locate any other identifying information about the Defendant.

Yet at SexOffenderRecord.com, the very top line of the site under the banner has a tag saying "Record Removal Inquiries." That page has a form through which lawyers can submit record removal requests to the site.[85]

And "searches on the Internet" can actually easily identify the SexOffenderRecord.com operators within minutes. A Google Scholar search for "sexoffenderrecord" finds *Wilson v. Web.com Group, Inc.*,[86] which also involves SexOffenderRecord.com and Web Express and mentions Charles Rodrick, who appears to be one of the operators of the site. That search also finds *Stewart v. Oesterblad*,[87] which involves the same site and mentions Charles Roderick (with a slightly different spelling than in *Wilson*) and Brent Oesterblad, who appears to be another of the operators. The information in the records of those cases could likely be used to track down the site operators further.

A Google search for "sexoffenderrecord" also finds a *USA Today* article about a 2014 verdict against the operators of SexOffender-

---

[85] Volokh, *supra* note 78.

[86] No. 2:15-cv-02198-GMN-CWH, 2016 WL 1600830 (D. Nev. Apr. 20, 2016).

[87] No. 2:13-cv-14841 (E.D. Mich. Aug. 5, 2014).

Record.com and SORArchives.com, which mentions Charles Rodrick.[88] A Google News search finds the same site. And these are just free searches—Westlaw, Lexis, and Bloomberg Law searches will find still more cases.

So there was no real justification in this case for proceeding via service by publication and a default judgment; and the same may well be true of many other default judgments used to get takedown orders. We cannot know for sure in most cases, precisely because there was no adversarial inquiry into the question. But we do know that the incentives (for the unscrupulous) point towards avoiding finding the true defendant.

VI. Default or Stipulated Judgments Aimed at Deindexing Professional Media Articles

Plaintiffs also seem to be attempting to deindex professional media articles, from organizations such as CNN, *USA Today*, the *New York Daily News*, local TV stations, and more. Of course, if plaintiffs sued the media organizations directly, the organizations would likely fight back—and likely successfully so. But some plaintiffs' lawyers are cleverer than that.

A. Wag the Dog: Lawsuits Based on Allegedly Defamatory Comments

Here is trick number one: plaintiffs find a critical comment that has been posted under the article by some anonymous user. They

---

[88] Robert Anglen, *Sex Offender Websites' Victims Awarded $3.4M*, USA Today (May 16, 2014), https://www.usatoday.com/story/news/nation/2014/05/16/sex-offender-websites-victims-awarded-34m-/9195315.

then sue the commenter for libel, and get a default or stipulated judgment that finds that *the comment* is defamatory (not that the article is defamatory). It appears that they often do not e-mail the media outlet to ask it to remove the comment[89]—because removing the comment seems not to be their goal.

Instead, they submit the order directly to Google, asking it to deindex the entire page at which the comment is posted. And that page includes the article itself: Because Google can only deindex entire pages, and cannot remove comments, the only way it can deindex the comment is by also deindexing the article to which it is attached. This seems to be a variant of the wag-the-dog strategy used in the fake-defendant scheme, *see* Part I, but mostly using default judgments rather than stipulations by apparently fake defendants.

Consider, for instance, *Young v. Anonymous John Doe*. WFAA, a Dallas news station, wrote an article about Edwin Young, a fifty-five year old Texas minister, author, and founder of the Fellowship Church.[90] The article alleged that Young was living a life of luxury and that attendance at church was declining.[91] Four years later,

---

[89] Eugene Volokh, *People Trying to Get Google to Deindex Professional News Site Articles*, The Volokh Conspiracy [Wash. Post] (Dec. 14, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/14/people-trying-to-get-google-to-deindex-professional-news-site-articles/.

[90] *Id.*; *Prominent Grapevine Pastor Linked to Luxury*, WFAA (Feb. 5, 2010), http://www.wfaa.com/news/local/investigates/prominent-grapevine-pastor-linked-to-luxury/338287756.

[91] *Id.*

"Noemi Hernandez" posted an absurdly false comment on the page, claiming Young was homeless and abandoned his biological son sixty-five years ago.[92]

Just three weeks after the comment was posted, Young's lawyer filed a lawsuit in Florida state court against "Anonymous John Doe 1."[93] (This lawyer was also a lawyer in a case brought by Profile Defenders to deindex posts critical of their business,[94] though this was not one of the cases discussed in Part I.) The Affidavit of Diligent Search filed in that case did not state that the lawyer had tried to subpoena the commenter's Internet Protocol address to track the commenter down,[95] and WFAA stated that it had not received any such subpoena.[96] Rather, the lawyer used service by publication, publishing a notice in a local Florida newspaper announcing the suit—a practically ineffective form of notice, even if

---

[92] Complaint for Declaratory Judgment, exh. A, *Young v. Anonymous John Doe 1*, No. 2014-CA-013423 (Fla. 15th Cir. Ct. Palm Beach Cnty. June 16, 2015), http://www.law.ucla.edu/volokh/hassell/FlPalmBeachYoungvAnonymousJohnDoe.pdf.

[93] Complaint for Declaratory Judgment, *id.*

[94] *SEO Profile Defender Network v. Koshik*, No. 2015-CA-004544 (Fla. 15th Cir. Ct. Palm Beach Cnty. July 15, 2015), http://www.law.ucla.edu/volokh/hassell/FlPalmBeachSEOProfileDefenderNetworkvKoshik.pdf.

[95] Affidavit of Diligent Search, *Young v. Anonymous John Doe 1*, No. 2014-CA-013423 (Fla. 15th Cir. Ct. Palm Beach Cnty. June 16, 2015).

[96] Volokh, *supra* note 87.

it is sometimes legally available.[97] Young received a default judgment, authorizing him to submit the order to search engines.[98]

It thus seems that this default judgment against a commenter was used as a means of trying to hide a likely accurate article about Young, published by a Texas TV station. But the timing and the absurdly false nature of the comment also raises the possibility that someone on the plaintiff's side—Young, a reputation management company hired by Young, Young's lawyer, or someone else—posted the comment precisely as an excuse to deindex the whole article.

It is impossible to tell from these facts whether this actually happened in this case; but the history of the case shows that such a strategy of deliberately posting a comment precisely to have an excuse to get a deindexing order could be effective. If this strategy was not used in this case, it may well have been used in others. And if Yelp, Google, and similar companies are legally obligated to enforce such takedown orders, then the incentive to fraudulently generate such orders would become especially great.

Young is just a sample; we see the same pattern in:

- *Shavolian v. Anonymous John Doe 1*, aimed at deindexing a *New York Daily News* article about David Shavolian, a New

---

[97] Order Granting Final Default Judgment, *Young v. Anonymous John Doe 1*, No. 2014-CA-013423 (Fla. 15th Cir. Ct. Palm Beach Cnty. June 16, 2015).

[98] *Id.*

York real estate businessman who was sued for workplace harassment.[99]

- *M & M Inc. v. Brooks*, filed by the same lawyer as *Young v. Anonymous John Doe 1*, and aimed partly at deindexing articles in the online technology publications Gizmodo, TechDissected, and DigitalTrends criticizing an allegedly junk-science laundry technology sold by M & M Inc.[100]
- *Bansal v. Kumar*, aimed at deindexing a *Phoenix New Times* article that described the disbarment of a successful Arizona lawyer.[101]
- *Shah v. Patel*, aimed at deindexing a *Columbus Dispatch* article critical of a local doctor.[102]

---

[99] Volokh, *supra* note 87; Order Granting Final Default Judgment, *Shavolian v. Anonymous John Doe 1*, No. 2014-CA-000845 (Fla. 2nd Cir. Ct. Leon Cnty. July 8, 2014), http://www.law.ucla.edu/volokh/hassell/FlLeonShavolianvAnonymousJohnDoe1.pdf.

[100] *M&M Inc. v. Brooks*, No. 2016-CA-001330 (Fla. 15th Cir. Ct. Palm Beach Cnty. Apr. 1, 2016), http://www.law.ucla.edu/volokh/hassell/FlPalmBeachMMIncvBrooks.pdf.

[101] *Bansal v. Kumar*, No. V425852 (Md. Montgomery Cnty. Cir. Ct. Dec. 13, 2016), http://www.law.ucla.edu/volokh/hassell/MdMontgomeryBansalvKumar.pdf; https://www.lumendatabase.org/notices/13781781.

[102] *Shah v. Patel*, No. 16 CV 10978 (Ohio Franklin Cnty. Ct. Com. Pl. Feb. 1, 2017), http://www.law.ucla.edu/volokh/hassell/OhFranklinShahvPatel.pdf; https://www.lumendatabase.org/notices/13833849.

B. Lying Then or Lying Now?: Attempts to Deindex Professional Media Articles Based on a Source's Supposedly Recanting an Allegation

Now, trick two. Search engines like Google cannot remove quotes from legitimate news articles. If given a takedown order, they can only deindex the entire article. As a result, in several cases plaintiffs who dislike professional media articles that criticize them have:

(a) apparently gotten stipulations from the defendants recanting their allegations,

(b) gotten court orders against the defendants based on those stipulations, and then

(c) submitted the orders to Google, asking Google to deindex the critical article.

Now, if a media organization gets such a recantation from one of the sources they quote, the editors would reasonably ask: Was the source lying then, or is he lying now? If the editors are persuaded that the recantation is accurate, they might well publish a correction, or revise or even take down the original article. But if they think that the original report was accurate, and the recantation was coerced using a lawsuit, they might stand by their story.

When a plaintiff sues the source, though, gets a stipulation, and submits the order to Google with a deindexing request, the plaintiff is trying to short-circuit the news organization's review of the matter. Instead, the plaintiff wants to just get the original story hidden, with no independent evaluation of whether the story was

and continues to be correct. Today, it appears that Google is generally reluctant to deindex professional media articles, which can frustrate such a plaintiff stratagem. But if Google were required to comply with court orders to which it was not a party, then the stories would have to be deindexed.

Consider, for example, *Ball v. Saurman*, a case in Ventura County Superior Court. A *Ventura County Star* article had quoted Sandee Saurman as sharply criticizing Dr. Kiely Ball's hearing aid company.[103] Ball sued Saurman, who eventually agreed to a stipulation in which she stated that her original allegations were false.[104] A court then issued an injunction, which was submitted to Google for deindexing of the newspaper article.[105] If the Court of Appeal decision were upheld, Google would have had to deindex the *Ventura County Star* article even though neither the Star nor Google had an opportunity to independently examine Saurman's recantation.

Likewise, consider *Welter v. Does*, an Arizona case filed by the law firm that filed the cases containing apparently forged notarizations discussed in Part II. Megan Welter made the national news

---

[103] Judgment, *Ball v. Saurman*, No. 56-2012-00518245-CU-DF-VTA (Cal. Super. Ct. Ventura Cnty. filed Dec. 28, 2016), http://www.law.ucla.edu/volokh/hassell/CaVenturaBallvSaurman.pdf.

[104] *Id.*

[105] https://www.lumendatabase.org/notices/13746934.

as an Iraq War veteran who became an Arizona Cardinals cheerleader,[106] but then made the news again when she was arrested for allegedly beating her boyfriend, Ryan McMahon.[107] Two years later, Welter filed a defamation lawsuit against McMahon, and McMahon submitted a stipulation saying that his original allegations were false.[108] (It is impossible to tell from the record whether the signer of the stipulation was indeed the real Ryan McMahon, but let us assume that he was.)

Welter then got an injunction stating that McMahon's allegedly defamatory statements were posted on ABC News, Fox Sports, CBS News, and *USA Today*, presumably because articles on those sites were based on those statements.[109] And the injunction stated that defendant must take all actions, "including requesting removal of the URLs from all internet search engines . . . to remove

---

[106] *See, e.g.*, *Cardinals Cheerleader Also Iraq War Vet*, Fox Sports (July 31, 2013), http://www.foxsports.com/nfl/story/arizona-cardinals-cheerleader-megan-welter-also-an-iraq-war-vet-073113.

[107] *See, e.g.*, Aditi Roy & Alexis Shaw, *Arizona Cardinals Cheerleader Megan Welter Caught on Video Allegedly Attacking Boyfriend*, ABC News (Aug. 3, 2013), http://abcnews.go.com/US/iraq-war-vet-turned-nfl-cheerleader-arrested-allegedly/story?id=19861885.

[108] Stipulated Order for Perm. Inj., *Welter v. Does*, No. CV2016-004734 (Ariz. Super. Ct. Maricopa Cnty. June 29, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopaWeltervDoes.pdf.

[109] *Id.*

all such webpages and cache from the Internet, such that the Content is rendered unsearchable."[110] Again, because this was a stipulated judgment, there was no factual determination of whether McMahon's statements were actually defamatory. Yet under the Court of Appeal's reasoning, Google would have had to deindex all those mainstream media articles.

For another example of the same trick, see *Desert Palm Surgical Group v. Petta*, which was used to try to deindex a CNN Money article.[111]

C. Bury the URL: Attempts to Deindex Professional Media Articles By Listing Them Within a Long List of Other URLs

Finally, trick three for deindexing professional media articles: Busy trial judges often just take proposed orders from parties and approve them. That may work well when there are real adversaries involved, and a defendant will alert the court to any problems with the plaintiff's proposed order. But when a case is resolved by a default or stipulated judgment, no party may have an incentive to verify the legitimacy of all the URLs—and the judge might not be willing to do that, either.

Consider, for instance, *Flynn v. Garcia*, where a stipulated judgment contains hundreds of URLs from "gripe sites" that let

---

[110] *Id.*

[111] *Desert Palm Surgical Group v. Petta*, No. CV2008-010464 (Ariz. Super. Ct. Maricopa Cnty. June 13, 2016), http://www.law.ucla.edu/volokh/hassell/AzMaricopaDesertPalmSurgicalGroupvPetta.pdf.

anonymous users post criticism about others.[112] Buried among those sites (in the middle of the third page of URLs) is a single URL from Nevada's largest circulating newspaper—*Las Vegas Review-Journal*:

c&vpx=1183&vpy=106&dur=366&hovh=155&hovw=119&tx=160&ty=108&sig=101059169315843839
http://www.google.com/imgres?q=Lindsey+Pinapfel&hl=en&sa=X&tbo=d&biw=1396&bih=722&tbm=
isch&tbnid=Y1sLrlAxljfL8M:&imgrefurl=http://www.ripoffreport.com/internet-services/lindsey-
pinapfel-who/lindsey-pinapfel-whore-lindsey-
21d7a.htm&docid=GMdM2dfzI62hQM&imgurl=http://www.ripoffreport.com/Owner_28fbc2ce-74b0-
4281-9185-a5aecb32ecc7/Item_13f86f30-7200-47d0-a35b-
f7a5a046dd7c/Attachment.ashx&w=600&h=399&ei=mLD0UNudGNCoqQHShYHoCg&zoom=1&iact=h
=722&tbm=isch&tbnid=3Sk5r1V4W_HrDM:&imgrefurl=http://www.ripoffreport.com/directory/inter
net-business-
group.aspx&docid=BZ_OM21q6w5MyM&imgurl=http://www.ripoffreport.com/Owner_aa99cb1e-
0f3e-4d5a-a531-35768c2db992/Item_339a2b40-e326-4951-bd6c-
20c66f384fa3/Attachment.ashx&w=400&h=400&ei=YrH0UKBvlM-
pAfHggIAK&zoom=1&iact=hc&vpx=859&vpy=44&dur=80&hovh=225&hovw=225&tx=116&ty=165&si
http://www.htmlcorner.com/ibgsearch.com
http://www.htmlcorner.com/ibgsearch.com
http://www.lvrj.com/news/former-sports-drink-ceo-convicted-of-tax-evasion-145840565.html
http://www.pageglance.com/ibg-david-flynn.com
http://www.pageglimpse.com/ibg-david-flynn.com
http://www.pageinsider.com/globalbusinessmarketing.co.uk

It is impossible, of course, to tell whether the *Las Vegas Review-Journal* URL was deliberately buried in the proposed order, so that the judge would not notice it, or whether it was just included alongside all the other URLs without any further thought on the lawyer's part. But in any event, it seems likely that a judge, faced with a list of over a hundred URLs in a proposed default judgment, did not examine the list closely—and did not seriously consider whether the evidence presented really showed that all the URLs contained defamatory material.

---

[112] Stipulation & Order, *Flynn v. Garcia*, No. A-13-676559-C (Nev. Dist. Ct. Clark Cnty. Feb. 19, 2013), http://www.law.ucla.edu/volokh/hassell/NvClarkFlynnvGarcia.pdf.

And again, this is just a sample; we see the same in:

- *Ramsthel v. Penny*,[113] another case from the firm involved in the forged notarization cases (Part II) and in *Welter v. Does* (Part VI.B), in which the final order listed 228 URLs, including items on *The Atlantic*'s site The Wire (item 25) and on Yahoo News (item 38).
- *Generational Equity, LLC v. Does*,[114] where the plaintiff's complaint and the eventual injunction include—buried deep within hundreds of other URLs—two articles in *Inc.*, a prominent business magazine.[115]
- *Salle v. Marine Logistics*, which contains 35 URLs including (as #26) one for a 1997 *Orlando Sentinel* article.[116]

---

[113] Order for Default Judgment, *Ramsthel v. Penny*, No. CV2014-093104 (Ariz. Maricopa Cnty. Sup. Ct. Sept. 23, 2014), http://www.law.ucla.edu/volokh/hassell/AzMaricopaRamsthelvPenny.pdf.

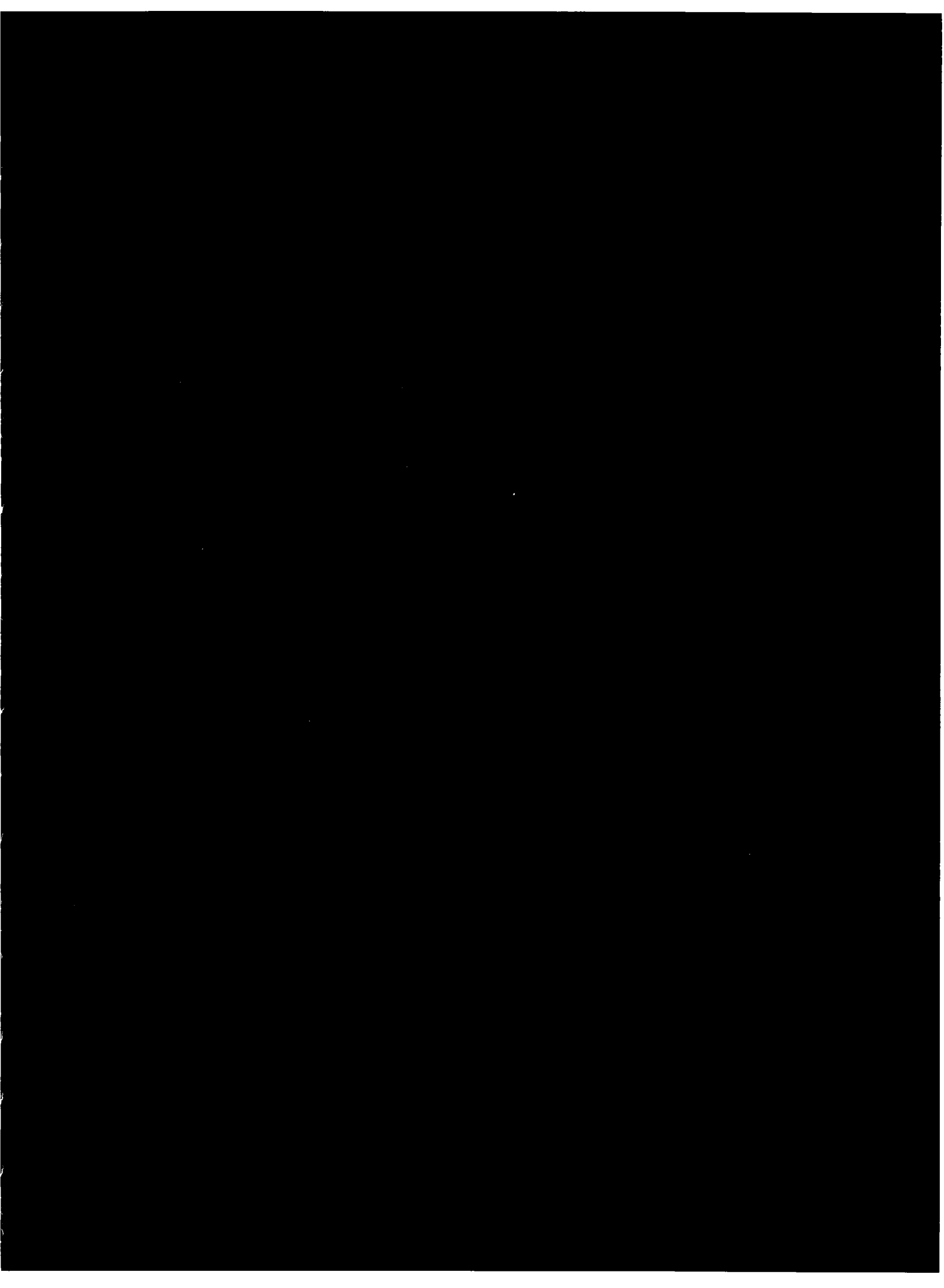
[114] Plaintiff's First Amended Petition, *Generational Equity, LLC v. Does #1–100*, No. 401-00232-2014, at 11–12 (Tex. Dist. Ct. Collin Cnty. Mar. 21, 2014), http://www.law.ucla.edu/volokh/hassell/TxCollinGenerationalEquityvDoes.pdf; Second Judgment Modifying Order Granting Generational Equity's Permanent Injunction, *id.*

[115] Plaintiff's First Amended Petition, *id.*

[116] Agreed Final Judgment & Permanent Injunction, *Salle v. Marine Logistics*, No. 50 2015 CA 004469 XXXX MB (Fla. 15th Cir. Ct. Palm Beach Cnty. June 19, 2015), http://www.law.ucla.edu/volokh/hassell/FlPalmBeachSallevMarineLogisticsGroup.pdf.

- *Kriss v. Reviewer*, which includes the URL of a *Miami Daily Business Review* article (as #31 out of 43 URLs).[117]

[117] Order Granting Judgment & Entry of Permanent Injunction, *Kriss v. Reviewer*, No. A1502350 (Ohio Hamilton Cnty. Ct. Com. Pl. Sept. 10, 2015), http://www.law.ucla.edu/volokh/hassell/OhHamiltonKrissvReviewer.pdf.



VIII. These Problems Cannot Be Solved by Requiring Internet Companies to Intervene to Challenge Suspicious Orders

This brief has argued that Internet company discretion is the best (albeit imperfect) way of dealing with the epidemic of questionable court orders: Such discretion would leave companies free to investigate such submitted orders, including by requiring submitters to provide more information. Indeed, taking away this discretion would only worsen the epidemic, by giving unscrupulous reputation management companies an especially strong incentive to do whatever it takes to get such an order.

To be sure, in theory, there is an alternative way of dealing with this: requiring Internet companies to affirmatively intervene in a case to challenge a suspicious order, if they think they have a basis to doubt the order and therefore wish to avoid enforcing it. But in practice, this alternative is unlikely to help.

Any such intervention would be difficult and expensive. It would require finding and engaging local counsel, who would need to write the motion to intervene, conduct possibly extensive discovery, attend hearings, further brief arguments, and so on. The bill could easily reach into the tens of thousands of dollars for any one case. Even if some of this money could be recouped as sanctions in the event that plaintiffs are found to have misbehaved in getting the order, much of the time the guilty parties will get away without providing full restitution; and some of the time the facts may be ambiguous, and no sanctions may be available.

Moreover, such intervention may be practically largely precluded by procedural rules. Intervention in a case after a judgment

has been rendered is rare, and disfavored. In California, for example, a motion to intervene must be "timely," Cal. Code Civ. Proc. § 387 (West 2017), which generally means that it is not allowed after judgment, *Morton Regent Enterprises, Inc. v. Leadtec California, Inc.* (1977) 74 Cal. App. 3d 842, 846.[123] In Arizona, "a motion to intervene after judgment is considered timely only in extraordinary and unusual circumstances." *Weaver v. Synthes, Ltd. (U.S.A.)* (Ct. App. 1989) 162 Ariz. 442, 446.

Other jurisdictions have similar rules; for instance, Federal Rule of Civil Procedure 60 allows a judgment to be reopened because of "fraud . . ., misrepresentation, or misconduct," but expressly provides that this may be done only "no more than a year after the entry of the judgment."[124] And because victorious plaintiffs have control over when to present an order to Google, they could deliberately wait until final judgment has been entered and any period for possible reopening has passed.

These barriers, both legal and financial, would give Google, Yelp, and similar companies a strong incentive not to challenge orders submitted to them, if the orders were legally binding absent

---

[123] Although *Morton* also notes that intervention is allowed after a *default* judgment where "default judgment was rendered . . . because of mistake, surprise, inadvertence or excusable neglect," 74 Cal. App. 3d at 846, such an exception may not apply to stipulated judgments. In addition, having to show legally adequate "mistake, surprise, inadvertence or excusable neglect" would often require a great deal of effort and money.

[124] Fed. R. Civ. P. 60(b)(3), (c)(1).

such a challenge. And there would be little countervailing incentive to bring challenges. After all, such a challenge would primarily benefit the author of the posted material, not Google or Yelp itself.

Legally, Google and Yelp do have First Amendment rights to communicate user-supplied material. Yelp Opening Br. on Merits 28–34; *Amici Curiae* Br. of First Amendment & Internet Law Scholars. But practically speaking, they are unlikely to have any deep desire to spend tens of thousands of dollars just as a matter of principle.

Occasionally, they may do so, as Yelp is doing in this very case, especially when they think they can establish a precedent that will protect their rights in many future cases. But if the Court of Appeal's decision is accepted, and Google and Yelp are generally found to have a legal duty to comply with orders, there will be little benefit—and much cost—to their challenging any particular order.

IX. Judicial Notice of Court Documents

Most of the documents cited in this brief are complaints, orders, or opinions; *amicus* asks this court to take notice of them under Cal. Evid. Code § 452(d). *Amicus* also asks this court to take notice of state online notary rolls, discussed in Part II, under Cal. Evid. Code § 452(c) (official acts of executive departments of any state).

In certain places, though, the brief also mentions other information. [redacted] This material has been submitted (mostly by Google) to the Lumen Database, which is run by the Berkman Klein Center for Internet &

Society at Harvard University,[125] so its content might be judicially noticeable under Cal. Evid. Code § 452(h) ("facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy").

But beyond this, this court can consider the information about the court orders—as well as other assertions in the brief, such as about the apparent absence of certain defendants at the addresses stated in various complaints and stipulations, see, *e.g.*, Part I—as "legislative facts." The "adjudicative facts" related to what happened in the case under review (e.g., what Bird accused Hassell of, whether Hassell is guilty of that, and so on) must indeed be found within the record. But in determining the practical advantages and disadvantages of various alternative legal rules, courts routinely and necessarily rely on "legislative facts," such as those included in academic research.

As this Court noted in *Cabral v. Ralphs Grocery Co.*, it is proper to consider such facts "not to supplement the factual record of the case," "but only as [they bear] on the legal issue" in the case—there, the "existence of a duty of care in stopping alongside a freeway"; here, the propriety of binding Internet companies to injunctions on an aiding-and-abetting theory.

> In determining de novo what the law is, appellate courts routinely consider materials that were not introduced at the trial, including publications containing

---

[125] Lumen, *About Us*, http://www.lumendatabase.org/pages/about.

> expressions of viewpoints and generalized statements about the state of the world. These are considered not as a substitute for evidence but as an aid to the court's work of interpreting, explaining and forming the law. As the Law Revision Commission has explained, the Evidence Code does not restrict courts in their consideration of materials for the purpose of determining the law. (Cal. Law Revision Com. com., 29B pt. 1 West's Ann. Evid. Code (1995 ed.) foll. § 450, p. 420; see also Rest.3d Torts, Liability for Physical and Emotional Harm, § 7, com. b, p. 79 ["Courts determine legislative facts necessary to decide whether a no-duty rule is appropriate in a particular category of cases."].)

(2011) 51 Cal. 4th 764, 775, 248 P.3d 1170, 1177 n.5.

For these reasons, *amicus* asks this Court either to take judicial notice of, or to otherwise consider, the information that he has collected, and use it to inform this Court's judgment about what would happen if Internet companies were required to comply with orders to which they were not parties.[126] These predictions are in large part a matter of common sense, but legislative facts can be properly used to supplement "the basic generalized knowledge that a fact finder possesses regarding human affairs, and the way the world works." *California First Amend. Coalition v. Superior Court* (1998) 67 Cal. App. 4th 159, 174 (citing 9 Wigmore on Evidence (1981) § 2565(b)).

---

[126] *See Cabral v. Ralphs Grocery Co.*, 51 Cal. 4th at 775, 248 P.3d at 1177 n.5 (noting that this Court could consider such information "as background to our determination of the law without taking formal notice of it," so that an express request for judicial notice of such information, "while not improper, was thus unnecessary").

Of course, if this Court would like to gather facts on the practices that the brief describes, it could also appoint a special master to take such evidence. *See, e.g.*, Cal. Rules of Ct. 8.252(c)(2)(B). (The special master could also be helpful if this Court concludes that some of the attempted frauds against California courts outlined in this brief warrant attention from this Court.) *Amicus* would of course be happy to provide any such special master with the records that he has gathered in his research.

CONCLUSION

It is said that "the principal purpose of the legal process," as is practiced within an adversarial system such as ours, "is not to obtain answers; it is to resolve disputes." *E.g.*, Michael J. Saks, *Enhancing and Restraining Accuracy in Adjudication* (1988) 51 L. & Contemp. Probs. 243, 244. Whether or not this is an exaggeration in some cases, it is certainly the practice for stipulated and default judgments. If parties stipulate to some facts, the judge will not second-guess them. If a defendant chooses not to contest a case, the judge will generally accept the plaintiff's factual claims, because the defendant has voluntarily absented himself from the dispute.[127]

But while the result of these processes may be fair as between the parties, it should not be coercively imposed on third parties. It

---

[127] "Because the default *confesses* those properly pleaded facts, a plaintiff has no responsibility to provide the court with sufficient evidence to prove them—they are treated as true for purposes of obtaining a default judgment." *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal. App. 4th 267, 281, 33 Cal. Rptr. 3d 774, 787.

should not be imposed as a binding obligation on services such as Google, Yelp, or WordPress, when they are not parties to the litigation. It should not be imposed on authors whose posts people are trying to get removed or deindexed (but who often are not directly sued). And it should not be imposed on readers, who are denied the information in those posts—information that plaintiff may claim is libelous, but that has never been reliably determined to be libelous in a trustworthy adversarial process.

A person "'. . . is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.' . . . This rule is part of our 'deep-rooted historic tradition that everyone should have his own day in court.'" *Richard v. Jefferson County*, 517 U.S. 793, 798 (1996) (citations omitted). Some deep-rooted traditions may be foolish or outdated, but this one is wise.

If the day in court belongs only to the plaintiffs, with the defendants absent, colluding, or outright fake, the result will not just be unfair to impose on third parties: It will often lack any assurance of accuracy. The statement may have been "conclusively adjudged to be defamatory," Hassell Br. 14, *as between the parties*. But there is no basis to view it as conclusive on third parties—and plenty of basis, as this brief has shown, to view such adjudications with great skepticism.

DATED: April 17, 2017

Respectfully Submitted,

By: Eugene Volokh

Eugene Volokh
Amicus Curiae

APPENDIX A. LAWSUITS THAT SHARE PROCEDURAL AND TEXTUAL FEATURES WITH *SMITH V. GARCIA* AND *PATEL V. CHEN*

1. *Glatter v. Castle*, No. SC125890 (Cal. L.A. Super. Ct. injunction issued June 24, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesGlattervCastle.pdf.

2. *Glatter v. Castle*, No. 184324 (Cal. Shasta Super. Ct. filed Mar. 3, 2016), http://www.law.ucla.edu/volokh/hassell/CaShastaGlattervCastle.pdf.

3. *Lyman v. Bernard*, No. LC104275 (Cal. L.A. Super. Ct. injunction issued June 22, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesLymanvBernard.pdf.

4. *Serenbetz v. McDonald*, No. BC621992 (Cal. L.A. Super. Ct. dismissed June 27, 2016), http://www.law.ucla.edu/volokh/hassell/CaLosAngelesSerenbetzvMcDonald.pdf.

5. *Williams v. Li*, No. L15-03752 (Cal. Contra Costa Super. Ct. injunction issued Dec. 28, 2015), http://www.law.ucla.edu/volokh/hassell/CaContraCostaWilliamsvLi.pdf.

6. *Carter v. Quinn*, No. 2016-021440-CA-01 (Fla. Miami-Dade Cnty. Cir. Ct. dismissed Oct. 10, 2016), http://www.law.ucla.edu/volokh/hassell/FlMiamiDadeCartervQuinn.pdf.

7. *Cast v. Pawloski*, No. 2016-CH-09649 (Ill. Cook Cnty. Cir. Ct. complaint filed Jul. 22, 2016), http://www.law.ucla.edu/volokh/hassell/IlCookCastvPawloski.pdf.

8. *Jones v. Conti*, No. 24C15006945 (Md. Baltimore City Cir. Ct. injunction issued Dec. 21, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreJonesvConti.pdf.

9. *Norbu v. Campbell*, No. 24C1600250 (Md. Baltimore City Cir. Ct. dismissed June 2, 2016), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreNorbuvCampbell.pdf.

10. *Patel v. Chan*, No. 24C16003573 (Md. Baltimore City Cir. Ct. injunction issued July 22, 2016, Motion to Intervene, Motion to Strike Judgment and Answer to Defendant's Motion to Vacate Consent Judgment/Order filed Sept. 21, 2016), http://www.law.ucla.edu/volokh/hassell/MdBaltimorePatelvChan.pdf.

11. *Ruddie v. Kirschner*, No. 24C15005620 (Md. Baltimore City Cir. Ct. injunction issued Dec. 14, 2015), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreRuddievKirschner.pdf.

12. *Tanoto v. Brown*, No. 24C16000901 (Md. Baltimore City Cir. Ct. dismissed July 8, 2016), http://www.law.ucla.edu/volokh/hassell/MdBaltimoreTanotovBrown.pdf.

13. *Hanna v. Garcia*, No. 12C161705 (Md. Harford Cnty. Cir. Ct. injunction issued June 27, 2016), http://www.law.ucla.edu/volokh/hassell/MdHarfordHannavGarcia.pdf.

14. *Norbu v. Campbell*, No. 12C161959 (Md. Harford Cnty. Cir. Ct. injunction issued July 15, 2016), http://www.law.ucla.edu/volokh/hassell/MdHarfordNorbuvCampbell.pdf.

15. *Tanoto v. Brown*, No. 12C161958 (Md. Harford Cnty. Cir. Ct. injunction issued July 18, 2016), http://www.law.ucla.edu/volokh/hassell/MdHarfordTanotovBrown.pdf.

16. *Mohlman v. Jones*, No. 13C16107924 (Md. Howard Cnty. Cir. Ct. injunction denied June 15, 2016), http://www.law.ucla.edu/volokh/hassell/MdHowardMohlmanvJones.pdf.

17. *Benedict v. Matthews*, No. A16738922C (Nev. Clark Cnty. Dist. Ct. injunction issued July 8, 2016), http://www.law.ucla.edu/volokh/hassell/NvClarkBenedictvMatthews.pdf.

18. *Horner v. Davis*, No. A16738996C (Nev. Clark Cnty. Dist. Ct. filed June 23, 2016), http://www.law.ucla.edu/volokh/hassell/NvClarkHornervDavis.pdf.

19. *Callagy v. Roffman*, No. 160603108 (Pa. Phila. Ct. Com. Pl. injunction issued July 1, 2016, vacated Oct. 20, 2016),

http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaCallagyvRoffman.pdf.

20. *Murtagh v. Reynolds*, No. 160901262 (Pa. Phila. Ct. Com. Pl. injunction denied and docket entered Oct. 26, 2016), http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaMurtaghvReynolds.pdf.

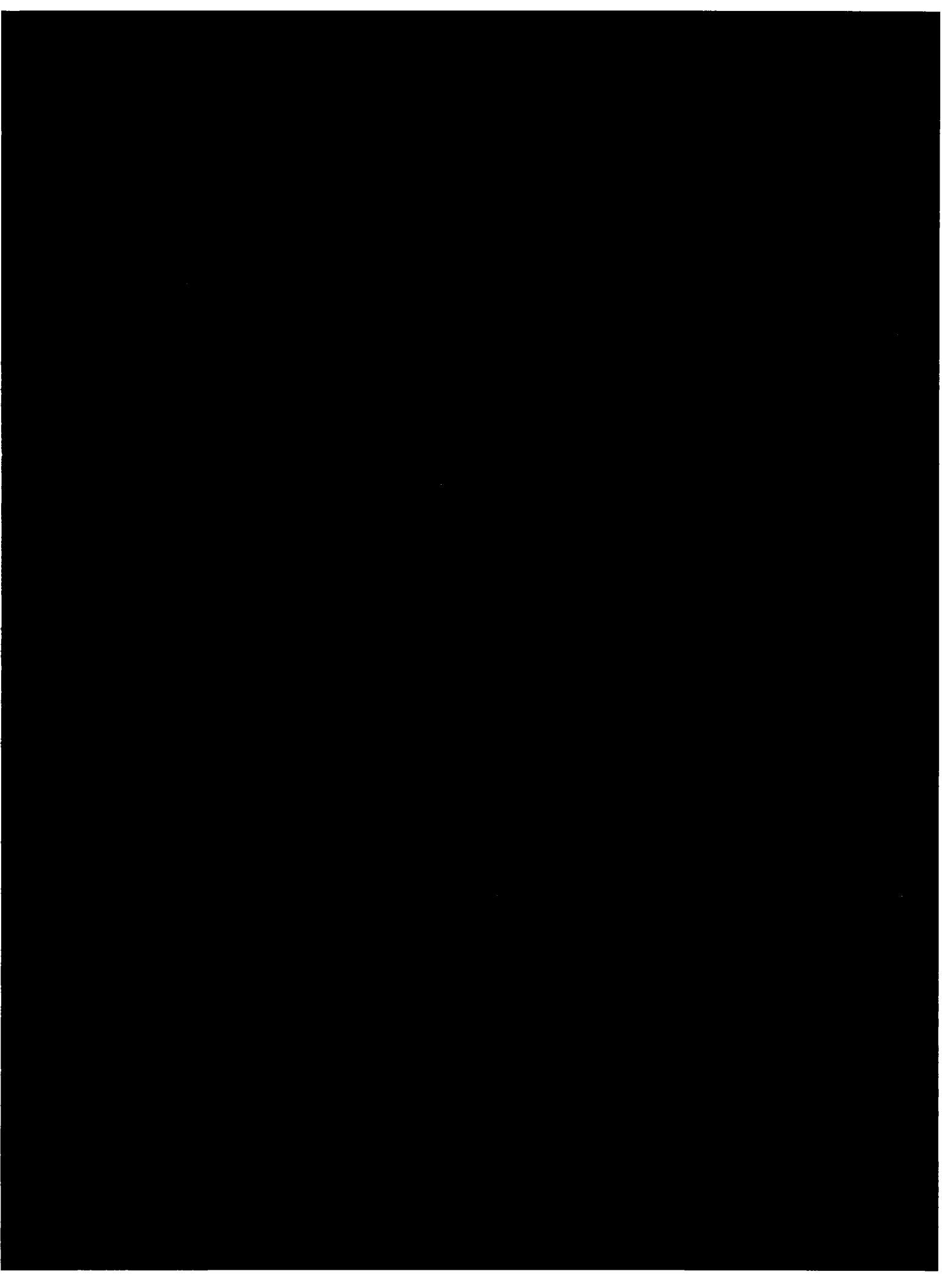
21. *Nelson v. Spear*, No. 160600824 (Pa. Phila. Ct. Com. Pl. filed June 14, 2016), http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaNelsonvSpear.pdf.

22. *Talson v. Martinez*, No. 160603109 (Pa. Phila. Ct. Com. Pl. injunction granted July 1, 2016), http://www.law.ucla.edu/volokh/hassell/PaPhiladelphiaTalsonvMartinez.pdf.

23. *Olea v. James*, No. 2016-49734 (Tex. Harris Cnty. Dist. Ct. filed July 27, 2016), http://www.law.ucla.edu/volokh/hassell/TxHarrisOleavJames.pdf.

24. *Smith v. Garcia*, No. CA16-144, 2017 WL 412722 (D.R.I. injunction issued Apr. 22, 2016, vacated Jan. 31, 2017), http://www.law.ucla.edu/volokh/hassell/FedDRISmithvGarcia.pdf.

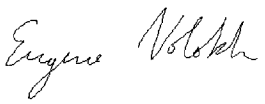
25. *Mohlman v. Jones*, No. H-16-0274 (S.D. Tex. dismissed *sua sponte* on grounds of lack of diversity Feb. 4, 2016) http://www.law.ucla.edu/volokh/hassell/FedSDTexMohlmanvJones.pdf.



CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I certify that this brief, exclusive of the copied images given as examples, contains 12,763 words, including footnotes; the copied images, put together, contain fewer than 1000 words. In making this certification, I have relied on the word count function of the Microsoft Word 2016 computer program used to prepare the brief.

DATED: April 17, 2017



Eugene Volokh
Amicus Curiae

CERTIFICATE OF SERVICE

I, Eugene Volokh, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of Los Angeles, State of California. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action.

I caused to be served a true and correct copy of ***AMICUS CURIAE*** **BRIEF OF EUGENE VOLOKH** on each person listed on the following page, by the following means:

On April 17, 2017, I enclosed a true and correct copy of said document in an envelope with postage fully prepaid for deposit in the United States Postal Service.

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail, for collecting and processing correspondence for mailing with the United States Postal Service.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on April 17, 2017 at Los Angeles, California.

s/ Eugene Volokh

Eugene Volokh

Service List

Monique Olivier, Esq.
Duckworth Peters Lebowitz Olivier LLP
100 Bush Street, Suite 1800
San Francisco, CA 94104

Harmeet Kaur Dhillon
Nitoj Paul Singh
Dhillon Law Group, Inc.
177 Post Street, Suite 700
San Francisco, California 94108

Thomas R. Burke
Rochelle L. Wilcox
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533

Aaron Schur
Yelp, Inc.
140 New Montgomery Street
San Francisco, CA 94105

Clerk of the Court
Superior Court of California, County of San Francisco 400 McAllister Street
San Francisco, CA 94102

Clerk of the Court
California Court of Appeal, First District
350 McAllister Street
San Francisco, CA 94102