

Case No. S235968

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

DAWN HASSELL, *et al.*
Plaintiffs and Respondents,

vs.

AVA BIRD,
Defendant,

YELP, INC.,
Appellant.

SUPREME COURT
FILED

NOV 21 2016

Jorge Navarrete Clerk

Deputy

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233
Superior Court of the County of San Francisco
Case No. CGC-13-530525, The Honorable Ernest H. Goldsmith

**YELP INC.'S REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF ROCHELLE L. WILCOX WITH EXHIBITS A-G**

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE *thomasburke@dwt.com* (SB# 141930)
*ROCHELLE L. WILCOX *rochellewilcox@dwt.com* (SB# 197790)
505 Montgomery Street, Suite 800, San Francisco, CA 94111-6533
Tel.: (415) 276-6500 Fax: (415) 276-6599

YELP INC.
AARON SCHUR *aschur@yelp.com* (SB# 229566)
140 New Montgomery Street, San Francisco, California 94105
Tel: (415) 908-3801

Attorneys for Non-Party Appellant YELP INC.

Case No. S235968

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

DAWN HASSELL, *et al.*
Plaintiffs and Respondents,

vs.

AVA BIRD,
Defendant,

YELP, INC.,
Appellant.

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233
Superior Court of the County of San Francisco
Case No. CGC-13-530525, The Honorable Ernest H. Goldsmith

**YELP INC.'S REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF ROCHELLE L. WILCOX WITH EXHIBITS A-G**

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE *thomasburke@dwt.com* (SB# 141930)
*ROCHELLE L. WILCOX *rochellewilcox@dwt.com* (SB# 197790)
505 Montgomery Street, Suite 800, San Francisco, CA 94111-6533
Tel.: (415) 276-6500 Fax: (415) 276-6599

YELP INC.
AARON SCHUR *aschur@yelp.com* (SB# 229566)
140 New Montgomery Street, San Francisco, California 94105
Tel: (415) 908-3801

Attorneys for Non-Party Appellant YELP INC.

TABLE OF CONTENTS

	Page
I. SUMMARY OF ARGUMENT	1
II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE ATTACHED COURT RECORDS AND ARTICLES	1
A. Court Records Are Properly The Subject Of Judicial Notice.....	1
B. News Articles And Internet Web Pages And Postings Are Properly The Subject Of Judicial Notice	4
III. CONCLUSION.....	7

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ampex Corp. v. Cargle</i> (2005) 128 Cal.App.4th 1569	5
<i>Artucovich v. Arizmendiz</i> (1967) 256 Cal.App.2d 130.....	2
<i>Cairns v. Franklin Mint Co.</i> (C.D. Cal. 2000) 107 F.Supp.2d 1212	5
<i>Consumer Opinion LLC v. ZCS, Inc., et al.</i> , United States District Court for the Northern District of California, San Francisco Division, Case No. 4:16- cv-06105-KAW.....	3
<i>County of San Diego v. Sierra</i> (1990) 217 Cal.App.3d 126.....	2
<i>Day v. Sharp</i> (1975) 50 Cal.App.3d 904.....	2
<i>Gentry v. Ebay, Inc.</i> (2002) 99 Cal.App.4th 816	5
<i>Goldstein v. Hoffman</i> (1963) 213 Cal.App.2d 803.....	2
<i>Hofmann Co. v. E.I. Du Pont de Nemours & Co.</i> (1988) 202 Cal.App.3d 390.....	4
<i>Hogen v. Valley Hospital</i> (1983) 147 Cal.App.3d 119.....	1
<i>Holmes v. City of Oakland</i> (1968) 260 Cal.App.2d 378, 384.....	1
<i>Magnolia Square Homeowners Ass'n v. Safeco Ins. Co. of America</i> (1990) 221 Cal.App.3d 1049.....	2
<i>McKelvey v. Boeing N. Am., Inc.</i> (1999) 74 Cal.App.4th 151	4

<i>Mitul R. Patel v. Mathew Chan</i> , Circuit Court for Baltimore City, Baltimore, Maryland, Case No. 24-C-16-003573.....	3
<i>Pollstar v. Gigmania Ltd.</i> (E.D. Cal. 2000) 170 F.Supp.2d 974	5
<i>Seelig v. Infinity Broadcasting Broad. Corp.</i> (2002) 97 Cal.App.4th 798	4
<i>Sosinsky v. Grant</i> (1992) 6 Cal.App.4th 1548	2
<i>Taliaferro v. County of Contra Costa</i> (1960) 182 Cal.App.2d 587, 592	1
<i>Weingarten v. Block</i> (1980) 102 Cal.App.3d 129.....	5
Statutes	
47 U.S.C. § 230	3
California Business and Professions Code § 17200	3
California Evidence Code	
§ 451.....	1
§ 452.....	1, 2
§ 452(d)	1, 2
§452(h)	1, 4, 5
§ 453.....	1, 2
§ 459.....	1
§ 459(a)	1

I. SUMMARY OF ARGUMENT

Pursuant to Evidence Code §§ 452(d) and (h) and § 459, Petitioner Yelp Inc. (“Yelp”) respectfully requests that the Court take judicial notice of the court records and Internet news articles that are submitted with this Request for Judicial Notice as **Exhibits A through G** to the Declaration of Rochelle L. Wilcox (“Wilcox Decl.”). As Yelp establishes below, this Court is authorized to take judicial notice of these court records and articles, and it should do so because they are relevant to a key issue in this appeal—the potential for abuse by defamation plaintiffs searching for ways to alter online content, if the Court approves entry of an injunction against a website publisher such as Yelp without advance notice.¹

II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE ATTACHED COURT RECORDS AND ARTICLES

A. Court Records Are Properly The Subject Of Judicial Notice

California Evidence Code § 459(a) provides in part that “[t]he reviewing court *shall* take judicial notice of (1) each matter properly noticed by the trial court and (2) each matter that the trial court was required to notice under Section 451 or 453. The reviewing court may take judicial notice of any matter specified in Section 452.” California Evidence Code § 452(d) authorizes a court to take judicial notice of “[r]ecords of

¹ This Court may take judicial notice of the documents submitted with this Request, although no similar request was made to the lower courts. *Taliaferro v. County of Contra Costa* (1960) 182 Cal.App.2d 587, 592; *Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125 (citing *Holmes v. City of Oakland* (1968) 260 Cal.App.2d 378, 384).

(1) any court of this state or (2) any court of record of the United States or of any state of the United States.” California Evidence Code § 453, in turn, provides that “[t]he trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.”

Under Section 452(d), California courts regularly take judicial notice of the existence of court records (although they may not judicially notice the truth of the matters contained in those records). *E.g.*, *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1561-1562; *County of San Diego v. Sierra* (1990) 217 Cal.App.3d 126, 128 n.2; *Magnolia Square Homeowners Ass’n v. Safeco Ins. Co. of America* (1990) 221 Cal.App.3d 1049, 1056-57; *Artucovich v. Arizmendiz* (1967) 256 Cal.App.2d 130, 133-34; *Goldstein v. Hoffman* (1963) 213 Cal.App.2d 803, 814. Thus, this Court may take judicial notice of the existence of each document in a court file, including **Exhibits A through C**, as requested here. *Day v. Sharp* (1975) 50 Cal.App.3d 904.

Yelp asks the Court to take judicial notice of the following court records, attached as **Exhibits A through C**, which reflect ways in which the court system may be manipulated by defamation plaintiffs eager to obtain

orders directing websites to alter online content:

Exhibit A: “Motion to Intervene; Motion to Strike Judgment and Answer to Defendant Mathew Chan’s Motion to Vacate Consent Judgment/Order,” filed September 21, 2016, in the matter of *Mitul R. Patel v. Mathew Chan*, Circuit Court for Baltimore City, Baltimore, Maryland, Case No. 24-C-16-003573 (“*Patel v. Chan*”), including the supporting Affidavit of Mitul R. Patel and all Exhibits filed in support thereof and the Proposed Order.

Exhibit B: “Defendant’s Motion to Vacate Consent Judgment/Order,” filed September 6, 2016, in *Patel v. Chan*, including the supporting Affidavit of Matthew Chan and all Exhibits filed in support thereof and the Proposed Order.

Exhibit C: “Complaint for: (1) Unlawful, Unfair and Fraudulent Business Practices under California Business and Professions Code § 17200; (2) Civil Conspiracy; and (3) Abuse of Process,” filed October 21, 2016, in the matter of *Consumer Opinion LLC v. ZCS, Inc., et al.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 4:16-cv-06105-KAW.

As Yelp’s Opening Brief discusses, businesses hoping to hide critical reviews from the public have been searching for ways to do that, notwithstanding Section 230’s protection for website publishers such as Yelp. O.B., Section V.C. These court records provide examples of a few

of the ways in which disgruntled businesses may attempt to manipulate the judicial system in efforts to obtain court orders requiring website publishers to remove critical comments about those businesses, evidencing the potential for abuse if the court of appeal's Opinion is affirmed here.

B. News Articles And Internet Web Pages And Postings Are Properly The Subject Of Judicial Notice

Section 452(h) of the Evidence Code authorizes this Court to take judicial notice of “[f]acts 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.”

Under this Section, courts regularly take judicial notice of published materials, such as the existence and content of newspaper articles, under Section 452(h). *See, e.g., Seelig v. Infinity Broadcasting Broad. Corp.* (2002) 97 Cal.App.4th 798, 807 n.5 (taking judicial notice of news articles discussing the reality television show “Who Wants to Marry a Multi-Millionaire?”; judicial notice intended to establish that the program was a matter of widespread public interest); *McKelvey v. Boeing N. Am., Inc.* (1999) 74 Cal.App.4th 151, 162 (taking judicial notice of newspaper articles and transcripts of radio and television broadcasts “to show the extent of the widespread publicity” of an incident to demonstrate that plaintiff had notice before statute of limitations expired); *Hofmann Co. v. E.I. Du Pont de Nemours & Co.* (1988) 202 Cal.App.3d 390, 395 n.3 (trial

court took judicial notice of newspaper article in which allegedly defamatory statements appeared); *Weingarten v. Block* (1980) 102 Cal.App.3d 129, 137 (trial court took judicial notice of series of articles containing allegedly defamatory statements). In each case, the existence of the documents was found to be capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Likewise, Section 452(h) permits the Court to take judicial notice of posts found from Internet web sites. *See, e.g., Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1573 n.2 (taking judicial notice of the fact that respondent maintains a web site and of “various computer printouts from [respondent’s] web site and [a] Yahoo! Message board”); *Gentry v. Ebay, Inc.* (2002) 99 Cal.App.4th 816, 821 n.1 (taking judicial notice of “the manner in which eBay describes its operations from its web site”); *see also Pollstar v. Gigmania Ltd.* (E.D. Cal. 2000) 170 F.Supp.2d 974, 978 (taking judicial notice of printout from plaintiff’s web site); *Cairns v. Franklin Mint Co.* (C.D. Cal. 2000) 107 F.Supp.2d 1212, 1216 (taking judicial notice of pages from Warhol Museum’s web site). Like news articles, the existence of Internet web sites and the posts contained on them is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

For these reasons, Yelp respectfully requests this Court to take judicial notice of the following Internet news articles and other information

obtained from various Internet web sites, which are attached as **Exhibits D** through **G**:

Exhibit D: Tim Cushing, “Bogus defamation lawsuit with fake defendant results in negative reviews of dentist being taken down,”

TechDirt, Aug. 24, 2016, available at

<https://www.techdirt.com/articles/20160823/15435735321/bogus-defamation-lawsuit-with-fake-defendant-results-negative-reviews-dentist-being-taken-down.shtml>.

Exhibit E: Eugene Volokh & Paul Alan Levy, “Dozens of suspicious court cases with missing defendants aim at getting web pages taken down or deindexed,” *Washington Post*, Oct. 10, 2016, available at

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/?utm_term=.2a456e6301f1.

Exhibit F: Tim Cushing, “Reputation management company linked to bogus libel lawsuits now hyping its anti-cyberbullying skills, *TechDirt*, Oct. 18, 2016, available at

<https://www.techdirt.com/articles/20161015/12113435805/reputation-management-company-linked-to-bogus-libel-lawsuits-now-hyping-anti-cyberbullying-skills.shtml>.

Exhibit G: Kristen V. Brown, “The brilliant but completely

unethical scheme reputation management companies are using to censor the internet,” *Fusion*, Oct. 28, 2016, available at <http://fusion.net/story/362902/fake-lawsuits-google-censor/>.

These articles discuss the many ways in which reputation management companies and similar businesses are attempting to obtain court orders to encourage website publishers to remove critical reviews and statements from their websites. The Court need not accept the truth of the claims in these articles, because they are not presented to establish the underlying facts. Instead, they are presented to offer cautionary examples of the ways in which the appellate court’s Opinion may give rise to abuse if it is affirmed—a proper subject of judicial notice.

III. CONCLUSION

As addressed above, the documents submitted with this Request for Judicial Notice establish important facts for this Court’s consideration. Therefore, for the foregoing reasons, Yelp respectfully requests that the Court take judicial notice of the court records and articles attached to this Request as **Exhibits A through G**.

Dated: November 17, 2016

DAVIS WRIGHT TREMAINE LLP
Thomas R. Burke
Rochelle L. Wilcox

By: _____

Rochelle L. Wilcox

Attorneys for Non-Party Appellant
YELP INC.

DECLARATION OF ROCHELLE L. WILCOX

I, Rochelle L. Wilcox, declare:

1. I am an attorney admitted to practice before all the courts of the State of California and before this Court. I am a partner in the law firm Davis Wright Tremaine LLP (“DWT”) and I am one of the attorneys for Petitioner Yelp Inc. (“Yelp”). I have personal knowledge of the following facts and, if called upon to testify, I could and would competently testify to these facts.

2. Attached as **Exhibit A** is a true and correct copy of a “Motion to Intervene; Motion to Strike Judgment and Answer to Defendant Mathew Chan’s Motion to Vacate Consent Judgment/Order,” filed September 21, 2016, in the matter of *Mitul R. Patel v. Mathew Chan*, Circuit Court for Baltimore City, Baltimore, Maryland, Case No. 24-C-16-003573 (“*Patel v. Chan*”), including the supporting Affidavit of Mitul R. Patel and all Exhibits filed in support thereof and the Proposed Order. One of DWT’s librarians obtained these documents from the court file in *Patel v. Chan* at my request.

3. Attached as **Exhibit B** is a true and correct copy of “Defendant’s Motion to Vacate Consent Judgment/Order,” filed September 6, 2016, in *Patel v. Chan*, including the supporting Affidavit of Matthew Chan and all Exhibits filed in support thereof and the Proposed Order. One of DWT’s librarians obtained these documents from the court file in *Patel*

v. *Chan* at my request.

4. Attached as **Exhibit C** is a true and correct copy of the “Complaint for: (1) Unlawful, Unfair and Fraudulent Business Practices under California Business and Professions Code § 17200; (2) Civil Conspiracy; and (3) Abuse of Process,” filed October 21, 2016, in the matter of *Consumer Opinion LLC v. ZCS, Inc., et al.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 4:16-cv-06105-KAW. One of DWT’s librarians obtained these documents from the court file in this case at my request.

5. Attached as **Exhibit D** is a true and correct copy of Tim Cushing, “Bogus defamation lawsuit with fake defendant results in negative reviews of dentist being taken down,” *TechDirt*, Aug. 24, 2016, available at <https://www.techdirt.com/articles/20160823/15435735321/bogus-defamation-lawsuit-with-fake-defendant-results-negative-reviews-dentist-being-taken-down.shtml>. My assistant Ellen Duncan printed this document from the Internet at my request on November 2, 2016.

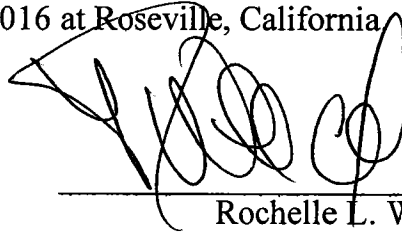
6. Attached as **Exhibit E** is a true and correct copy of Eugene Volokh & Paul Alan Levy, “Dozens of suspicious court cases with missing defendants aim at getting web pages taken down or deindexed,” *Washington Post*, Oct. 10, 2016, available at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/10/10/dozens-of-suspicious-court-cases-with-missing->

defendants-aim-at-getting-web-pages-taken-down-or-deindexed/?utm_term=.2a456e6301f1. My assistant Ellen Duncan printed this document from the Internet at my request on November 1, 2016.

7. Attached as **Exhibit F** is a true and correct copy of Tim Cushing, “Reputation management company linked to bogus libel lawsuits now hyping its anti-cyberbullying skills, *TechDirt*, Oct. 18, 2016, available at <https://www.techdirt.com/articles/20161015/12113435805/reputation-management-company-linked-to-bogus-libel-lawsuits-now-hyping-anti-cyberbullying-skills.shtml>. My assistant Ellen Duncan printed this document from the Internet at my request on November 1, 2016.

8. Attached as **Exhibit G** is a true and correct copy of Kristen V. Brown, “The brilliant but completely unethical scheme reputation management companies are using to censor the internet,” *Fusion*, Oct. 28, 2016, available at <http://fusion.net/story/362902/fake-lawsuits-google-censor/>. My assistant Ellen Duncan printed this document from the Internet at my request on November 17, 2016.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was signed on November 17, 2016 at Roseville, California



A handwritten signature in black ink, appearing to read 'Rochelle L. Wilcox', is written over a horizontal line. The signature is stylized and cursive.

Rochelle L. Wilcox

[PROPOSED] ORDER

This Court, having considered the Request For Judicial Notice of Petitioner Yelp Inc., and good cause having been shown therefore,

IT IS ORDERED that the Court takes judicial notice of the following documents:

Exhibit A: “Motion to Intervene; Motion to Strike Judgment and Answer to Defendant Mathew Chan’s Motion to Vacate Consent Judgment/Order,” filed September 21, 2016, in the matter of *Mitul R. Patel v. Mathew Chan*, Circuit Court for Baltimore City, Baltimore, Maryland, Case No. 24-C-16-003573 (“*Patel v. Chan*”), including the supporting Affidavit of Mitul R. Patel and all Exhibits filed in support thereof and the Proposed Order.

Exhibit B: “Defendant’s Motion to Vacate Consent Judgment/Order,” filed September 6, 2016, in *Patel v. Chan*, including the supporting Affidavit of Matthew Chan and all Exhibits filed in support thereof and the Proposed Order.

Exhibit C: “Complaint for: (1) Unlawful, Unfair and Fraudulent Business Practices under California Business and Professions Code § 17200; (2) Civil Conspiracy; and (3) Abuse of Process,” filed October 21, 2016, in the matter of *Consumer Opinion LLC v. ZCS, Inc., et al.*, United States District Court for the Northern District of California, San Francisco

Division, Case No. 4:16-cv-06105-KAW.

Exhibit D: Tim Cushing, “Bogus defamation lawsuit with fake defendant results in negative reviews of dentist being taken down,” *TechDirt*, Aug. 24, 2016, available at <https://www.techdirt.com/articles/20160823/15435735321/bogus-defamation-lawsuit-with-fake-defendant-results-negative-reviews-dentist-being-taken-down.shtml>.

Exhibit E: Eugene Volokh & Paul Alan Levy, “Dozens of suspicious court cases with missing defendants aim at getting web pages taken down or deindexed,” *Washington Post*, Oct. 10, 2016, available at 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/?utm_term=.2a456e6301f1.

Exhibit F: Tim Cushing, “Reputation management company linked to bogus libel lawsuits now hyping its anti-cyberbullying skills,” *TechDirt*, Oct. 18, 2016, available at <https://www.techdirt.com/articles/20161015/12113435805/reputation-management-company-linked-to-bogus-libel-lawsuits-now-hyping-anti-cyberbullying-skills.shtml>.

Exhibit G: Kristen V. Brown, “The brilliant but completely unethical scheme reputation management companies are using to censor the

internet,” *Fusion*, Oct. 28, 2016, available at

<http://fusion.net/story/362902/fake-lawsuits-google-censor/>.

Dated: _____

By: _____
Honorable Tani Gorre Cantil-Sakauye
Chief Justice of the State of California

MITUL R. PATEL

Plaintiff

v.

MATHEW CHAN

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 24-C-16-003573

* * * * *

**MOTION TO INTERVENE, MOTION TO STRIKE JUDGMENT and
ANSWER TO DEFENDANT MATHEW CHAN'S MOTION TO VACATE**

CONSENT JUDGMENT/ORDER

Intervenor MITUL R. PATEL, by and through his attorneys, James G. Maggio, Esquire, and Steven D. Shemenski, Esquire, hereby files this Motion to Intervene, Motion to Strike Judgment, and Answer to Defendant's Motion to Vacate Consent Judgment/Order and in support thereof avers:

APPEARANCE
TOTAL
RECEIVED
CASHIER
12/11/16

1. The matter *sub judice* purports to be an action filed *pro se* for a Consent Judgment acknowledging a defamation of character and charging the alleged Defendant with removing postings on internet sites the Defendant allegedly made against Plaintiff or causing the website providers to remove said postings.

2. Intervenor is the alleged Plaintiff in this matter.

3. Intervenor did not file said action in this Honorable Court.

a. Intervenor maintains a dental practice at 2627 Peachtree Parkway, #400, Suwanee, Georgia 30024. See Exhibit 1, Affidavit of Mitul R. Patel with attachments, Paragraphs 2 and 7, which is attached hereto and incorporated herein by reference.

MITUL R. PATEL

Plaintiff

v.

MATHEW CHAN

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 24-C-16-003573

* * * * *

MOTION TO INTERVENE, MOTION TO STRIKE JUDGMENT and
ANSWER TO DEFENDANT MATHEW CHAN'S MOTION TO VACATE

CONSENT JUDGMENT/ORDER

Intervenor MITUL R. PATEL, by and through his attorneys, James G. Maggio, Esquire, and Steven D. Shemenski, Esquire, hereby files this Motion to Intervene, Motion to Strike Judgment, and Answer to Defendant's Motion to Vacate Consent Judgment/Order and in support thereof avers:

APPEAR FEE
TOTAL
RECEIVED
CASHIER: KAY GREGORY
07/21/16 10:26AM

1. The matter *sub judice* purports to be an action filed *pro se* for a Consent Judgment acknowledging a defamation of character and charging the alleged Defendant with removing postings on internet sites the Defendant allegedly made against Plaintiff or causing the website providers to remove said postings.

2. Intervenor is the alleged Plaintiff in this matter.

3. Intervenor did not file said action in this Honorable Court.

a. Intervenor maintains a dental practice at 2627 Peachtree Parkway, #400, Suwanee, Georgia 30024. See Exhibit 1, Affidavit of Mitul R. Patel with attachments, Paragraphs 2 and 7, which is attached hereto and incorporated herein by reference.

b. A search of the United States Postal Service Website indicates that no mailing address exists for 276 Peachtree Parkway, Suwanee, Georgia 30024, the address listed for Plaintiff on the original Complaint. See Exhibit 2, USPS.com which is attached hereto and incorporated herein by reference.

c. Intervenor has no connection with the real property and any improvements thereon that may be located at 276 Peachtree Parkway, Suwanee, Georgia 30024, the address indicated for Plaintiff MITUL R. PATEL on the original Complaint.

d. Intervenor did not file the matter *sub judice*. See Exhibit 1, Affidavit of Mitul R. Patel with attachments, Paragraph 4, which is attached hereto and incorporated herein by reference.

e. Intervenor has previously engaged the services of an entity doing business as SEO Profile Defense Network, LLC., to provide "online reputation management services" for Intervenor's dental practice. See Exhibit 3, Correspondence from Counsel to Intervenor to SEO Profile Defense Network, LLC., which is attached hereto and incorporated herein by reference.

f. In so retaining the services of SEO Profile Defense Network, LLC., Intervenor did not authorize the filing of any lawsuit by said entity on his behalf. See Exhibit 1, Affidavit of Mitul R. Patel with attachments, Paragraphs 4, 5 and 6, which is attached hereto and incorporated herein by reference.

4. Intervenor did not file, nor cause to have filed, the matter *sub judice*, and he is not presently a party to this action.

5. Defendant MATHEW CHAN¹ did post reviews on internet websites regarding his experience with Intervenor at Intervenor's Dental practice.

6. As a result of the issuance of the "Consent Order" in the matter *sub judice*, Intervenor has been caused to suffer negative publicity via internet news blogs as a result of the attempt by the party purporting to be Plaintiff MITUL R. PATEL's attempts to have negative reviews of Intervenor's Dental practice removed from internet review websites. See Defendant MATHEW CHAN's Motion to Vacate Consent Judgment, Exhibits S, T, U, and V.

7. Intervenor has the right to Intervene in this matter as Intervenor is the person who allegedly filed this action (but did not) and the Intervenor would be the sole person who has the authority to file such a lawsuit seeking the relief requested. Maryland Rule 2-214(a).

8. As Intervenor did not file this lawsuit that on its face is attempting to legally enforce an agreement on his behalf, though he is not the party who filed the lawsuit, Intervenor has the right to ask this Honorable Court to allow him to intervene in this matter and act on his behalf to rectify the wrongful filing of this lawsuit.

9. Upon Intervenor's Motion to Intervene being granted, Intervenor should be designated as a Plaintiff by this Honorable Court. Maryland Rule 2-214(c).

10. Upon this Honorable Court allowing Intervenor to intervene as Plaintiff in this matter, Intervenor/designated Plaintiff respectfully requests that this Honorable Court Vacate the Consent Judgment, and Dismiss this matter without prejudice.

¹ Intervenor MITUL R. PATEL acknowledges that the proper spelling of the name of the person alleged to be the Defendant in this matter is "MATTHEW CHAN", however for the purpose of clarity in the record will refer to Defendant as "MATHEW CHAN" as the name was stated in the original filing in this Honorable Court.

a. Intervenor/designated Plaintiff admits that jurisdiction of this matter would more properly be considered under the legal system of the State of Georgia, or the Federal District Court located in Georgia.

b. To the best of Intervenor/designated Plaintiff's information and belief, Defendant MATHEW CHAN did not and has not consented to a Judgment to be entered admitted defamation and/or authorizing the removal of his postings on review websites.

c. Intervenor/designated Plaintiff, who would be an interested party in any action for defamation if it exists against Defendant MATHEW CHAN, did not file nor authorize any person or entity to file on his behalf the legal action *sub judice*.

d. As Intervenor/designated Plaintiff did not file nor authorize the filing of this lawsuit, and as Defendant MATHEW CHAN and Intervenor/designated Plaintiff did not enter into an agreement resulting in the alleged Consent Judgment/Order, it is proper for this Honorable Court to Vacate the Consent Judgment/Order.

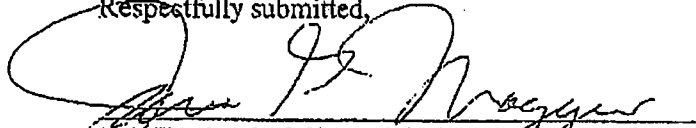
e. Dismissal of this matter without prejudice is proper as Intervenor/designated Plaintiff should not have any potential legal remedy he may have against Defendant MATHEW CHAN be prejudiced by a legal filing he did not make nor authorize to be made on his behalf.

11. Intervenor/designated Plaintiff, having reviewed and considered Defendant MATHEW CHAN's Motion to Vacate Consent Judgment/Order admits the allegations therein and believes that it is in the best interests of justice to Grant Defendant's Motion and Vacate the Consent Judgment/Order.

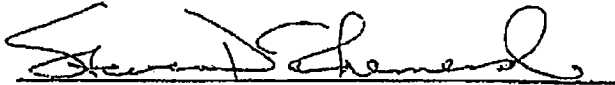
WHEREFORE, Intervenor/designated Plaintiff MITUL R. PATEL respectfully requests that this Honorable Court Grant his Motion to Intervene, Grant his Motion to Vacate the Consent

Judgment/Order and dismiss this matter without prejudice, and Grant Defendant's Motion to Vacate Consent Judgment/Order, and Grant such other and further relief as this Honorable Court deems appropriate.

Respectfully submitted,



JAMES G. MAGGIO, ESQUIRE
THE LAW OFFICE OF JAMES G. MAGGIO
802 Ingleside Avenue
Catonsville, Maryland 21228
410-262-6938
Facsimile 410-788-4467
Jamesgmaggio@yahoo.com



STEVEN D. SHEMENSKI, ESQUIRE
THE LAW OFFICE OF STEVEN D. SHEMENSKI
802 Ingleside Avenue
Catonsville, Maryland 21228
443-341-0458
Facsimile 410-788-4467
Shemenskilaw@gmail.com
Attorneys for Intervenor MITUL R. PATEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2016, a copy of the foregoing Motion was mailed, first class postage prepaid to:

Matthew Chan
P.O. Box 6865
Columbus, Georgia 31917


STEVEN D. SHEMENSKI, ESQUIRE

EXHIBIT 1: AFFIDAVIT OF MITUL R. PATEL

IN THE MARYLAND CIRCUIT COURT OF BALTIMORE CITY
STATE OF GEORGIA

MITUL R. PATEL,

Plaintiff,

vs.

MATHEW CHAN,

Defendant.

)
)
)
)
)
)
)
)
)
)
)
)

CIVIL ACTION FILE

Case #: 24-C-16-003573

AFFIDAVIT OF MITUL R. PATEL

STATE OF GEORGIA

Personally appeared before the undersigned attesting officer, duly authorized by law to administer oaths, Mitul R. Patel, who after being duly sworn on oath, deposes and states the following:

1.

My name is Mitul R. Patel. I am over the age of eighteen (18), suffer from no legal disability, and am otherwise competent to testify to the facts contained in this Affidavit.

2.

I reside in Fulton County, Georgia. I am a licensed Dentist in the State of Georgia, and I operate and manage a dental practice in Forsyth County, Georgia located at 2627 Peachtree Parkway, Suite 440, Suwanee, Georgia 30024.

3.

I am the purported Plaintiff in the above-styled action. I come forward in good faith to clear my name in this Court, to report a potential crime and fraud that has been perpetrated upon myself and this Court, and to report an abuse of this Court's legal process.

4.

It has come to my attention that a Complaint dated February 8, 2016 [Case No. 24-C-16003573] was filed against the Defendant, Mathew Chan. [See Exhibit "A"]. Although my name is signed to the Complaint, the signature is a forgery. My original signature can be readily seen and compared in this notarized Affidavit. At no time did I authorize the filing of this Complaint, and I would have never authorized the filing of this Complaint, nor did I have knowledge that the Complaint [Case No. 24-C-16003573] was even filed until this was brought to my attention in August, 2016.

5.

In addition, a Consent Motion for Injunction and Final Judgment was filed with the Court on June 15, 2016, bearing the signature of myself and of the purported Defendant, Mathew Chan. [See Exhibit "B"]. I never signed the Consent Motion, nor did I have any knowledge whatsoever regarding the filing of the Consent Motion. My name was forged on the Consent Motion, and I never authorized the filing or signing of the Consent Motion. Furthermore, I never discussed the contents of the Consent Motion with the purported Defendant, Mathew Chan.

6.

At no time did I ever authorize any individual or entity to file a Complaint, Consent Motion or Order [See Exhibit "C"] on my behalf or take any action whatsoever in the Maryland Circuit Court, Baltimore City, nor did I ever authorize any individual or entity to sign my name to any Court pleadings or other such documents.

7.

My address as listed on the Complaint and Consent Motion is incorrect. My correct