

CAUSE NO. 07-07934-H

IN RE:
PETITION OF M.P.
REQUESTING A DEPOSITION
OF CORPORATE REPRESENTATIVE
FOR GOOGLE, INC.

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§

IN THE DISTRICT COURT OF
DALLAS COUNTY, TEXAS
160th JUDICIAL DISTRICT

PETITIONER'S RESPONSE TO MOVANT'S
MOTION TO QUASH AND FOR PROTECTIVE ORDER

Petitioner M.P. ("Petitioner") files this Response to Movant's Motion to Quash and for Protective Order (the "Motion"), as follows:

FILED
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DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

I.

PRELIMINARY STATEMENT

Believing it could do so with impunity, Movant created a blog account with Google for the express purpose of saying abusive, terrible things about Petitioner. Apparently not aware of the breadth of discovery Texas Rule of Civil Procedure 202 affords parties seeking to investigate potential claims, Movant shamelessly proceeded to set forth repugnant, defamatory statements about Petitioner on this blog site. Now facing its day of reckoning, Movant pleads with the Court to maintain the secrecy of its identity. Regrettably for Movant, no legal basis exists for quashing the discovery that this Court has already sanctioned. Because the Motion is wholly without merit, the relief Movant desperately seeks should be denied.

II.

PROCEDURAL HISTORY

On August 2, 2007, Petitioner filed the Petition Requesting Deposition to Investigate Potential Claim or Suit (the "Petition") seeking the deposition of a corporate representative of Google, Inc. ("Google") as authorized by Texas Rule of Civil Procedure 202.1(b).¹ Specifically, Petitioner sought to elicit from Google the names and addresses of those responsible for certain very disparaging statements regarding Petitioner posted on blogs Google hosted.²

Electing to conserve time and resources rather than proceeding with a deposition of a corporate representative in California, Petitioner and Google agreed to utilize written discovery. Accordingly, on August 24, 2007, Petitioner filed an agreed order³ authorizing Petitioner to serve discovery on Google requiring it to identify those responsible for the derogatory statements regarding Petitioner.⁴ Then on September 21, 2007, after a hearing at which Google appeared through its counsel and stated that it agreed to the requested relief,⁵ the Court entered the agreed Order Authorizing Discovery.⁶

¹ See Petition.

² See *id.*; see also Letter from C. Dunham Biles to Decker Cammack, dated August 2, 2007, attached as Exhibit 1 to the Affidavit of C. Dunham Biles ("Biles Affidavit") attached hereto as Exhibit A (enclosing draft notice of deposition).

³ See Letter from C. Dunham Biles to Shirley Gomez, dated August 24, 2007, attached hereto as Exhibit B ("[C]ommercial litigation counsel for Google, Inc., Hilary Ware, is being provided with a copy of this Order. I have conferred with Ms. Ware concerning this Order. Google, Inc. does not oppose immediate entry of the order."); see also e-mail from Hilary Ware to Dunham Biles, dated September 19, 2007, attached to the Biles Affidavit as Exhibit 2 ("I'll let you know who your compatriot in agreeing to a court order directing us to produce the information we have on the blogger (deposition off calendar) will be.").

⁴ See Order Authorizing Discovery.

⁵ See, e.g., e-mail from Don Colleluori to C. Dunham Biles, dated September 21, 2007, attached to the Biles Affidavit as Exhibit 3 ("I just forwarded the order to her, noting that I assumed she will deal directly with you on the production. If you don't hear differently from me

Accordingly, on September 27, 2007, Petitioner served M.P.'s First Set of Interrogatories to Google, Inc. and M.P.'s First Request for the Production of Documents to Google, Inc.⁷ On October 25, 2007, Movant—hoping to maintain its status as an anonymous defamer⁸—filed the Motion with the Court,⁹ seeking to thwart Petitioner's effort to discover the identity of those responsible for stating the despicable comments about Petitioner anonymously over the internet.¹⁰

III.

SUMMARY OF ARGUMENT

Movant asserts two arguments in support of the Motion, both of which are unavailing. First, Movant argues that Petitioner has not complied with Rule 202 because: (i) Movant was not provided notice of the hearing on the Petition; and (ii) Rule 202 does not provide for service

by Monday, go ahead and contact her directly.”). The “her” refers to Ms. Hilary Ware, in-house counsel for Google.

⁶ See Order Authorizing Discovery.

⁷ See M.P.'s First Set of Interrogatories to Google, Inc., attached to the Biles Affidavit as Exhibit 4; M.P.'s First Request for the Production of Documents to Google, Inc., attached to the Biles Affidavit as Exhibit 5.

⁸ Movant boldly admits that “Movant is the individual who created the Google account and blog at issue.” See Motion to Quash Discovery and for Protective Order at 2. The Motion, however, is not verified or supported by an affidavit.

⁹ Notably, Movant apparently failed to confer with and serve Google's counsel of record in accordance with Local Rule 2.07 of the Civil Courts of Dallas County and Texas Rule of Civil Procedure 21. See Motion at 10-11; see also Local Rule 2.07 of the Civil Courts of Dallas County, Texas (“No counsel for a party shall file, nor shall any clerk set for hearing, any motion unless accompanied with a certificate of conference signed by counsel for movant.”); TEX. R. CIV. P. 21 (“Every . . . motion . . . unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefore, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.”).

¹⁰ See Motion at 10.

of interrogatories and document requests.¹¹ Second, Movant erroneously asserts that the First Amendment shields its identity from disclosure by Google because Petitioner has not met the burden of overcoming Movant's alleged First Amendment right to anonymous speech; therefore, Movant claims that Petitioner cannot establish a viable claim.¹²

Movant's motion is without merit for two reasons. First, Petitioner has satisfied the requirements of Rule 202 necessary to obtain the requested discovery. Second, the First Amendment does not bar the requested discovery. Accordingly, the Motion should be denied.

IV.

ARGUMENT AND AUTHORITIES

A. Applicable Standards

1. Texas Rules Of Civil Procedure 202

Texas Rule of Civil Procedure 202 permits a party to petition the Court for an order authorizing the taking of a deposition either: (1) to perpetuate testimony before an anticipated suit; or (2) to investigate a potential claim or suit.¹³ If a deposition is sought to perpetuate testimony, the petitioner must plead "that the petitioner anticipates the institution of a suit in which the petitioner may be a party."¹⁴ In contrast, if the petitioner seeks to investigate a potential claim or suit, as in this case, the petition must instead state "that the petitioner seeks to investigate a potential claim by or against petitioner."¹⁵

¹¹ See *id.* at 3-4.

¹² See *id.* at 4-10.

¹³ See TEX. R. CIV. P. 202; TEX. R. CIV. P. 202.1.

¹⁴ TEX. R. CIV. P. 202.2(d)(1).

¹⁵ TEX. R. CIV. P. 202.2(d)(2).

Additionally, the petition and notice of the hearing are to be served on "all persons petitioner seeks to depose, and if suit is anticipated on all persons the petitioner expects to have interests adverse to petitioner's in the anticipated suit."¹⁶ Clearly, a suit is not "anticipated" when a party is seeking to investigate a claim or suit under Texas Rule of Civil Procedure 202.1(b).¹⁷ One of the purposes behind allowing such discovery is to provide an opportunity for potential plaintiffs to gather information to assist them in determining whether or not to file suit.¹⁸ Only if a petitioner seeks discovery to perpetuate testimony does Texas Rule of Civil Procedure 202.1(a) require notice to persons expected to have interests adverse to the petitioner. In such instance, the petition need only set forth the subject matter of the anticipated suit, if any, and the petitioner's interest therein.¹⁹

¹⁶ TEX. R. CIV. P. 202.3(a) (emphasis added).

¹⁷ See, e.g., DORSANEO TEXAS LITIGATION GUIDE § 10.03[3] ("If the deposition is for the purpose of investigating a potential claim, it is not necessary to serve any adverse parties under the rule, because at this point suit is not 'anticipated.'").

¹⁸ See Hecht & Pemberton, *A Guide to the 1999 Texas Discovery Rules Revisions*, 1998, at G-17, available at: <http://www.supreme.courts.state.tx.us/rules/tdr/discocle37.pdf> ("Plaintiffs' lawyers . . . urged that investigatory depositions under Rule 737 had proven to be a useful device by which plaintiffs could investigate a potential claim, a step that, they contended, has become increasingly necessary in an era of sanctions for frivolous lawsuits, 'no evidence' summary judgment motions, and other heightened burdens on plaintiffs. Several practitioners commented that the results of bill of discovery depositions frequently lead them not to file suit or not to pursue a potential defendant, thereby reducing the number of lawsuits and overall litigation costs. To address . . . concerns, Rule 202 expressly permits pre-suit investigatory depositions but limits the extent to which they can be used in a subsequent lawsuit if an eventual party did not receive notice of the deposition. A Rule 202 deposition ordinarily can be used to the same extent as a sworn statement; that is, solely for impeaching the witness from whom the deposition was taken. But if a party attempts to use Rule 202 abusively and/or to circumvent deposition notice requirements — such as to 'set up' a target rather than for good faith investigation of a potential claim — Rule 202.5 authorizes the trial court to forbid the use of the deposition for any purpose, including impeachment.").

¹⁹ See, e.g., *City of Houston v. U.S. Filter Wastewater Group, Inc.*, 190 S.W.3d 242, 245, n.2 (Tex. App.—Houston [1st Dist.] 2006, no pet.) ("Rule 202 does not require a petitioner to plead a specific cause of action; instead, it requires only that the petitioner 'state the subject matter of the anticipated action, if any, and the petitioner's interest therein.'"); see also TEX. R.

2. Libel Under Texas Law

To establish libel, a Plaintiff must show that: (1) the defendant published a statement that implies an assertion of fact; (2) the statement referred to the plaintiff; (3) the statement was defamatory;²⁰ (4) the statement was false; and (5) the defendant was negligent, or acting with actual malice, without regard to the truth of the statement.²¹

Additionally, contrary to Movant's assertion,²² the First Amendment does not require inquiry into whether a statement is fact or opinion.²³ For example, "[i]f a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if

Civ. P. 202.2(e) ("The petition must state the subject matter of the anticipated action, if any, and the petitioner's interest therein.").

²⁰ See TEX. CIV. PRAC. & REM. CODE § 73.001 ("A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury.").

²¹ See, e.g., *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990) (element 1); *Bentley v. Bunton*, 94 S.W.3d 561, 579, 586, 590 (Tex. 2002) (elements 1, 3-5); *WFAA-TV v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998) (elements 1-5).

²² Notably, Movant misrepresents the law by stating "[s]tatements of opinion are not actionable" and citing *Carr v. Brasher*, 776 S.W.2d 567, 570 (Tex. 1984), which is no longer applicable on this point of law in light of *Milkovich*, 497 U.S. at 18-19, and *Bentley*, 94 S.W.3d at 579-80.

²³ See *Milkovich*, 497 U.S. at 18-19 ("[W]e do not think this passage from (a prior case) was intended to create a wholesale defamation exemption for anything that might be labeled 'opinion.' Not only would such an interpretation be contrary to the tenor and context of the passage, but it would also ignore the fact that expressions of 'opinion' may often imply an assertion of objective fact. . . . [W]e think the 'breathing space' which 'freedoms of expression require in order to survive' is adequately secured by existing constitutional doctrine without the creation of an artificial dichotomy between 'opinion' and fact.") (citations omitted); *Bentley*, 94 S.W.3d at 579-80 (adopting the standards in *Milkovich*, stating that "[t]o distinguish between fact and opinion, we are bound to use as our guide the United States Supreme Court's latest word on the subject, *Milkovich v. Lorain Journal Co.*").

those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact."²⁴ Therefore, a statement, whether expressed as fact or opinion, may be libelous if it expressly or impliedly asserts objective facts.²⁵ Indeed, Texas courts have upheld defamation claims based on opinions.²⁶

Moreover, Texas has a compelling interest in allowing full discovery upon a showing of need, including the investigation of potential defamation claims, even in the face of assertions of First Amendment rights.²⁷ Notably, any First Amendment objection is overcome by a plaintiff's need to identify those responsible for making defamatory statements.²⁸

B. Petitioner Has Satisfied The Requirements Of Rule 202 Necessary To Obtain The Requested Discovery.

As a preliminary matter, Movant offers no evidence that he is an individual whose identity is sought. Instead, the Motion, filed without verification, states that "Movant is the

²⁴ *Bentley*, 94 S.W.3d at 583 (quoting *Milkovich*, 497 U.S. at 18-19).

²⁵ See *Milkovich*, 497 U.S. at 18-19; *Bentley*, 94 S.W.3d at 579-80.

²⁶ See, e.g., *Marshall v. Mahaffey*, 974 S.W.2d 942, 948 (Tex. App.—Beaumont 1998, pet. denied) ("I don't trust her. I think she's sleazy . . . I think she's a slut and she's just after his money and she's a gold digger.").

²⁷ See, e.g., *In re Maurer*, 15 S.W.3d 256, 261 (Tex. App.—Houston [14th Dist.] 2000, no pet.) ("In *Tilton*, the Texas Supreme Court recognized the importance of open discovery even in the face of a claim of First Amendment associational rights. While the court never stated that the interest in open discovery is a compelling one, it concluded that such an interest might justify disclosure of narrow limited groups of individuals based on a particularized showing of need. Here, . . . they seek the identity of only a limited group of individuals: those individuals who were responsible for the ads that appeared in the *Katy Times*. Without this information, Sheriff Thomas and Deputy Burton cannot prove who defamed them and cannot obtain full redress on their claims. The general purpose of discovery is to allow the parties to obtain full knowledge of the facts and issues prior to trial. This purpose would be completely thwarted if we were to allow relator to shield her answers behind the First Amendment. . .").

²⁸ See, e.g., *id.*

individual who created the Google account and blog at issue.”²⁹ Accordingly, the Motion should be denied.

Moreover, assuming *arguendo* that Movant is the anonymous person who cowardly says terrible untruths about others, he was not entitled to notice because Rule 202.3(a) only requires notice to an adverse party in an anticipated suit.³⁰ As stated above, the Petition does not state that it was filed to perpetuate testimony for an anticipated suit under Texas Rule of Civil Procedure 202.1(a); rather, it was filed to investigate a potential claim as permitted by Texas Rule of Civil Procedure 202.1(b).³¹ Indeed, Petitioner expressly pleads that “[s]uch testimony is sought in order to acquire the names and addresses of the individuals and/or entities responsible for these derogatory statements to further investigate potential claims resulting from those statements.”³²

Furthermore, Movant cannot be heard to object to the fact that, in order to conserve time and resources, and at Google’s request, Petitioner agreed to serve written discovery rather than proceed with a deposition of a corporate representative in California.³³ Simply put, Movant does not have standing to object to the form of the discovery because it does not affect Movant.³⁴

²⁹ See Motion at 2.

³⁰ See TEX. R. CIV. P. 202.3(a) (“At least 15 days before the date of the hearing on the petition, the petitioner must serve the petition and a notice of the hearing . . . if suit is anticipated, on all persons petitioner expects to have interests adverse to petitioner’s in the anticipated suit.”) (emphasis added).

³¹ See Petition at 1 (“M.P. requests authority to take the deposition of a corporate representative for Google, Inc. (‘Google’), in order to investigate a potential claim or suit, as authorized by Texas Rule of Civil Procedure 202.”).

³² See *id.* at 2 (emphasis added). Furthermore, Movant in its Motion states only that the Petition “anticipates adverse interests”; it does not and cannot state that the Petition “anticipates suit.” Motion at 4.

³³ See Exhibit 2 to the Biles Affidavit (“I’ll let you know who your compatriot in agreeing to a court order directing us to produce the information we have on the blogger

Therefore, Movant lacks standing to object to either the form of the discovery or to the alleged lack of notice. Moreover, there is no evidence that Movant has any standing whatsoever in this matter. Accordingly, the Court should deny the Motion.

C. The First Amendment Does Not Bar The Requested Discovery.

1. The Motion should be denied because the Petition satisfies the standard in Texas.

Consistent with the purposes of Rule 202 and discovery in general, Texas permits discovery of the identity of anonymous defamers despite assertions of First Amendment rights.³⁵ Movant, however, conveniently ignores Texas case law in an attempt to fabricate a heightened standard of pleading necessary to obtain disclosure of an anonymous speaker's identity.³⁶ It is illuminating that Movant fails to cite a single Texas authority supporting its purported standard

(deposition off calendar) will be."); Exhibit B ("[C]ommercial litigation counsel for Google, Inc., Hilary Ware, is being provided with a copy of this Order. I have conferred with Ms. Ware concerning this Order. Google, Inc. does not oppose immediate entry of the order."); Exhibit 1 to the Biles Affidavit (letter enclosing a draft deposition notice).

³⁴ See, e.g., *Calder v. Cass*, 310 S.W.2d 649, 650 (Civ. App.—Dallas 1958, no writ) ("In any event appellant Bruce Calder is in no position to complain. Service of citation was had as to him. Therefore his deposition and the deposition of other defendants on whom service was had, may be taken."); see also *In re Kiberu*, No. 2-07-312-CV, 2007 WL 3208604, at *4 (Tex. App.—Fort Worth, Nov. 1, 2007, no pet. h.) (not yet released for publication) (denying mandamus relief and allowing under Rule 202, the deposition of Kiberu and the production of Kiberu's personnel file).

³⁵ See, e.g., *In re Maurer*, 15 S.W.3d at 261 ("In *Tilton*, the Texas Supreme Court recognized the importance of open discovery even in the face of a claim of First Amendment associational rights. While the court never stated that the interest in open discovery is a compelling one, it concluded that such an interest might justify disclosure of narrow limited groups of individuals based on a particularized showing of need. Here, . . . they seek the identity of only a limited group of individuals: those individuals who were responsible for the ads that appeared in the *Katy Times*. Without this information, Sheriff Thomas and Deputy Burton cannot prove who defamed them and cannot obtain full redress on their claims. The general purpose of discovery is to allow the parties to obtain full knowledge of the facts and issues prior to trial. This purpose would be completely thwarted if we were to allow relator to shield her answers behind the First Amendment. . . .").

³⁶ See Motion at 4-10.

and no authority concerning pre-suit discovery.³⁷ The standard in Texas is clear: Texas permits discovery to investigate the identity of anonymous defamers who attempt to cloak themselves in the wrappings of the First Amendment.³⁸ Here, the Petition specifically states that: "Such testimony is sought in order to acquire the names and addresses of the individuals and/or entities responsible for these derogatory statements to further investigate potential claims resulting from those statements."³⁹ Accordingly, the Motion should be denied.

Remarkably, Texas Rule of Civil Procedure 202 requires only that the Petitioner plead the subject matter of the claim being investigated, not a cause of action.⁴⁰ Here, that standard is met. Specifically, Petitioner has pleaded that "the names and addresses of entities and/or individuals who are hosting and posting derogatory statements . . . is necessary in order for M.P. to request that such defamatory conduct cease and/or for M.P. potentially to file claims against the responsible individuals and/or entities."⁴¹ Therefore, Rule 202 has been satisfied and the Motion should be denied.

³⁷ See *id.* at 4-10 ("Numerous courts have likewise recognized that the First Amendment establishes a heightened burden before the identity of an anonymous speaker may be compelled to be disclosed.") (not citing to any Texas cases). Not only has Texas not adopted Movant's proposed heightened standard, but numerous other jurisdictions have rejected such a standard in favor of pre-existing discovery rules. See, e.g., *Klehr Harrison Harvey Branzburg & Ellers, LLP v. JPA Development, Inc.*, No. 0425, 2006 WL 37020, at *9 (Pa. Com. Pl. Jan. 4, 2006) (not reported in A.2d) ("[T]his court will not apply the *Dendrite* or the *Cahill* standards. Instead, it will analyze defendants' Motion for a Protective Order under existing Pennsylvania discovery rules."); *In re Baxter*, No. 01-00026-M, 2001 WL 34806203, at *12 (W.D. La. Dec. 20, 2001) (not reported in F.Supp.2d) (after expressly rejecting cases cited by Movant, the court held that "the proper standard should be, depending upon whether the statements involve public concern or private concern, a showing of at least a reasonable probability or a reasonable possibility of recovery on the defamation claim.").

³⁸ See, e.g., *In re Maurer*, 15 S.W.3d at 261.

³⁹ Petition at 2.

⁴⁰ See, e.g., *City of Houston*, 190 S.W.3d at 245, n.2.

⁴¹ See Petition at 2.

2. **Moreover, the Motion should be denied because Petitioner can state a claim for libel.**

A libel Plaintiff must show that the defendant published, negligently or with actual malice, a false, defamatory statement concerning the plaintiff that implies an assertion of fact.⁴² While Petitioner would not be surprised if additional defamatory statements are discovered once the identity of the anonymous defamer(s) is known, the anonymous defamer(s) has committed libel based solely on the statements contained on the blog at issue.⁴³

Movant, however, attempts to defeat Petitioner's potential libel claim by incorrectly asserting that "[s]tatements of opinion are not actionable."⁴⁴ Both the United States Supreme Court and Texas Supreme Court have abolished inquiry into whether a statement is one of fact or opinion; instead, the rule now is that statements, whether fact or opinion, that expressly or impliedly assert objective facts are actionable.⁴⁵ Indeed, Texas courts have upheld defamation claims where: (i) the plaintiff was referred to as "sleazy," "a slut," and "a gold digger;"⁴⁶ (ii) the defendant defamed the plaintiff through innuendo;⁴⁷ (iii) statements that could be characterized

⁴² See, e.g., *Milkovich*, 497 U.S. at 19; *Bentley*, 94 S.W.3d at 579, 586, 590; *WFAA-TV*, 978 S.W.2d at 571.

⁴³ See Petition at 2 ("[E]ntities and/or individuals . . . are hosting and posting derogatory statements concerning M.P. on blogs hosted by Google. . . . [I]nformation is necessary in order for M.P. to request that such defamatory conduct cease. . . .").

⁴⁴ See Motion at 9.

⁴⁵ See *Milkovich*, 497 U.S. at 18-19; *Bentley*, 94 S.W.3d at 579-80; TEX. CIV. PRAC. & REM. CODE § 73.001 ("A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury").

⁴⁶ See *Marshall v. Mahaffey*, 974 S.W.2d at 948.

⁴⁷ See *Guisti v. Galveston Tribune*, 105 Tex. 497, 505 (Tex. 1912) ("It is immaterial that the publication complained of is not libelous per se, it is libelous and actionable, nevertheless, if by such innuendoes as may not extend but simply explain the effect and meaning of the language

as opinions implied the existence of undisclosed defamatory facts;⁴⁸ and (iv) the plaintiff was referred to as “a liar, a thief, and a swindler.”⁴⁹

Here, a few examples of the defamatory statements include: (i) Petitioner “is a fraud of a club owner (albeit she ‘earned’ her ownership on her knees)”; (ii) Petitioner “continues to break the bylaws” of a country club; and (iii) “A lawsuit is imminent” [sic] against Petitioner for “breach of fiduciary responsibility and apparently some fraud.” Those statements are defamatory, assert objective facts, and are false.

In other words, the anonymous defamer(s) have falsely called petitioner: (i) a fraud; (ii) a gold digger; and (iii) one of ill repute, while falsely asserting that she has violated bylaws, committed fraud, and breached fiduciary duties. The actionable defamatory words “sleazy,” “slut,” and “gold digger” pale in comparison to the statements published in regard to Petitioner.

Although unnecessary to obtain this discovery, Petitioner has established a viable libel claim, thus surpassing any heightened standard applied by other jurisdictions. Moreover, Texas courts permit discovery to investigate the identity of anonymous defamers, despite the assertion of First Amendment rights.⁵⁰ Accordingly, the Motion should be denied.

used and the identity of the person libeled, the publication is of such character as tends to injure the reputation of plaintiff and expose her to public hatred, contempt or ridicule, or tends to impeach her honesty, integrity, virtue or reputation.”); *see also Druckel v. Saint Joseph Hosp.*, 78 S.W.3d 576, 585 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (“To prove a defamation claim, a plaintiff may use innuendo to explain the statements.”).

⁴⁸ *See Shearson Lehman Hutton, Inc. v. Tucker*, 806 S.W.2d 914, 920-921 (Tex. App.—Corpus Christi 1991, writ dismissed w.o.j.) (“This Court has held that an opinion may be actionable in a defamation case if the statement contains an implied assertion of fact. . . . Even assuming, that the statements could be characterized as opinions, the statements clearly imply the existence of undisclosed facts that Tucker had engaged in serious misconduct, which adversely reflected upon his reputation and fitness as a stockbroker.”).

⁴⁹ *See Flournoy v. Story*, 37 S.W.2d 272, 273 (Civ. App.—Fort Worth 1930, no writ).

⁵⁰ *See, e.g., In re Maurer*, 15 S.W.3d at 261.


V.

CONCLUSION

For all the foregoing reasons, Petitioner requests that the Court deny Movant's Motion to Quash and for Protective Order, and grant Petitioner all other relief to which Petitioner may be entitled.

Respectfully submitted,

BICKEL & BREWER

By: 

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State Bar No. 08867720
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State Bar No. 24042407

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be served upon the following via facsimile on this 14th day of November, 2007.



C. Dunham Biles

Via Facsimile (512) 536-9908

Peter D. Kennedy, Esq.
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Via Facsimile (214) 939-2090

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COUNSEL FOR GOOGLE, INC.

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CAUSE NO. 07-07934-H

IN RE: PETITION OF M.P. REQUESTING A DEPOSITION OF CORPORATE REPRESENTATIVE FOR GOOGLE, INC.	§ § § § §	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS 160th JUDICIAL DISTRICT
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**AFFIDAVIT OF C. DUNHAM BILES IN SUPPORT OF
PETITIONER'S RESPONSE TO MOVANT'S
MOTION TO QUASH AND FOR PROTECTIVE ORDER**

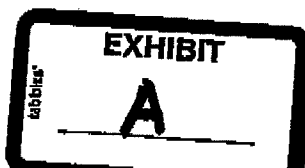
STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

Before me the undersigned authority, personally appeared C. Dunham Biles, who being duly sworn upon his oath, deposed and stated the following:

1. My name is C. Dunham Biles. I am over the age of eighteen (18) years, have never been convicted of a felony, and am competent to make this affidavit. All statements within this affidavit are within my personal knowledge and are true and correct.

2. I am a Senior Associate with Bickel & Brewer. Bickel & Brewer represents Petitioner M.P. in this matter. I attest to this affidavit in support of Petitioner's Response to Movant's Motion to Quash and for Protective Order which Petitioner files with the Court contemporaneously with this affidavit.

3. Attached hereto as Exhibit 1 is a true and correct copy of a letter from C. Dunham Biles to Decker Cammack, dated August 2, 2007.



4. Attached hereto as Exhibit 2 is a true and correct copy of an e-mail from Hilary Ware to C. Dunham Biles, dated September 19, 2007.

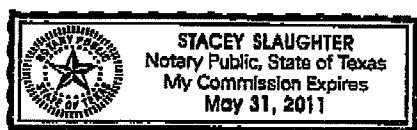
5. Attached hereto as Exhibit 3 is a true and correct copy of an e-mail from Don Colleluori to C. Dunham Biles, dated September 21, 2007.

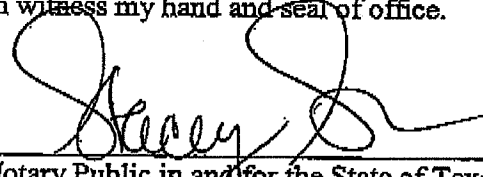
6. Attached hereto as Exhibit 4 is a true and correct copy of M.P.'s First Set of Interrogatories to Google, Inc.

7. Attached hereto as Exhibit 5 is a true and correct copy of M.P.'s First Request for the Production of Documents to Google, Inc.


C. Dunham Biles

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 14 day of November 2007, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

BICKEL & BREWER

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August 2, 2007

VIA HAND DELIVERY AND FACSIMILE

Decker Cammack
Fish & Richardson, P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201

Re: Cause No. 07-07939-H; In Re: *Petition of M.P. Requesting a Deposition of Corporate Representative for Google, Inc.*

Dear Mr. Cammack:

Enclosed please find file-marked copies of:

- (1) Petition of M.P. Requesting a Deposition of Corporate Representative for Google, Inc.; and
- (2) Order Setting Hearing.

Additionally, as a courtesy, enclosed please find the Notice of Deposition of Designated Representative of Google, Inc. which we intend to serve. We will forward you the Order Setting Hearing once it is signed.

If you are authorized and agree to accept service of the Petition of M.P. Requesting a Deposition of Corporate Representative for Google, Inc. on behalf of Google, Inc., please so indicate by signing below.

As always, if you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

C. Dunham Biles



Decker Cammack
August 2, 2007
Page 2.

Decker Cammack
Fish & Richardson, P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201

Counsel for Google, Inc.

Enclosures

5138870.1
0500-02

No. 07-07934-H.

IN RE: PETITION OF M.P. REQUESTING A DEPOSITION OF CORPORATE REPRESENTATIVE FOR GOOGLE, INC.	§ § § § §	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS 160th JUDICIAL DISTRICT
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NOTICE OF DEPOSITION OF DESIGNATED REPRESENTATIVE OF GOOGLE, INC.

TO: Google, Inc., by and through their counsel of record, Decker Cammack, 1717 Main Street, Suite 5000, Dallas, TX 75201

PLEASE TAKE NOTICE that, pursuant to the Texas Rules of Civil Procedure 199, Plaintiff M.P., by and through attorneys of record, Bickel & Brewer, shall take the deposition upon oral examination of a designated representative of Google, Inc. ("Deponent") at the offices of Bickel & Brewer, 4800 Bank One Center, 1717 Main Street, Dallas, Texas 75201, before a Notary Public or other officer authorized to administer oaths. The deposition shall be conducted at 9:30 a.m. on August __, 2007. The deposition may be recorded by sound, videotape, and/or stenographic means in accordance with the Texas Rules of Civil Procedure. The deposition shall continue from day-to-day, excluding Saturdays, Sundays, and legal holidays, until completed.

The deposition will be taken in accordance with the provisions of the Texas Rules of Civil Procedure and shall be for the purpose of discovery, for use as evidence, and for all other purposes allowable by law.

Deponent is directed to designate a representative or representatives to testify on its behalf concerning each of the following matters:

NOTICE OF DEPOSITION OF DESIGNATED REPRESENTATIVE OF GOOGLE, INC.

1. Information sufficient to determine the identity of the individuals and/or entities responsible for originally posting the blog "Del Mar Country Club is a Fraud" at <http://dmccsucks.blogspot.com> and the subsequent blog post entitled "MP must be stopped!" on November 9, 2006 at 7:46 a.m., including their names, addresses, and phone numbers.

2. Information sufficient to determine the identify of the individuals and/or entities who left blog comments in response to the "MP must be stopped!" posted on November 9, 2006, including their names, addresses, and phone numbers.

3. Information sufficient to identify the individuals and/or entities who linked to the Del Mar Country Club homepage (<http://delmarcountryclub.com>) from a hyperlink entitled "Goat Track" located under the "Links" section of "Del Mar Country Club is a Fraud" blog, including their names, addresses, and phone numbers.

Respectfully submitted,

BICKEL & BREWER

By: _____

John W. Bickel, II
State Bar No. 08867720
C. Dunham Biles
State Bar No. 24042407

4800 Bank One Center
1717 Main Street
Dallas, Texas 75201
Telephone: (214) 653-4000
Telecopier: (214) 653-1015

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be served upon the following attorneys of record in the above cause via facsimile in accordance with Rule 21 of the Texas Rules of Civil Procedure, on this _____ day of August, 2007.

Decker Carmack
1717 Main Street, Suite 5000
Dallas, TX 75201
Attorneys for Defendant
Google, Inc.

C. Dunham Biles

5138699.2
1714-03

DELIVERY/PICKUP REQUEST

BICKEL & BREWER
4800 Bank One Center
1717 Main Street
Dallas, Texas 75201
(214) 653-4000

Please deliver to/pickup from:

Date: 8/2/07

Decker Cammack Fish & Richardson
1717 Main, Ste. 3000, Dls, Tx 75201

Re: Cause No. 07-07939 - Petition of M.P.

From: CDB

Circle preferred time for delivery:

- (1) 10:30 a.m.
- (2) 1:00 p.m.
- (3) 3:30 p.m.
- (4) No later than _____ o'clock (RUSH)

Circle preferred time for filing

- (1) 10:30 a.m.
- (2) 1:00 p.m.
- (3) 3:30 p.m.

Contents of envelope:

- 1) File marked copy of petition w/Order
- 2) Depo. Notice of Corporate Representative

Delivered by: [Signature] Time: 2:47

Received by: [Signature] Time: 2:47

Attorney Copy - White
Delivery Record - Yellow
Address - Pink
Secretaries Copy - Goldenrod

Confirmation Report - Memory Send

Time : 08-02-07 03:28pm
Tel line :
Name :

Job number : 547
Date : 08-02 03:25pm
To : 0484#500+02#2147472091
Document pages : 10
Start time : 08-02 03:25pm
End time : 08-02 03:28pm
Pages sent : 10
Status : OK

Job number : 547 *** SEND SUCCESSFUL ***

BICKEL & BREWER
ATTORNEYS AND COUNSELLORS
1400 BANK ONE CENTER
1777 MAIN STREET
DALLAS, TEXAS 75201
PHONE (214) 853-1000
FAX (214) 853-1010

785 FIFTH AVENUE
NEW YORK, N.Y. 10105
(212) 260-1000

www.bickelbrower.com

TELECOPIER TRANSMITTAL COVER SHEET

TO: DECKER CAMMACK, ESQ.
FISH & RICHARDSON

TELECOPIER NO: 214-747-2091

FROM: C. DUNHAM BILES

DATE: AUGUST 2, 2007

CLIENT/MATTER NO.: 0500-02; In Re: Petition of M.P. Requesting a
Deposition of Corporate Representative for Google, Inc.

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE: _____

THE INFORMATION CONTAINED IN THIS TELECOPIED MESSAGE, INCLUDING ANY ENCLOSURES, IS ATTORNEY
PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR
ENTITY NAMED ABOVE AS ADDRESSEE. THE REVIEW, DISSEMINATION, COPYING OR DELETION OF THIS
COMMUNICATION BY OR TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF
YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND
RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

512855.1
0600-07

BICKEL & BREWER
ATTORNEYS AND COUNSELLORS
1400 BANK ONE CENTER
1777 MAIN STREET
DALLAS, TEXAS 75201
PHONE (214) 853-1000
FAX (214) 853-1010

785 FIFTH AVENUE
NEW YORK, N.Y. 10105
(212) 260-1000

www.bickelbrower.com

www's Direct Dial: (214) 453-1017
www's Email Address: Lab@bickelbrower.com

August 2, 2007

From: "Hilary Ware" <hware@google.com>
To: "Dunham Biles" <CDB@bickelbrewer.com>
Date: 9/19/2007 3:31 PM
Subject: Re: Clerk's Number

Thanks. We use Figari & Davenport often in Dallas; I've emailed them to ask if they can send someone and as soon as they clear conflicts, I'll let you know who your compatriot in agreeing to a court order directing us to produce the info we have on the blogger (depo off calendar) will be...

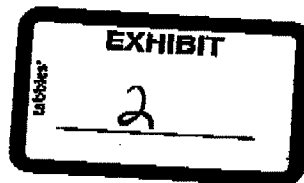
On 9/19/07, Dunham Biles <CDB@bickelbrewer.com> wrote:
Stephanie Gomez, Clerk 160th: 214-653-7271

Cause No. 07-07934-H

C. Dunham Biles
Bickel & Brewer
(214)653-4000
cdb@bickelbrewer.com

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Hilary E. Ware
Senior Litigation Counsel
Google Inc.



From: "Don Colleluori" <don.colleluori@figdsv.com>
 To: "Dunham Biles" <CDB@bickelbrewer.com>
 Date: 9/21/2007 4:36 PM
 Subject: RE: Google Order

I just forwarded the order to her, noting that I assumed she will deal directly with you on the production. If you don't hear differently from me by Monday, go ahead and contact her directly.

-----Original Message-----

From: Dunham Biles [mailto:CDB@bickelbrewer.com]
 Sent: Friday, September 21, 2007 4:32 PM
 To: Don Colleluori
 Subject: RE: Google Order

Going forward, may I speak directly with Hilary Ware?

C. Dunham Biles
 Bickel & Brewer
 (214)653-4000
 cdb@bickelbrewer.com

>>> "Don Colleluori" <don.colleluori@figdsv.com> 9/21/2007 4:30 PM >>>
 Thanks.

-----Original Message-----

From: Dunham Biles [mailto:CDB@bickelbrewer.com]
 Sent: Friday, September 21, 2007 4:20 PM
 To: Don Colleluori
 Subject: Google Order

Attached please find the Order entered this morning.

C. Dunham Biles
 Bickel & Brewer
 (214)653-4000
 cdb@bickelbrewer.com

The information contained in this e-mail message, including any attachments, is attorney privileged and/or confidential information intended only for the use of the individual or entity named as addressee. The review, dissemination, distribution, or copying of this communication by or to anyone other than the intended addressee is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail and destroy all copies of the original message. Thank you.

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strictly prohibited. If you have received this communication in error,
please immediately notify the sender by reply e-mail and destroy all
copies of the original message. Thank you.

No. 07-07934-H

IN RE:
PETITION OF M.P.
REQUESTING A DEPOSITION
OF CORPORATE REPRESENTATIVE
FOR GOOGLE, INC.

§
§
§
§
§

IN THE DISTRICT COURT OF
DALLAS COUNTY, TEXAS
160th JUDICIAL DISTRICT

M.P.'S FIRST SET OF
INTERROGATORIES TO GOOGLE, INC.

TO: Google, Inc., by and through its custodian of records, Edmond Choi, 1600 Amphitheatre Parkway, Mountain View, CA 94043.

COMES NOW, M.P., by and through attorneys of record, Bickel & Brewer, and pursuant to Rule 197 of the Texas Rules of Civil Procedure, serves M.P.'s First Set of Interrogatories ("Interrogatories") upon Google, Inc. ("Google"). Google shall answer these Interrogatories fully, in writing, and under oath subject to the definitions and instructions set forth herein. Google shall serve its answers upon counsel for M.P. at the offices of Bickel & Brewer, 1717 Main Street, Suite 4800, Dallas, Texas 75201, within thirty (30) days after service of these Interrogatories.

I.

DEFINITIONS AND INSTRUCTIONS

1. To the extent provided by the Texas Rules of Civil Procedure, these Interrogatories are intended to be continuing in nature. You are requested and required to supplement your responses when appropriate or necessary to the full extent provided by the Texas Rules of Civil Procedure, the Local Rules, and any Order of this Court to make your responses correct and complete.

M.P.'S FIRST SET OF
INTERROGATORIES TO GOOGLE, INC.



2. These Interrogatories are intended to include all documents in your possession, or subject to your custody or control, whether directly or indirectly. A document is deemed to be within your possession, custody, or control if: (1) it is within your actual possession, custody or control; or (2) it is within the possession of any other person or entity and you have the right to obtain the document from such person or entity, and you:

- (a) own the document in whole or in part;
- (b) have a right by contract, statute or otherwise to use, inspect, examine, or copy such document on any term; or
- (c) as a practical matter, have been able to use, inspect, examine, or copy such document when you have sought to do so.

3. Unless otherwise indicated, the use in these Interrogatories of your name or the name of any plaintiff, defendant, party, business organization, or other legal entity, shall specifically include all of that entity's present or former employees, officers, directors, agents, representatives, members, departments, sections, affiliates, subsidiaries, parents, attorneys of the person, party, or business organization, and all other persons acting on its behalf.

4. "You" and "your" shall refer to Google, including but not limited to Google's representatives, agents, employees, attorneys, and/or any one acting on its behalf.

5. For purpose of interpreting or construing the scope of these Interrogatories, you are instructed to give words their most expansive and inclusive meanings. You should therefore:

- (a) Construe the words "and" as well as "or" in the disjunctive or conjunctive, as necessary to make the Request for inclusive;
- (b) Construe the term "including" to mean "including, but not limited to";
- (c) Construe the word "any" to include and mean "each and every" and "any and all";
- (d) Construe the plural form of a word to include the singular and vice versa; and

(e) Construe the masculine noun or adjective to include the feminine and vice versa.

6. "Communication," "communicate," and "communicated," means any oral, written or electronic utterance, notation, or statement of any nature whatsoever, including without limitation: correspondence; personal conversations; telephone calls; dialogues; discussions; interviews; consultations; telegrams; e-mails; metadata; telexes; cables; facsimile transmissions; memoranda; agreements; audio recordings, and other oral, written, or electronic communications.

7. "Relate to," "related to," "relating to," "refer to," "regarding," "concerning," or "concern" mean concerning, relating to, regarding, reflecting, referring to, having a relationship to, pertaining to, identifying, containing, pertinent to, compromising, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, or constituting, directly or indirectly, in whole or in part, or to be otherwise factually, legally, or logically connected to the subject matter of the particular request.

8. "Person" and "persons" include natural individuals, groups of natural individuals acting in a collegial capacity (e.g., a committee or counsel), corporations, partnerships, associations, trusts, joint ventures, and any other incorporated or unincorporated business, governmental, public or legal entity. A reference to any person shall include, when applicable, its subsidiaries, controlled persons, controlling persons, shareholders, officers, directors, employees, agents, or other persons acting or purporting to act on its behalf.

9. "Describe," "description," "identification," "identify," and "identity," when used in reference to (a) a natural individual, requires you to state his or her full name, residential and business addresses, and telephone numbers; (b) a corporation, requires you to state its full

corporate name and any name under which it does business, its state of incorporation, and the address of its principal place of business; (c) business, requires you to state the full name or style under which the business is conducted, its business address or addresses, the types of businesses in which it is engaged, the geographical areas in which it conducts those businesses, and the identity of the person or persons who own, operate, and control the businesses; (d) a document, requires you to state the nature of the document, its title, its date, and the name or names of its authors or recipients, its length in number of pages or otherwise, and its present location and custodian; (e) a communication, requires you to identify persons participating in the communication and to state the date, time, manner, place, means, and substance of the communication which was written, to identify the document or documents which refer to the communication.

II.

PRIVILEGED OR PROPRIETARY INFORMATION

If you contend that a response to an interrogatory calls for the disclosure of privileged information, in whole or in part, or if you otherwise object to any part of any interrogatory, you are required to provide a complete response to the portion of the interrogatory that is not privileged or objectionable. With respect to the remainder of the interrogatory, state the following: (a) the reason for such objection or ground for exclusion; (b) the identity of each person having knowledge of the factual basis and the identity of the individual documents, if any, on which the privilege or other ground is asserted; (c) the nature of the claim or privilege; and (d) the brief description of the item, document or thing in a manner so as not to waive the privilege.

III.

INTERROGATORIES

INTERROGATORY NO. 1:

In relation to the website www.blogspot.com, provide the following information for the account with the user name "DMCCSUCKS": (1) the date and time when the account was created; (2) the e-mail address provided to create the account; (3) the IP address(es) associated with the account; and (3) any additional information that identifies, or that could help to identify, the person and/or entity that created the account, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

INTERROGATORY NO. 2:

In relation to the website www.blogspot.com, provide the following information for the blog "Del Mar Country Club Is A Fraud," located at www.dmccsucks.blogspot.com: (1) the date and time when the blog was first created; (2) the user name of the person who created the blog; (3) the e-mail address provided to create the account; (4) the IP address(es) associated with the account; and (5) any additional information that identifies, or that could help to identify, the person and/or entity that created the blog, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

INTERROGATORY NO. 3:

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmccsucks.blogspot.com, provide the following information for the blog posting "MP must be stopped!": (1) the date and time when the post occurred; (2) the user name for the posting; (3) the e-mail address provided to create the account; (4) the IP address(es) associated with the account; and (5) any additional information that identifies, or that could help to identify, the person and/or entity who made the posting, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

INTERROGATORY NO. 4:

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmccsucks.blogspot.com, provide the following information for comments posted in response to the blog posting "MP must be stopped!": (1) the date and time when each comment

was posted; (2) the IP address(es) associated with the posted comments; and (3) any additional information that identifies, or that could help to identify, the person(s) and/or entity who posted the comments, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

INTERROGATORY NO. 5:

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmcCsucks.blogspot.com, provide the following information for the hyperlink entitled "Goat Track," located under the "Links" section of "Del Mar Country Club Is A Fraud" blog: (1) the date and time when the link was created; (2) the name of the user that created the link; (3) the e-mail address provided to create the user's account; (4) the IP address(es) associated with the user's account; (5) the date and time when individuals have linked to the Del Mar Country Club homepage (<http://delmarcountryclub.com>) from the "Goat Track" hyperlink; and (6) the IP address(es) of individuals who used the "Goat Track" hyperlink.

ANSWER:

Respectfully submitted,

BICKEL & BREWER

By: 

John W. Bickel, II
State Bar No. 08867720
C. Dunham Biles
State Bar No. 24042407

4800 Bank One Center
1717 Main Street
Dallas, Texas 75201
Telephone: (214) 653-4000
Telecopier: (214) 653-1015

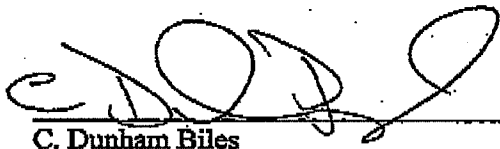
ATTORNEYS FOR M.P.

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be served upon the following custodian of record in the above cause via email in accordance with Rule 21 of the Texas Rules of Civil Procedure, on this 27 day of September, 2007.

Edmond Choi
Custodian of Record
Google, Inc.
1600 Amphiteatre Parkway
Mountain View, CA 94043

Hilary Ware, Esq.
Google, Inc.
1600 Amphiteatre Parkway
Mountain View, CA 94043



C. Dunham Biles

5142926.1
1714-03

No. 07-07934-H

IN RE:
PETITION OF M.P.
REQUESTING A DEPOSITION
OF CORPORATE REPRESENTATIVE
FOR GOOGLE, INC.

§
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§
§
§

IN THE DISTRICT COURT OF
DALLAS COUNTY, TEXAS
160th JUDICIAL DISTRICT

M.P.'S FIRST REQUEST FOR THE
PRODUCTION OF DOCUMENTS TO GOOGLE, INC.

TO: Google, Inc., by and through its custodian of records, Edmond Choi, 1600 Amphitheatre Parkway, Mountain View, CA 94043.

COMES NOW, M.P., by and through attorneys of record, Bickel & Brewer, and pursuant to Rule 196 of the Texas Rules of Civil Procedure, serves M.P.'s First Request for the Production of Documents ("Request for Documents") upon Google, Inc. ("Google"). M.P. hereby requests production, inspection, and copying of all documents and tangible things which are responsive to the subject matter categories set forth below.

Google shall answer this Request for Documents fully, in writing, and under oath, subject to the definitions and instructions set forth herein. Google is requested and required, pursuant to Rule 196 of the Texas Rules of Civil Procedure, to produce for inspection and copying the documents specified below at the offices of Bickel & Brewer, 1717 Main Street, Suite 4800, Dallas, Texas 75201, on the earlier of any date ordered by the Court, as agreed by the parties, or not more than thirty (30) days after service hereof. The produced documents should be organized as they are kept in the ordinary course of business or organized and labeled to correspond with each particular Request.

M.P.'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO GOOGLE, INC.



I

DEFINITIONS AND INSTRUCTIONS

1. To the extent provided by the Texas Rules of Civil Procedure, this Request for Documents is intended to be continuing in nature. You are requested and required to supplement your responses when appropriate or necessary to make correct and complete to the full extent provided by the Texas Rules of Civil Procedure, the Local Rules, and any Order of this Court.

2. To the extent that Google believes that any of the following requests are vague or ambiguous, Google is requested to notify M.P. immediately and a clarification will be provided.

3. "You" and "your" shall refer to Google, including but not limited to Google's representatives, agents, employees, attorneys, and/or anyone acting on its behalf.

4. This Request for Documents is intended to include all documents in your possession, or subject to your custody or control, whether directly or indirectly. A document is deemed to be within your possession, custody, or control if: (1) it is within your actual possession, custody or control; or (2) it is within the possession of any other person or entity and you have the right to obtain the document from such person or entity, and you:

(a) own the document in whole or in part;

(b) have a right by contract, statute or otherwise to use, inspect, examine or copy such documents on any term; or

(c) as a practical matter, have been able to use, inspect, examine or copy such document when you have sought to do so.

For the avoidance of doubt, this Request for Documents is intended to include, but is not limited to, all documents subject to your control that are stored on any computers, Personal Digital Assistants (PDA), or Blackberries, that are in your custody or possession.

5. Unless otherwise indicated, the use in this Request of your name or the name of any plaintiff, defendant, party, business organization, or other legal entity, shall specifically

include all of that entity's present or former employees, officers, directors, agents, representatives, members, departments, sections, affiliates, subsidiaries, parents, attorneys of the person, party, or business organization and all other persons acting on its behalf.

6. Each request seeks production of responsive documents in their entirety, without abbreviation, deletion, or redaction. For the avoidance of doubt, each responsive e-mail message should be produced with all of its respective e-mail attachments, and each responsive e-mail attachment should be produced with its respective parent e-mail message and with all e-mail attachments to that respective parent e-mail message. To the extent that you consider an e-mail message and its corresponding e-mail attachment(s) to constitute separate documents, M.P. requests the production of all documents attached to each responsive e-mail message, as well as all e-mail messages for which a responsive document is attached and all other documents attached to said e-mail messages. For the further avoidance of doubt, all responsive electronic documents should be produced with all their corresponding metadata. To the extent that you consider an electronic document's metadata to constitute a separate document, M.P. requests the production of all metadata that correspond to each responsive electronic document and all electronic documents that correspond to each responsive piece of metadata.

7. For purpose of interpreting or construing the scope of these Requests, you are instructed to give words their most expansive and inclusive meanings. You should, therefore:

- (a) Construe the words "and" as well as "or" in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- (b) Construe the term "including" to mean "including, but not limited to";
- (c) Construe the word "any" to include and mean "each and every" and "any and all";
- (d) Construe the plural form of a word to include the singular and vice versa; and

(e) Construe a masculine noun or adjective to include the feminine and vice versa.

8. "Communication," "communicate," and "communicated," means any oral, written or electronic utterance, notation, or statement of any nature whatsoever, including without limitation: correspondence; personal conversations; telephone calls; dialogues; discussions; interviews; consultations; telegrams; e-mails; e-mail attachments; metadata; telexes; cables; facsimile transmissions; memoranda; agreements; audio recordings, and other oral, written, or electronic communications.

9. "Person" and "persons" include natural individuals, groups of natural individuals acting in a collegial capacity (e.g., a committee or counsel), corporations, partnerships, associations, trusts, joint ventures, and any other incorporated or unincorporated business, governmental, public or legal entity. A reference to any person shall include, when applicable, its subsidiaries, controlled persons, controlling persons, shareholders, officers, directors, employees, agents, or other persons acting or purporting to act on its behalf.

10. The term "document" shall mean all writings of any sort and should be construed in its broadest sense to include but not be limited to all original and non-identical copies, whether by reason of marginalia or other notes or alterations, and all preliminary or subsequent drafts of the following items, whether printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand. For avoidance of doubt, an electronic document and its corresponding metadata constitute a single document.

11. Unless otherwise indicated, the use in these Interrogatories of your name or the name of any plaintiff, defendant, party, business organization, or other legal entity, shall specifically include all of that entity's present or former employees, officers, directors, agents,

representatives, members, departments, sections, affiliates, subsidiaries, parents, attorneys of the person, party, or business organization, and all other persons acting on its behalf.

II.

PRIVILEGED OR PROPRIETARY INFORMATION

If any document requested is withheld on the basis of a claim of privilege or work product, or otherwise, you are requested to submit a description of the withheld material or information pursuant to Rule 193.3(b) of the Texas Rules of Civil Procedure.

III.

ELECTRONICALLY STORED INFORMATION

If any information is withheld because such information is stored electronically, you are requested to submit a written statement, no later than the date of the document production, identifying the subject matter of the information and the place or places where such information is maintained, and for information stored electronically, provide a copy of the diskette or tape containing the electronically stored information, including all metadata for that electronically stored information, a suitable program or method of retrieving such information, and a print-out of the electronically stored information.

IV.

DESTROYED DOCUMENTS

If any document requested has been lost, discarded, or destroyed, you are requested to submit a written statement no later than the date of the commencement of the document production, identifying as completely as possible each such document so lost, discarded or destroyed. Identification of each such document shall include the date of disposal, manner of disposal, reason for disposal, persons authorizing the disposal, persons having knowledge of the disposal and persons disposing of the document.

V.

REQUESTED DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

In relation to the website www.blogspot.com, provide all documents with the following information about the account with the user name "DMCCSUCKS": (1) the date and time when the account was created; (2) the e-mail address provided to create the account; (3) the IP address(es) associated with the account; and (3) any additional information that identifies, or that could help to identify, the person and/or entity that created the account, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

REQUEST FOR PRODUCTION NO. 2

In relation to the website www.blogspot.com, provide all documents with the following information about the blog "Del Mar Country Club Is A Fraud," located at www.dmccsucks.blogspot.com: (1) the date and time when the blog was first created; (2) the user name of the person who created the blog; (3) the e-mail address provided to create the account; (4) the IP address(es) associated with the account; and (5) any additional information that identifies, or that could help to identify, the person and/or entity that created the blog, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

REQUEST FOR PRODUCTION NO. 3

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmccsucks.blogspot.com, provide all documents with the following information about the blog posting "MP must be stopped!": (1) the date and time when the post occurred; (2) the user name for the posting; (3) the e-mail address provided to create the account; (4) the IP address(es) associated with the account; and (5) any additional information that identifies, or that could help to identify, the person and/or entity who made the posting, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

REQUEST FOR PRODUCTION NO. 4

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmccsucks.blogspot.com, provide all documents with the following information for

M.P.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO GOOGLE, INC.

REQUEST FOR PRODUCTION NO. 4

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmcscsucks.blogspot.com, provide all documents with the following information for comments posted in response to the blog posting "MP must be stopped!": (1) the date and time when each comment was posted; (2) the IP address(es) associated with the posted comments; and (3) any additional information that identifies, or that could help to identify, the person(s) and/or entity who posted the comments, including, but not limited to: (a) name; (b) address; and (c) telephone number.

ANSWER:

REQUEST FOR PRODUCTION NO. 5

In relation to the blog "Del Mar Country Club Is A Fraud," located at www.dmcscsucks.blogspot.com, provide all documents with the following information for the hyperlink entitled "Goat Track," located under the "Links" section of "Del Mar Country Club Is A Fraud" blog: (1) the date and time when the link was created; (2) the name of the user that created the link; (3) the e-mail address provided to create the user's account; (4) the IP address(es) associated with the user's account; (5) the date and time when individuals have linked to the Del Mar Country Club homepage (<http://delmarcountryclub.com>) from the "Goat Track" hyperlink; and (6) the IP address(es) of individuals who used the "Goat Track" hyperlink.

ANSWER:

Respectfully submitted,

BICKEL & BREWER

By: 

John W. Bickel, II
State Bar No. 08867720
C. Dunham Biles
State Bar No. 24042407

4800 Bank One Center
1717 Main Street
Dallas, Texas 75201
Telephone: (214) 653-4000
Telecopier: (214) 653-1015

ATTORNEYS FOR M.P.

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be served upon the following custodian of record in the above cause via email in accordance with Rule 21 of the Texas Rules of Civil Procedure, on this 27 day of September, 2007.

Edmond Choi
Custodian of Record
Google, Inc.
1600 Amphiteatre Parkway
Mountain View, CA 94043

Hilary Ware, Esq.
Google, Inc.
1600 Amphiteatre Parkway
Mountain View, CA 94043


C. Dunham Biles

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BICKEL & BREWER

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787 FIFTH AVENUE
50TH FLOOR
NEW YORK, NEW YORK 10153
(212) 489-1400

August 24, 2007

VIA HAND DELIVERY

Ms. Shirley Gomez, Clerk
George L. Allen, Sr. Courts Building
160th Judicial District Court, 6th Floor
600 Commerce Street, Box 640
Dallas, Texas 75202

Re: Cause No. 07-07934-H; *In Re: Petition of M.P.*
Requesting a Deposition of Corporate Representative for Google, Inc.

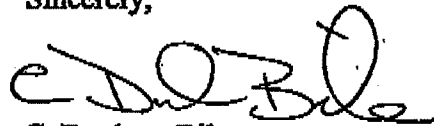
Dear Ms. Gomez:

Enclosed please find an Order Authorizing Discovery with regard to the above-referenced matter.

By copy of this letter, commercial litigation counsel for Google, Inc., Hillary Ware, is being provided with a copy of this Order. I have conferred with Ms. Ware concerning this Order. Google, Inc. does not oppose immediate entry of the Order.

As always, if you have any questions, please do not hesitate to contact me.

Sincerely,



C. Dunham Biles



Ms. Shirley Gomez, Clerk
August 24, 2005
Page 2

cc: Hilary Ware, Esq.
Commercial Litigation Counsel
Google, Inc.
1600 Amphitheater Pkwy.
Mountain View, CA 94043
650-253-5807

Enclosures

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