CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

BRADLEY W. SMITH, an individual, and RESCUE ONE FINANCIAL, LLC	)	
Plaintiffs,	)	
vs.	)	Case No. 24-C-15-004789
BRYAN LEVIN,	)	
Defendant.	)	

MEMORANDUM OF MYVESTA FOUNDATION AS AMICUS CURIAE SUPPORTING MOTION TO VACATE FRAUDULENT CONSENT ORDER

The plaintiffs in this case have moved the Court to vacate the "Consent Order" on the ground that the order was procured pursuant to various "irregularities" and also urge the Court to dismiss the lawsuit with prejudice. The better term for what happened here was that the Court was defrauded, perhaps criminally so. Myvesta Foundation is the company that operates the "Get Out of Debt Guy" web site at http://www.getoutofdebt.org, a web site devoted to informing consumers about the merits and demerits of companies (such as Rescue One Financial) that purportedly help consumers who incur heavy debt burdens. Myvesta was the intended victim of the fraud, although it was never identified in the original lawsuit or motion to vacate. Myvesta now appears as amicus curiae to support the motion to vacate for reasons additional to those given in the motion.

Myvesta urges the Court to take notice of two separate patterns of wrongdoing that this case has in common with many other fraudulent lawsuits, filed both in Maryland and throughout the United States. As we explain below, courts across the country have been subjected to fraudulent misuse of the courts to obtain improper prior restraints against fully protected free speech and, as more fully explained below, to suppress perfectly legal, albeit critical, speech by having it

"deindexed" from Internet search engines, thereby rendering it effectively invisible. In light of this information, the Court may wish to consider whether to inquire into the degree of responsibility both of the plaintiffs in this action and of the lawyer, Bennett Wills, who originally filed this lawsuit (and, we believe, at least two others) bearing the signatures of fake defendants. In addition, amicus urges the Court to institute procedures to inhibit future frauds of this sort from being perpetrated.

Factual Background

The complaint in this case, filed on September 18, 2015, alleges that an anonymous comment, posted in September 2014 to some articles on the "Get Out of Debt" site, contains false and defamatory content.[1] The complaint prayed for a preliminary and permanent injunction compelling the individual defendant, the fictional "Bryan Levin" who purportedly lived at 1427 South Charles Street in Baltimore, to "remove from the Internet all material pertaining to the Plaintiffs," and barring him from "posting or publishing any false or defamatory material . . . regarding Plaintiffs."

A few days after the complaint was filed, a document entitled "Consent Judgment (Md. Rule 2-612)" was submitted under cover of a letter from lawyer Bennett Wills, dated September 28, 2015, representing that the parties had "reached an agreement in the matter" and that "the Defendant has consented to judgment." The order purported to reflect an agreement between plaintiffs Bradley Smith and Rescue One Financial LLC and defendant "Bryan Levin" that certain statements in the September 2014 comments were false and defamatory; that not only the comments but also the entire

[1] The complaint alleged that the defamatory comments were attached to https://getoutof debt.org/51374/is-rescue-one-financial-hiring-people-to-lie-to-google; https://getoutofdebt.org/85462/rescue-one-financial-consumer-complaint-february-6-2015; https://getoutofdebt.org/tag/rescue-one-financial; and https://getoutofdebt.org/62316/rescue-one-financial-still-sending-mailers-loans.

articles to which the comments were posted should be removed from the Internet; and that "all negative statements, material and/or information pertaining to the plaintiffs" was to be removed from the Internet as well as from any search engines. The consent judgment directed this removal by "Defendant," by "Defendant's agents," and by any "other person/entity assisting or enabling Defendant's publication of the below referenced Content." The order defined such persons or entities as "collectively Defendant's Agents" and proceeded to spell out, in successive paragraphs, what such other persons and entities were required to do with respect to removal. Paragraph 5 provided that, because "it is foreseeable that the above-referenced URL's and/or Content" would persist online, removal from search engines such as "Google, Yahoo! and Bing" was to be sought as well.

Each of these documents was signed by Bennett Wills, purportedly acting as counsel for plaintiff Bradley Smith and his company, Rescue One Financial LLC; the "consent judgment" also bore the signature of "Bryan Levin."

It is the general policy of Myvesta's Get Out of Debt Guy site not to remove comments after they are posted. Instead, as the site's terms explain, its policy is to allow people who post comments, but later regret having done so, to post an explanation and retraction; Myvesta believes that this approach maintains a public record of what was said, shows the correction of factual error, and holds defamers publicly accountable for their misdeeds. https://getoutofdebt.org/terms. However, the order imposes relief that purports to require removal of not only the allegedly false comments, but also the articles to which the comments were posted; it was also intended to induce Google and other search engines to remove from their search results not just the allegedly defamatory anonymous comments but the entire articles to which the comments were posted. When an online article is

"deindexed"—removed from the database against which search engine users run their search queries —the article becomes, for all practical purposes, hidden from consumers who are not already regular readers of the web site where the article has been published.

If the plaintiffs in this case had actually been able to identify the anonymous individual who posted comments on Myvetsa's blog, the commenter could easily have agreed with Bradley Smith and Rescue One Financial LLC about the defamatory nature of the comments, and they could have agreed about what compensation or other remedies the commenter could provide to plaintiffs for defaming them. They could not, however, by private agreement, have compelled the removal of the comments from the blog (much less the non-defamatory articles to which the comments were posted), and they could not have put a judge's imprimatur on the elimination of the web pages that included those comments from search engine listings. Inasmuch as the order imposes injunctive relief against speech without any adjudication that the speech is false or that it was published with actual malice, it constitutes a constitutionally impermissible prior restraint. *Metropolitan Opera Ass'n v. HERE Local 100,* 239 F.3d 172, 176-177 (2d Cir. 2001); *Lothschuetz v. Carpenter*, 898 F.2d 1200, 1208-09 (6th Cir. 1990) (concurring opinion on an issue joined by another of the three-judge appellate panel). Moreover, federal law makes blog hosts such as Myvesta immune from relief directed at content supplied by commenters on their web sites. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009). In the circumstances, it is apparent that the only purpose for filing this action and securing the Court's signature on the order was to prejudice the ability of intervenor Myvesta Foundation to carry content of which Bradley Smith and Rescue One Financial disapprove, and to communicate that content effectively to the public through listing on search engines.

In that respect, Myvesta was the **real** defendant in this case, particularly given the implicit admission on page 4 of plaintiffs' Motion to Vacate that Bryan Levin either was "uninformed" about the fact that he was named as a defendant, or was "possibly non-existent"—that is, is a fictional person, a name invented to make up for the fact that plaintiffs had no idea who the real author of the anonymous complaints was. The effort to achieve "deindexing" of the articles to which the comments were appended was intended to interfere with Myvesta's First Amendment right to communicate its views and opinions about the plaintiffs to members of the public who use search engines to obtain information about the plaintiffs. For example, consumers who have accumulated a significant amount of debt, and who have received a solicitation to use plaintiffs' services, might use Internet search engines to check plaintiffs' track record. Myvesta is entitled to communicate its views to such consumers.

Even though Myvesta was the target of this lawsuit, plaintiffs did not give Myvesta Foundation any notice that they were filing these papers or seeking relief to the detriment of Myvesta Foundation. The Supreme Court has held that the First Amendment requires notice to those sought to be enjoined so that they can have an opportunity to participate in a decision that will affect their speech rights. *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 181 (1968). Moreover, constitutional due process was violated when the Court entered an order harming intervenor's interests without intervenor having received any notice or opportunity to be heard in opposition to the proposed order.

This case is but one in a series of lawsuits that were filed in the name of Bradley Smith and/or Rescue One Financial purportedly complaining about comments made on blog posts on the Myvesta "Get Out of Debt Guy" web site, but then not just seeking relief about the allegedly

defamatory comments themselves, but also seeking to hide the non-defamatory articles to which they were appended from members of the public seeking information about the plaintiffs.

The first such case was brought by a law firm in the Florida Circuit Court for Broward County, alleging that some unidentified individual had posted negative comments on articles on Myvesta's web site. The complaint in *Rescue 1 Financial LLC v. John Doe*, No. CACE-14-024286 (Florida Circuit Court of the Seventeenth Judicial Circuit for Broward County) is available on the public electronic docket in that court, and is attached to this brief. The theory of the complaint was that John Doe had placed certain comments on articles on the getoutofdebt.org web site (that is, Myvesta's site, although Myvesta's identity was not mentioned), and that these comments were false and defamatory. The complaint acknowledged that neither the blog's host nor search engines such as Google could be sued over the hosted comments, but alleged that Google was unfairly serving as the "public electronic microphone" for the comments, bringing the false comments to public attention in that "Google electronically republishes the defamatory statements . . . every time a Google.com user searches the plaintiff's name." The complaint further alleged that, because the comments had been posted anonymously, it was not possible to identify the poster of the comments; consequently, the complaint sought leave to serve the anonymous defendant only by publication. And the complaint justified personal jurisdiction in Florida on the ground that the web site could be viewed in Florida and that it was possible that the anonymous commenter was from Broward County, Florida. Myvesta was never notified that the lawsuit had been filed seeking an injunction that would block public access through search engines to its non-defamatory articles about Rescue One Financial. The complaint was verified, on information and belief, by Bradley Smith. The court in that case allowed service to be effected by publication in a legal publication specific to Broward

County; thereafter, the court granted a default judgment as requested.

This case was the second such lawsuit filed in the name of Bradley Smith and Rescue One Financial, seeking to obtain a supposed consent order that would secure the same relief as had been sought in the Florida action — the "delisting" by search engines of articles that were not claimed to be defamatory, based on allegations that comments to those articles contained defamatory material. Myvesta's understanding is that a new suit was undertaken because Google did not effect the delisting in response to the Florida order. Levy Affidavit ¶ 4. Like the Florida action, this lawsuit was filed by an attorney, Bennett Wills. The consent order was purportedly signed by the named defendant, Bryan Levin. But Bryan Levin was a fictional defendant. *Id.* It follows that Bryan Levin did not sign the consent order; rather, his signature was forged. Nor was Myvesta given any notice of the action seeking to block public access to its non-defamatory articles about plaintiffs Smith and Rescue One Financial LLC.

"Bradley Smith" filed a third lawsuit: *Smith v. Garcia*, Case No. CV 16-144 S, 2017 WL 412722 (D.R.I. Jan. 31, 2017). As in this case and as in *Rescue 1 Financial v. Doe*, the complaint alleged that comments to articles on the Get Out of Debt Guy blog contained defamatory material, but sought orders calling for search engines to delist the entire articles, none of which were claimed to be defamatory. But unlike this case, the complaint in *Smith v. Garcia* was filed pro se. The complaint was purportedly signed by Bradley Smith, and was accompanied by a motion for entry of a consent order that was signed both by Smith and by the purported defendant, Deborah Garcia. Deborah Garcia was a fictional defendant; her signature was forged on the consent order papers; Smith's signature was **also** forged onto the complaint. Discovery in that case eventually revealed that Bradley Smith' s company Rescue One had hired reputation manager Richart Ruddie to help

"clean up" its reputation, and that the Rhode Island forgery was effected by Ruddie in furtherance of the "reputation clean-up" services for which he had been hired. And as in this case, no notice was given to Myvesta that a court order was being sought that would impede access by members of the public to its fair criticisms of Smith and his company.

In courts across the country, a large number of "fake cases" like this one have been filed for the purpose of suppressing articles that criticize various individuals and companies, without having to present any evidence of either falsity or the mental state required to establish defamation liability (actual malice for public figures and negligence for other plaintiffs). Volokh and Levy, *Dozens of Suspicious Court Cases, with Missing Defendants, Aim at Getting Web Pages Taken Down or Deindexed,* published simultaneously 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/ and http://pubcit.typepad.com/clpblog/2016/10/dozens-of-suspicious-court-cases-with-missing-defendants-aim-at-getting-web-pages-taken-down-or-dein.html.

Myvesta learned indirectly of the federal court order that was entered against its interests in *Smith v. Garcia*. It moved for leave to intervene in the action as a defendant, and it moved the federal court to vacate the fraudulently entered consent order. In addition, because Rhode Island has an anti-SLAPP statute, Myvesta moved to dismiss the lawsuit under the anti-SLAPP law. Chief Judge Smith granted all three motions, and set a schedule for briefing of the issue of Myvesta's claims for monetary relief under the anti-SLAPP law. At the same time, Chief Judge Smith asked the United States Attorney for the District of Rhode Island to investigate whether the submission of fraudulent papers implicated any federal criminal statutes. It is Myvesta's understanding that the

existence of that investigation was one of the factors that induced Richart Ruddie, the individual reputation manager who was apparently responsible for the filing of this action as well as *Smith v. Garcia* and *Rescue 1 Financial v. Doe,* to enter the Settlement Agreement that was submitted with the motion to vacate.[2]

ARGUMENT

As the intended victim of the fraud that was perpetrated on the Court through the filing of this action, Myvesta strongly endorses the relief sought by plaintiffs' motion. Certainly the order calling for the delisting from search engines of articles that Myvesta published about the plaintiffs, whose veracity and First-Amendment-protected status has never been challenged, ought to be vacated forthwith. Myvesta takes no position on whether plaintiffs have sound libel claims against the unknown persons who posted the challenged comments to Myvesta's articles about the plaintiffs. Considering that plaintiffs now admit that they have no idea who posted those comments, and thus no reason to believe that the poster or posters are located in Baltimore or, indeed, anywhere in the state of Maryland, the complaint should be dismissed if for no other reason than lack of personal jurisdiction over the anonymous commenter(s). In addition, considering that filing of this case constituted fraud from the outset, dismissal with prejudice is a fitting remedy.

Where Myvesta parts company with plaintiffs' motion is that plaintiffs have given the Court no reason to credit several self-serving statements seeking to absolve plaintiffs and their former counsel, Bennett Wills, from any responsibility for the fraud that was perpetrated on the Court.

[2]Myvesta has been asked to avoid public disclosure of several of the facts of which it is aware, to avoid prejudicing the federal criminal investigation. This brief has been crafted with that stricture in mind. If the Court desires a more detailed statement of facts, Myvesta asks that it be allowed to submit a more detailed factual account under seal.

These statements are made without any evidentiary support, and as we explain below, there is significant reason to doubt the veracity of these representations. Therefore, in granting the motion to vacate, as Myvesta hopes the Court will do, Myvesta urges the Court not to recite these self-serving representations on the assumption that they are true.

To the contrary, to the extent that the Court deems it important to protect the dignity of its own proceedings (as Chief Judge Smith has done in Rhode Island by soliciting the involvement of the United States Attorney), Myvesta urges the Court to consider whether to impose its own sanctions on those responsible for the fraud on this court, whether to refer the case to state or federal prosecutors in Maryland for investigation, and whether to ask professional licensing authorities to investigate the propriety of professional discipline of the lawyer who signed the complaint and proposed consent order accompanied by a forged signature.

A. There Are Indications That Plaintiffs and/or Attorney Bennett Wills Knew What Richart Ruddie Was Doing.

There is good reason to believe that plaintiffs Bradley Smith and Rescue One Financial knew or should have known that Richart Ruddie was using fraudulent means to "clean up" their reputations by concealing truthful criticisms and fair expressions of opinion from consumers whose only access to that information was through searches using search engines, and therefore that some of the unsworn representations to the contrary in their moving papers may be inaccurate.

The first such indication is the papers filed in the Florida Circuit Court for Broward County in *Rescue 1 Financial v. Doe*. As the papers reflect, that complaint was filed on December 26, 2014, and Myvesta has previously been informed both by Ruddie's own counsel and by a California lawyer representing Rescue One Financial that it was Ruddie who arranged for the filing of the case. Levy

Affidavit ¶ 3. That is one reason why *Rescue 1 Financial v.Doe* is listed in the Settlement Agreement in *Smith v. Garcia* (submitted as an attachment to plaintiffs' motion) as one of the orders in the "fake lawsuits" procured for plaintiffs by Richart Ruddie for the purpose of getting Myvesta's criticisms of plaintiffs delisted from search engines that Ruddie (with the cooperation of plaintiffs) is required to get vacated. Yet plaintiffs claim at page 4 of their motion that they did not secure Ruddie's services until April 2015. That representation cannot be correct.

Moreover, the complaint in *Rescue 1 Financial v. Doe* alleged that, because the comments had been posted anonymously, it was not possible to identify the commenter(s); the complaint further alleged that the commenters might be located in Broward County. These were the excuses given for serving by publication in an obscure Broward County publication, and for obtaining a default judgment. Not only did the complaint make these allegations, but plaintiff Bradley Smith verified, under oath, that he believed these facts to be true. But then, as soon as they learned that Google was unwilling to effect the delisting that the company had hired Ruddie to secure for them, plaintiffs represented that they just believed the accuracy of the completely contradictory allegations of **this** complaint — that Ruddie had managed to identify anonymous commenters who happened to be in Baltimore, where the complaint was filed.

What's more, plaintiffs were keeping close enough track of what Ruddie was doing on their behalf that, two months after Ruddie secured the entry of the phony consent order in this case, they entered a contract with one of Ruddie's firms, RIR1984 LLC, dated November, 2015 (again, not April 2015, the date set forth in the moving papers), that referred to the delisting that had been accomplished in this case. (A copy is attached). The contract, which called for Ruddie to be paid $6000 per month for at least nine months, recited that Ruddie would monitor the Internet for future

"negative listings" that would be removed "just as we removed the previous Steve Rhodes articles" (Steve Rhode is Myvesta's principal). And yet, when the existence of this case first came to light, the lawyer who was at the time representing Bradley Smith vis-à-vis Myvesta's litigation in the Rhode Island federal court, represented that Smith had never signed any retainer agreement with Bennett Wills, the lawyer whom Ruddie had obtained to file this case.

Turning now to attorney Bennett Wills, the representation previously received from Smith's lawyer (Robby Birnbaum, whose name is mentioned in the moving papers) that Smith had never signed a retainer agreement authorizing Wills to file a lawsuit in his name, raises questions about what Wills knew about the case he was filing and whether he filed this lawsuit on proper authority. In addition, it has come to Myvesta's attention that Bennett Wills has filed two additional "fake lawsuits" in Maryland circuit courts that are comparable to this case. *Visionstar, Inc. v. Perez,* No. 24C15005743 (Cir. Ct. Balt. City); *Cohen v. Wilkerson*, No. 06C15070022 (Cir. Ct. Carroll Cy). (Copies of these two complaints are attached). The papers use very similar language, and an investigation conducted by a private detective retained by UCLA law professor Eugene Volokh to assist in his investigation of the phenomenon of fake litigation established that, as in this case, neither of the two individuals who were named as defendants and whose signatures appear on the consent orders live at the addresses shown for them. See attached Declaration of Giles Miller. Moreover, both cases show obvious signs of being fake: the signatures of defendants "Mark Wilkerson" and "Daniel Perez" appear to have been written by the same hand; and the very carefully handwritten signature of "Mark Wilkerson" spells his name as "Wilerkson." And in the Visionstar case, the allegation in paragraph 13 about the IP address from which the supposedly defamatory reviews were posted to the Ripoff Report web site is a highly implausible. Generally speaking, a

subpoena can be issued in connection with a case seeking to identify the poster of an anonymous comment, but that is something that happens **after** the complaint is filed, not something that can be listed in the complaint. Undersigned counsel has contacted inside counsel for Xcentric Ventures, the company that operates Ripoff Report, and ascertained that his client has never received any subpoena to identify the anonymous author of the reports cited in the *Visionstar* complaint; that attorney also represented that he checked the IP addresses for the reports cited in the complaint, and that **none of them** was associated with the address 12.4.33.71 as the complaint alleges. Levy Affidavit ¶ 7.

Given the existence of reasons to doubt the innocence of plaintiffs and their original counsel, Mr. Wills, in ruling on their motion to vacate the Court is urged not to simply credit the implausible and unsworn assertions about their innocence, not backed by any evidence, that pervade the motion to vacate.

B. Because This Court Has Been Facing an Epidemic of Fraudulent Consent Orders, It Should Institute Procedures Aimed at Preventing A Recurrence.

As bad as it is that Myvesta has been victimized by the filing of the fake consent decree in this case, and that this Court as well as the Circuit Court for Carroll County have been the venues where the fraud in this case as well as the frauds in *Visionstar* and *Cohen* were perpetrated through the signature of Bennett Wills, phony proposed consent orders suppressing speech have been submitted in several other cases that were filed on a pro se basis in this Court. Four such cases are *Patel v. Chan*, No. 4C16003573 (Cir. Ct. Balt. City); *Tanoto v. Brown*, No. 24C16000901 (Cir. Ct. Balt. City); *Jones v. Conti*, No. 24C15006945 (Cir. Ct. Balt. City); and *Ruddie v. Kirschner*, No. 24C15005620 (Cir. Ct. Balt. City). (Copies of the papers are attached).

The fake consent order that most directly concerns Myvesta is *Jones v. Conti*, because the

consent order affected it directly. The complaint was filed in the name of Brian Jones, pro se, against a defendant, William Conti, who could not be located at the address listed on the proposed consent order. Miller Declaration. (In the course of preparing the article on fake litigation that Professor Volokh and undersigned counsel Paul Alan Levy published, Professor Volokh retained the services of a private investigator, Giles Miller, to help determine whether the defendants identified as having signed several apparently fake consent orders really existed.) Although the complaint alleges that certain online articles defamed plaintiff Jones, a review of one of the articles cited in the consent order, which appears on Myvesta's own web site, https://getoutofdebt.org/62563/vantage-acceptance-consumer-complaint-june-25-2014, shows that the article is about a California debt relief company called "Vantage Acceptance" and that neither the article nor indeed any comment says anything about Brian Jones. Yet a judge of this Court signed an order finding the article defamatory, ordering its removal from the Internet, and calling for delisting from search engines.[3]

Ruddie v. Kirschner was filed pro se in the name of "R. Derek Ruddie," although the name below the signature line on the proposed consent order is Richart Ruddie, the perpetrator of the judicial fraud in this case. The handwriting in that signature bears an astonishing resemblance to the signatures of Daniel Perez and Mark Wilkerson, as can be seen by comparing Exhibits 3, 4, and 7. The complaint and consent order papers are a lie from beginning to end. Private investigator Giles Miller concluded that there was no "Jake Kirschner" at the address listed on the papers, *see* Miller Declaration; moreover, a review of the online article that was the subject of the phony proposed consent order reveals that it was posted on Ripoff Report about an Arizona lawyer named Daniel

[3] The complaint also alleges that reports on the web sites of 800Notes.com and Ripoff Report also defamed Brian Jones. Scrutiny of those two web sites shows that on those sites, as well, the statements were about Vantage Acceptance and not about Brian Jones.

Warner, and says nothing about Ruddie. A copy of a screenshot of the original posting is appended to the attached declaration of Chuck Rodrick. Undersigned counsel consulted with counsel for Ripoff Report and confirmed that the original posting did not mention Ruddie; the original posting can also befound on the Internet Archive at http://web.archive.org/web/20160523164930/http://www.ripoffreport.com/r/DANIEL-WARNER-KELLY-WARNER-LAW//DANIEL-WARNER-KELLY-WARNER-LAW-Daniel-R-Warner-Daniel-Warner-Lawyer-FROM-Kelly-Warner-Law-1231611. Levy Affidavit ¶ 9.

Tanoto v. Brown was also filed pro se, but it appears that the clerk's office noticed that something was awry when its attempt to transmit documents by mail were met by a letter indicating that nobody with the names in question was located at that address – thus the case was dismissed.

Patel v. Chan is the fake consent order case in this Court that has received a fair amount of public attention. http://pubcit.typepad.com/clpblog/2016/08/georgia-dentist-mitul-patel-takes-phony-litigation-scheme-to-new-extremes-as-a-way-of-suppressing-cr.html; https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/08/24/georgia-dentist-claims-libel-lawsuit-was-filed-without-his-knowledge-though-in-his-name/?utm_term=.ba19bfe529a6. This purportedly pro se lawsuit was filed in the name of Mitul Patel, a Georgia dentist, over reviews of his professional conduct posted on Yelp and certain other places by one of his patients, Matthew Chan. The named defendant, however, was "Mathew Chan" (that is, Mathew with one "t"). The filed complaint was accompanied by a "Consent Motion for Injunction and Final Judgment" that was purportedly signed both by Patel and by "Mathew Chan" with an address in Baltimore that appears to be an office building. (That is, the complaint alleged that it was a man in Baltimore who had complained about services performed by a Georgia dentist; the complaint did not explain how the

defendant had been identified). Barely a month later, the consent order was signed by Judge Philip Senan Jackson. When the real Matthew Chan learned that this order had been entered against him, he objected vigorously, and in response to the unfavorable public attention that Patel began receiving, Patel represented publicly that he had not signed the pro se complaint. But Patel's Georgia counsel stated publicly that Patel had contracted for the services of Richart Ruddie to provide reputation management services. Levy Affidavit ¶ 10 and Exhibit 9. Moreover, communication with Yelp's counsel reveals that Patel himself tried to take advantage of the consent order issued in the case by asking Yelp to honor the order by removing Chan's review. Levy Affidavit ¶ 10.

On September 7, 2016, Chan filed a motion to vacate the consent order entered against his reviews; Patel retained Maryland counsel and on September 21, 2016 filed his own papers supporting the vacating of the consent order that had been fraudulently obtained in his name; Patel averred that he had never authorized the filing of the lawsuit in his name. On May 3, 2017, the court denied the motion to vacate on the ground that Chan's affidavit, which was "subscribed and sworn" before a Georgia notary, had not been attested in the manner required by the Maryland rules, and even though the court's original "consent order" was issued despite the fact that there was **no** affidavit supporting it. The denial also ignored the fact that the purported pro se plaintiff told the Court that **he** had not submitted the pro se complaint. Consequently, despite the passage of eight months since the judge who issued this order was informed that he had been hoodwinked, an invalid prior restraint of constitutionally protected speech remains in place.

Amicus respectfully suggests to the Court that it should take precautions against having its judges duped by fraudulent means into entering orders restraining constitutionally protected speech.

First, when cases like this are filed, the judges on the court should make sure there are real people on both sides of the caption. Second, when injunctive relief is sought against online postings, even by consent, the judge should review the online posting to make sure that it has been honestly described. Third, the judge should make sure that there is evidence to support the claims made about the material, not just allegations. Fourth, if the online posting reveals that it is being hosted by a third party that is not one of the parties to the litigation, the judge should ensure that that third party is properly subject to the court's jurisdiction, and that the third party has been given notice and an opportunity to respond. The Court might consider forming a pro bono panel of lawyers who are familiar with litigation of online matters to provide advice to judges confronted with ex parte or "consent"motions. And finally, when the court learns that is had been defrauded, it should act promptly to vacate the "consent order," not to speak of considering whether it is appropriate to refer the matter to the appropriate prosecutorial and disciplinary authorities.

CONCLUSION

The motion to vacate the judgment should be granted forthwith.

Respectfully submitted,

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