IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE-14-024286
DIVISION 02

RESCUE 1 FINANCIAL, LLC,
a California Limited Liability Company,

Plaintiff,

vs.

JOHN DOE,

Defendant.
_____/

MOTION OF MYVESTA FOUNDATION FOR LEAVE TO FILE MEMORANDUM AS *AMICUS CURIAE* SUPPORTING MOTION TO VACATE DEFAULT JUDGMENT

Myvesta Foundation ("Myvesta") moves this Court for leave to appear in this matter and to participate as *amicus curiae*. Myvesta respectfully requests leave to file a brief in support of Plaintiff's motion to vacate the default judgment, as Plaintiff's motion lacks important context in requesting this relief. Myvesta plans to submit argument that Plaintiff's suit was at no point legitimate, and was indeed part of a pattern of fraudulent litigation meant to remove speech protected by the First Amendment.

Plaintiff's motion is based on the ground that the lawsuit was "inappropriately filed," that the default judgment was "improvidently granted," and that in any event the default judgment was ineffective in that Google, whose discretionary decisions Plaintiff was hoping to influence, did not take the desired actions in any event.

What the motion to vacate does not acknowledge is that the complaint and default judgment were a fraud on the Court, because the real objective of this action was not to get the comments of some anonymous commenters taken off the Internet, or delisted from search engine results by Google and other search engine providers, but rather to suppress public access to blog articles about Plaintiff, even though there was no allegation that the blog articles were

themselves false; the only claim was that some anonymous comments made on the articles were false. And although Plaintiff mentions in passing the involvement of a Fort Lauderdale man named Richart Ruddie in arranging to have this lawsuit filed, Plaintiff does not frankly tell the Court that Ruddie is a specialist in helping companies clean up their reputations by securing the removal of critical articles from search engine results without having to prove that there is anything defamatory about the criticisms. The default judgment obtained in this case was part of a pattern, fostered by Ruddie in courts around the country, of filing "fake litigation" to suppress criticism on a blog that Plaintiff was not willing to countenance but over which it was not willing to sue because it knew that the blog's author would stand up for its First Amendment rights.

Myvesta has a particular interest in this case, as it is the owner of the blog in question, a consumer-oriented web site that reports on shenanigans in the "debt relief" industry and on companies, such as Plaintiff, which sometimes, in Myvesta's view, engage in shady and deceptive tactics to recruit customers. It was Myvesta, not Doe Defendants, who wrote the allegedly defamatory anonymous comments. Myvesta was the real defendant in this case, and the consent order is a prior restraint directed at suppressing **Myvesta's** speech in violation of its First Amendment rights. Myvesta's accompanying brief would also help to inform the Court's decision on Plaintiff's motion, as Myvesta is in a position to explain more fully why the default judgment in this case should be vacated as quickly as possible in light of the fact that the order is a prior restraint, and also to provide the Court with more detailed information about how the Court was defrauded. The proposed *amicus* brief also suggests several additional steps that the Court should take both to prevent a recurrence of the fraud and to vindicate the Court's interest in remedying past fraud.

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CONCLUSION

The motion for leave to file the attached brief as *amicus* curiae should be granted.

Dated: June 8, 2017.

Respectfully submitted,

/s/ Marc J. Randazza

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CASE NO.: CACE-14-024286

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June 2017, the foregoing document was served using E-Service in the Florida Court's E-Filing Portal, which will send a Notice of Electronic Filing to counsel for Plaintiff: Joel Hirschhorn, Esq., GRAY ROBINSON, P.A., 333 S.E. 2nd Avenue, Suite 3200, Miami, Florida 33131, joel.hirschhorn@gray-robinson.com.

/s/ Marc J. Randazza
Marc J. Randazza

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_____/

MEMORANDUM OF *AMICUS CURIAE* MYVESTA FOUNDATION IN SUPPORT OF MOTION TO VACATE DEFAULT JUDGMENT

Plaintiff Rescue 1 Financial, LLC ("Rescue One" or "Plaintiff") has moved the Court to vacate the default judgment on the ground that the lawsuit was "inappropriately filed," that the default judgment was "improvidently granted," and that in any event the default judgment was ineffective in that Google, whose discretionary decisions Plaintiff was hoping to influence, did not take the desired actions in any event. Plaintiff also urges the Court to dismiss the lawsuit with prejudice. The better term for what happened here is that the Court was defrauded. *Amicus* Myvesta Foundation ("Myvesta") is the company that operates the "Get Out of Debt Guy" web site at <www.getoutofdebt.org>, a web site devoted to informing consumers about the merits and demerits of companies (such as Rescue One) 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.

The theory of the complaint was that an anonymous individual, John Doe, 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. Complaint ¶¶ 27-28. 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." *Id.* ¶ 24. The complaint further alleged that, because the comments had been posted anonymously, it was not possible to identify the poster of the comments, *id.* ¶ 16; consequently, the complaint sought leave to serve the anonymous defendant only by publication. *Id.* ¶¶ 16-17. 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. *Id.* ¶¶ 13-14. 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. The complaint was verified, on information and belief, by Bradley Smith. The court allowed service to be effected by publication in a legal publication specific to Broward County; thereafter, the court granted a default judgment as requested.

Despite the fact that the complaint was signed by an attorney, and was verified by Plaintiff, it contained several false and misleading statements. For example, the Google search results shown in the exhibit do not, as alleged in the complaint, show the allegedly defamatory comments to Internet users who use "Rescue One Financial" as a search string. *Id.* ¶ 24 and *Exhibit C*. Rather, the search result provides a link to the articles that contain the criticisms of Rescue One. The Google search results contained "search snippets" drawn from the articles themselves, not from the comments, and Internet users would have seen the comments alleged in the complaint to be defamatory only if they clicked on the search result, read the entire article by scrolling down several screenfulls, and then began reading through the various comments posted to the articles.

Second, it is simply not true that Plaintiff had no way to identify the author of the allegedly defamatory comments. There is a standard mechanism for accomplishing that objective, one that is commonly used in Florida as in every other state, to identify defendants

who are alleged to have used the Internet anonymously to publish defamatory statements: the plaintiff sues the Doe defendant, and serves a subpoena on the host of the web site, demanding the Internet Protocol address ("IP address") from which the comment is posted. *In re Dixon*, 2015 WL 12856019, at *1 (M.D. Fla. Oct. 22, 2015); *Doe v. Cahill*, 884 A.2d 451, 454 (Del. 2005); *see also Knight v. State*, 154 So. 3d 1157, 1159 (Fla. 1st Dist. App. 2014) (use of IP address to locate defendant misusing computers for purpose of criminal investigation); *United States v. Richardson*, 2011 WL 1979856, at *3 (S.D. Fla. May 16, 2011), *report and recommendation adopted*, 2011 WL 1979812 (S.D. Fla. May 20, 2011), *aff'd*, 518 Fed. Appx. 708 (11th Cir. 2013) (unpublished) (same). Many jurisdictions demand an evidentiary showing that the case has merit before such discovery is allowed (under a standard that Myvesta's counsel, Paul Alan Levy, has advocated), *e.g.*, *Doe v Cahill*, *supra*. Florida does not yet have appellate precedent on that point. The IP address reveals the Internet Service Provider ("ISP") whose services were used to post the comment, and a second subpoena, issued to the ISP, can be employed to identify the specific customer of the ISP who was using the ISP's services to connect to the web site at the particular time when the comment was posted. That customer can then be identified, named as a defendant, and subjected to a final judgment including damages.

But Rescue One's Florida lawsuit did not follow that course, for at least two reasons, and possibly three reasons. First of all, the comments were not the reason for the lawsuit; they were just the excuse for the lawsuit, because the real reason for the lawsuit was to obtain an order calling for the articles themselves to be removed from the databases of Google and other search engines. This purpose is evident from the text of the proposed order, which does not call for suppression of the allegedly defamatory comments, but rather of the web addresses for the articles themselves – articles not alleged to be defamatory. Moreover, after Google chose not to block access to the Myvesta articles in response to the Court's default judgment order, Richart Ruddie, the "reputation management" operator whose services Rescue One had retained, caused two more lawsuits to be filed, one in Maryland state court and one in Rhode Island federal court, each alleging that certain comments were defamatory but seeking relief against

public access to articles to which the comments had been posted. These suits not only asserted fraudulently that the comments' authors resided in those respective states, but filings in them also bore forged signatures from non-existent defendants consenting to judgments similar to the one issued in this case by default. In the course of litigating an anti-SLAPP motion in the Rhode Island case, counsel for Myvesta was told by a California lawyer representing Rescue One that the reason why Rescue One hired Ruddie and agreed to the filing of **this** case was that it considered the article itself to be unfair, and it wanted public access to the article to be blocked. That is, the case was **not** filed over the comments.

Second, IP addresses contain geolocational data, and had Rescue One obtained that data, it would have shown that the comments were not posted from Broward County, Florida — the hypothetical source on which the claim of personal jurisdiction in Florida was predicated. Not only was Doe Defendant not located in Broward County, but neither was Plaintiff. The only overt connection between this case and Broward County is that Plaintiff's lawyers were located here. In addition, Richart Ruddie, the fraudster who was behind the filing of this litigation in this Court, lives in Ft. Lauderdale.

Because Doe was not located here in Broward County, service by publication limited to a Broward County publication was completely unlikely to give notice to Doe. Indeed, publication there was calculated to ensure that Doe would not receive notice and therefore, that there would be nobody able to point out the flaws in the complaint, not to speak of the First Amendment concerns that are implicated. Among those serious First Amendment issues was that the Court was importuned to issue injunctive relief for the purpose of disadvantaging Myvesta—as the complaint made clear, Plaintiff was seeking relief precisely because Google was providing a "public electronic megaphone" for speech on the Get Out of Debt Guy web site to which Plaintiff objects. Complaint ¶ 24. At the very least, the party who was to be deprived of the megaphone that was making its speech less effective in reaching its desired audience was entitled under the First Amendment, as well as by the Due Process Clause, to notice so that it could 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, relief disadvantaging Myvesta by blocking access to its speech was granted without any proof of falsity or *mens rea*. The failure to accord that protection to Myvesta is an additional reason why the default judgment order should be vacated.

A third possible reason why Rescue One would not have wanted to locate the commenter is that Myvesta suspects that the comments were posted precisely for the purpose of justifying litigation to suppress access to the articles. In the course of an investigation of the use of "fake litigation" as a means of securing Google delisting,[1] UCLA Professor Eugene Volokh and Myvesta counsel Paul Alan Levy identified several cases in which it was apparent that a comment had been added to an online article, long after the article was written, and a lawsuit brought shortly after the date of the comment, but seeking delisting of the entire article. The same pattern holds in this case. Here, articles criticizing Rescue One Financial were published on the Myvesta web site in 2012 and 2013, and a number of comments appeared within the year of each publication. Then, suddenly, in September 2014, long after the previous comments, harsh comments were posted on all three articles, each within roughly a half hour of each other, not addressing the substance of the articles but making gratuitous accusations about stealing money and sexual misconduct. Then, within months, this lawsuit was filed. It is quite possible that the comments were added for the purpose of fabricating a basis for litigation.

For these reasons, in addition to those set forth in the motion to vacate judgment, the motion to vacate should be granted. Moreover, considering the dishonest character of the allegations in the complaint, as well as the fact that the complaint was verified by Plaintiff, Myvesta urges the Court to consider whether further steps are appropriate vis-a-vis Plaintiff, or

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[1] Eugene Volokh, *Dozens of suspicious court cases, with missing defendants, aim at getting web pages taken down or deindexed*, THE WASHINGTON POST (Oct. 10, 2016), available at: <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/10/10/dozens-of-suspicious-court-cases-with-missing-defendants-aim-at-getting-web-pages-taken-down-or-deindexed/> (last accessed June 8, 2017).

about Broward County resident Richart Ruddie, who caused this fraudulent litigation to be filed in this Court.

Beyond this case, *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. As shown by the work of Professor Volokh and Mr. Levy, there has been a serious pattern of abusive litigation filed in courts across the country, seeking to suppress protected speech through deceptive means. Although this is the only such case of which *amicus* knows in Broward County, Professor Volokh has identified several other such cases in the Circuit Courts for Palm Beach County and other Florida counties.

To deal with this epidemic of deceptive litigation, *amicus* recommends several steps. 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 of this sort. 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.[2]

[2] The complaint was filed, and the default judgment was issued, before the July 15, 2015 effective date of the amendments that strengthened Florida's anti-SLAPP law. § 768.295 Fla. Stat. (2015).

CONCLUSION

The motion to vacate the default judgment should be granted. *Amicus* expresses no view about whether the lawsuit against the anonymous commenters should be dismissed. However, the Court should consider whether to take additional steps against the parties responsible for the fraudulent proceedings in this court, and whether to erect procedural safeguards against such frauds in future cases.

Dated: June 7, 2017.

Respectfully submitted,

/s/ Marc J. Randazza

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