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14 Attorneys for Movant John/Jane Doe

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**10/05/2018**  
Clerk of the Court  
BY: VANESSA WU  
Deputy Clerk

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN FRANCISCO**

17 *In the Matter of the Subpoena Issued to*  
18 *Weebly in:*

19 BETHANY SHERMAN, an individual,  
20 and OG ANALYTICAL, an Oregon  
21 limited liability company,  
22 Plaintiffs,

23 vs.

24 DOES 1 through 10, inclusive,

25 Defendants.

Case No. CGC-18-569429

**NOTICE OF MOTION AND MOTION  
TO QUASH SUBPOENA DUCES  
TECUM AND FOR MONETARY  
SANCTIONS**

**DATE:** November 9, 2018

**TIME:** 9:00a.m.

**DEPT:** 302

26 **TO: Bethan Sherman, OG Analytical, AND THEIR ATTORNEY OF RECORD**  
27 **HEREIN: PLEASE TAKE NOTICE** that on November 9, 2018 at 9:00a.m. or as soon  
28 thereafter as the matter may be heard, in Department 302 of the above-entitled court,  
located at 400 McAllister St., San Francisco, CA 94102-4515, anonymous Doe(s),  
through special appearance of counsel, will and hereby does move this Court:

1           1.       For an order pursuant to Cal. Civ. Proc. Code Ann. § 1987.1, the points and  
2 authorities noted in the accompanying Memorandum of Law, declaration of counsel,  
3 exhibits, and on such oral argument as may be received by this court, to quash the  
4 subpoena duces tecum served on Weebly, Inc. and an order that Weebly and the moving  
5 party need not respond to or produce any of the requested documents on the grounds  
6 that the subpoena duces tecum (1) that the statements noted in the complaint are not  
7 actionable, (2) that the plaintiffs have failed to present a prima facie case, and (3) that  
8 the subpoena, if not quashed, violates the First Amendment's protections for the right of  
9 anonymous speech and the right of privacy of the unnamed defendant(s).  
10

11           3.       Additionally, it is clear on the face of the complaint that this court will lack  
12 jurisdiction in this matter and that the complaint was filed with this court for the sole  
13 purpose of advancing the subpoena to identify individuals who own, operate, or have  
14 visited the website <https://eugeneantifa.weebly.com>. Weebly is the only entity with any  
15 apparent connection to San Francisco or California. While a motion filed related to  
16 discovery in a civil case is not a general appearance under CCP, Doe(s), nevertheless, do  
17 not waive any objections to personal jurisdiction in this matter.  
18  
19  
20

21           3. Unless the motion to quash is granted, the moving party will suffer  
22 unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

23 //

24 //

25 //



1 **CERTIFICATE OF SERVICE**

2 I certify that I served the foregoing Notice of Motion, Motion to Quash,  
3 Memorandum of Law in Support of Motion to Quash, Declaration of Counsel, and  
4 Supporting Exhibits on:  
5

6 William D. Johnson, CA Bar No. 101780  
7 350 S. Figueroa St., Suite 190  
8 Los Angeles, CA 90071  
9 johnson@loslaw.com

10 by the following method or methods:

- 11 1. By sending a copy of the above noted documents, from co-counsel’s office at  
12 1430 Willamette St. #358, Eugene, OR 97401, via First Class mail, to the  
13 above address of counsel.  
14 2. By emailing a full, true, and correct copy thereof to the attorney at the email  
15 address shown above, on the date set forth below; and  
16 3. Electronic Service;

17 DATED this 4th day of October, 2018

18 By:  /s/ James Wheaton  
19 James Wheaton  
20 Attorney for Movant Doe(s)

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14 Attorneys for Movant John/Jane Doe(s)

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23 vs.

24 DOES 1 through 10, inclusive,  
 25  
 26 Defendants.

27 Case No. CGC-18-569429

28 **MEMORANDUM OF LAW IN**  
**SUPPORT OF MOTION TO QUASH**  
**SUBPOENA DUCES TECUM AND**  
**FOR MONETARY SANCTIONS**

DATE: November 9, 2018

TIME: 9:00a.m.

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1. Plaintiffs Failed to Identify Actionable Words. .... 9

2. Plaintiffs Have Failed to Produce Sufficient Evidence to State a Prima Facie Cause of Action on Any Claims ..... 12

3. Even if Plaintiffs Presented a Prima Facie Case, Doe(s)' First Amendment Right to Engage in Anonymous Speech Outweighs the Disclosure of the Identity of Doe(s) ..... 15

CONCLUSION.....16

1  
2 **TABLE OF AUTHORITIES**

3 **CASES**

4 *Bates v. City of Little Rock,*  
5 361 U.S. 516 (1960)..... 8, 9

6 *Buckley v. American Constitutional Law Found.,*  
7 525 U.S. 182 (1999).....7

8 *Dendrite v. Doe,*  
9 775 A.2d 756 (N.J. Super. App. Div. 2001).....13

10 *Digital Music News LLC v. Superior Court,*  
11 226 Cal.App.4th 216 (2014).....11

12 *Doe v. Cahill,*  
13 884 A.2d 451 (Del. 2005) ..... 11, 13

14 *Glassdoor Inc. v. Superior Court,*  
15 215 Cal. Rptr. 3d 365 (Cal. App. 6th Dist. 2017) ..... 9, 12

16 *Krinsky v. Doe 6,*  
17 159 Cal. App.4th 1154 (Cal. App. 2008);..... 7, 12, 13, 14

18 *McIntyre v. Ohio Elections Comm.,*  
19 514 U.S. 334 (1995)..... 7, 9

20 *NAACP v. Alabama,*  
21 357 U.S. 449 (1958)..... 8, 9

22 *NAACP v. Claiborne Hardware Co.*  
23 458 U.S. 886 (1982).....15

24 *New York Times Co. v. Sullivan,*  
25 376 U.S. 254 (1964).....8

26 *Rancho Publications v. Superior Court,*  
27 68 Cal. App.4th 1538 (Cal. App. 1999)..... 7

28 *Shelly v. Kraemer,*  
334 U.S. 1 (1948).....8

*ZL Techs., Inc. v. Does 1-7,*

1 220 Cal. App. 5th 603 (Cal. App. 1st Dist. 2017) .....9, 10, 11, 12, 16

2 **CONSTITUTION AND STATUTES**

3 California Civil Procedure Code § 1987.1(b)(5) .....4

4 California Civil Procedure Code § 1987.2(b) .....15

5 United States Constitution, First Amendment .....passim

6 **MISCELLANEOUS**

7 United States Government Accountability Office Report to Congressional Requesters,  
8 *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress*  
9 *of Federal Efforts,*  
10 GAO-17-300 (April 2017).....6

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1           This motion to quash is made on behalf of Doe(s) under the California Civil  
2 Procedure Code § 1987.1(b)(5), which allows “[a] person whose personally identifying  
3 information, as defined in subdivision (b) of Section 1798.79.8 of the Civil Code, is  
4 sought in connection with an underlying action involving that person's exercise of free  
5 speech rights” to challenge the issuance of a subpoena duces tecum and CCP § 1987.2.  
6 Under CCP § 1987.1, a court may quash a subpoena and “make any other order as may  
7 be appropriate to protect the person from unreasonable or oppressive demands,  
8 including unreasonable violations of the right of privacy of the person.” For the reasons  
9 set forth below, Doe(s) motion to quash plaintiff’s subpoena to Weebly, Inc. should be  
10 granted.  
11  
12

#### 13 **STATEMENT OF FACTS**

14           This motion seeks to quash a subpoena duces tecum directed towards Weebly,  
15 Inc., for the discovery of the anonymous identity of the “creator of the webpage at  
16 “eugeneantifa.weebly.com” (“website”) as well as identifying information related to  
17 visitors of the website. Brinson Decl. ¶7, Exhibit B. The subpoena stems from a lawsuit  
18 filed by Bethany Sherman, an apparent neo-Nazi/white-nationalist resident of Oregon  
19 and Oregon limited liability company, “OG Analytical.” The lawsuit alleges three  
20 claims: 1) defamation; 2) violation of plaintiffs’ right to privacy; and 3) intentional  
21 interference with prospective economic relations.  
22  
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24

25           Plaintiff Bethany Sherman is a resident of Oregon and the owner/operator of  
26 Plaintiff OG Analytical, an Oregon LLC that provides “laboratory testing services to  
27 cannabis growers and producers in Oregon.” Complaint ¶ 1-2.  
28

1           On November 23, 2017, an anonymous author or authors posted a story to the  
2 website that effectively exposed Sherman as a neo-Nazi. Because plaintiffs failed to  
3 attach a reference to this article in their complaint, a copy is attached as Exhibit A.  
4 Brinson Decl. ¶ 6. The article claims to outline the extent of involvement of both  
5 Sherman and her boyfriend, Matthew Combs, in neo-Nazi organizations and their  
6 affinity for white-supremacist/Nazi ideology. The author(s) of the article posted several,  
7 nonprivileged, screenshots of conversations of Combs and Sherman apparently  
8 expressing their support for, or involvement in, neo-Nazi/white-supremacist  
9 organizations and ideals. The information revealed on the website is from three primary  
10 sources: 1) The website of OG Analytical, 2) Twitter, 3) and messages (that were made  
11 public prior to the publishing of the article) leaked from an invited participant to the  
12 server known as Discord, that outlines the blatant affinity of plaintiff Sherman, her  
13 boyfriend, and her friends for white-supremacism/Nazism and white-supremacist/neo-  
14 Nazi organizations.

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18           It is no secret that most people deplore Nazism, White-Nationalism, etc. The fact  
19 that, once Sherman was exposed as a neo-Nazi, plaintiffs lost business and were subject  
20 to a boycott should not be surprising to plaintiffs. Nothing posted on the website at  
21 issue is actionable—people simply do not like Nazis and do not want to be affiliated  
22 with them or their racist ideology.  
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1       **A. Before a Subpoena to Identify an Anonymous Internet Speaker May Be**  
2       **Enforced, the First Amendment Requires Plaintiffs to Identify Allegedly**  
3       **Actionable Speech and Produce Sufficient Evidence to State a Prima**  
4       **Facie Cause of Action; and, if Both Requirements are Met, the Court**  
5       **Must Balance the Anonymous Speakers’ First Amendment Right to**  
6       **Speak Anonymously with the Prima Facie Case.**

7               The subpoena requested by plaintiffs, if upheld, would violate the First  
8       Amendment right of Doe(s) to engage in anonymous speech. The U.S. Supreme Court  
9       has consistently protected the right of individuals and groups to engage in anonymous  
10       political speech. E.g., *Buckley v. American Constitutional Law Found.*, 525 U.S. 182,  
11       199-200 (1999); *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995). Courts in  
12       California have also upheld this right. See e.g., *Krinsky v. Doe 6*, 159 Cal. App.4th 1154,  
13       1164 (Cal. App. 2008); *Rancho Publications v. Superior Court*, 68 Cal. App.4th 1538,  
14       1548 (Cal. App. 1999) (holding that the California Constitution also protects the right to  
15       anonymous political speech).

16               In *Krinsky*, the California Court of Appeals noted the reasons as to why  
17       anonymous speech, especially on the internet, is important and why people may want to  
18       engage in anonymous political speech:  
19

20               The use of a pseudonymous screen name offers a safe outlet for the user  
21       to experiment with novel ideas, express unorthodox political views, or  
22       criticize corporate or individual behavior without fear of intimidation or  
23       reprisal. In addition, by concealing speakers’ identities, the online forum  
24       allows individuals of economic, political, or social status to be heard  
25       without suppression or other intervention by the media or more powerful  
26       figures in the field.

27       159 Cal. App.4th at 1162.

28               While private parties, especially those with enough time and resources, may  
ultimately determine the identity of an anonymous speaker, as Doe(s) appear to have

1 done relative to Sherman’s anonymous online personalities, such identification does not  
2 necessarily require state action and, is therefore, not subject to the constitutional limits  
3 on state action under the First Amendment. In contrast, a court order, such as a  
4 subpoena, is a state action and is, therefore, subject to constitutional limitations. *New*  
5 *York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964); *Shelley v. Kraemer*, 334 U.S. 1  
6 (1948).  
7

8           The subpoena, requested by plaintiffs, seeing to compel the production of the  
9 identities of the “Does,” would compromise the exercise of the Does’ fundamental rights.  
10 Such a subpoena “is subject to the closest scrutiny.” *NAACP v. Alabama*, 357 U.S. 449,  
11 461 (1958); *Bates v. City of Little Rock*, 361 U.S. 516, 524 (1960). If identified, the  
12 fundamental rights of speakers engaged in protected speech may be subject to forms of  
13 private retribution following court-ordered disclosures. *NAACP* at 462-463. Indeed, neo-  
14 Nazis, white-nationalists, etc. have a long history of violently attacking those they  
15 identify as “anti-fascists” as well as others for whom there is no future in their whites-  
16 only dystopia. According to a recent report prepared for Congress by the Government  
17 Accountability Office, far-right groups (the majority of which are affiliated with some  
18 form of neo-Nazi, white-supremacist, or white separatist ideology) were responsible for  
19 73% of the “85 violent extremist incidents that resulted in death since September 12,  
20 2001.” United States Government Accountability Office Report to Congressional  
21 Requesters, *Countering Violent Extremism: Actions Needed to Define Strategy and*  
22 *Assess Progress of Federal Efforts*, GAO-17-300, p. 4 (April 2017).  
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1 To overcome the scrutiny required to disclose the identities of individuals  
2 engaging in protected speech, there must be a showing of a “subordinating interest  
3 which is compelling” where such compelled disclosure threatens to significantly impair  
4 the fundamental rights of individuals. *Bates*, 361 U.S. at 524; *NAACP v. Alabama* at  
5 463. Because anonymous actors engaged in protected political speech possess a First  
6 Amendment right to remain anonymous, plaintiffs, like the government, must prove a  
7 compelling interest in such identification. *McIntyre* at 347. Because, as noted below,  
8 there are is no actionable speech identified by plaintiffs, plaintiffs completely failed to  
9 present a prima facie case for defamation, and no compelling interest to disclose the  
10 identities of Doe(s) has been demonstrated by plaintiffs, an order compelling the  
11 production of identities would grossly infringe on the First Amendment rights of Doe(s).  
12  
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14

15 **B. Plaintiffs Have Not Met the Requirements for Identifying an Anonymous**  
16 **Defendant.**

17 **1. Plaintiffs Failed to Identify Actionable Words.**

18 “[It] is necessary to require that a plaintiff seeking to discover the identity of an  
19 anonymous speaker first clearly specify the statements claimed to be actionable, state  
20 the actionable meanings assertedly conveyed by them, and set forth, if necessary,  
21 evidence sufficient to sustain a finding that the statements were capable of conveying  
22 those meanings.” *Glassdoor Inc. v. Superior Court*, 215 Cal. Rptr. 3d 365, at 635 (Cal.  
23 App. 6th Dist. 2017).  
24

25 The court in *Glassdoor* specifically noted that “the words constituting an alleged  
26 libel must be specifically identified if not pleaded verbatim, in the complaint.”  
27 *Glassdoor, Inc.* at 634. See also *ZL Techs., Inc. v. Does 1-7*, 220 Cal. App. 5th 603, at 616  
28

1 (Cal. App. 1st Dist. 2017). Plaintiffs in this case have not identified any allegedly  
2 defamatory statement(s) with the specificity required under established case law.  
3 Plaintiff also failed to attach the article at issue in which the alleged defamatory  
4 statements occurred. If there were concerns that further publication of the article would  
5 constitute a form of defamation in itself, plaintiff could have attached the article under  
6 seal.  
7

8 A defamatory statement “must contain a provable falsehood.” *ZL Techs* at 624. If  
9 it does not, the statement is mere opinion and is generally constitutionally protected.  
10 *Id.* Courts have recognized that the distinction between fact and opinion is not absolute  
11 and that some opinions contain implicit reference to a factual assertion. *Id.* Assuming  
12 the statements noted in plaintiffs’ complaint include falsifiable elements (e.g., plaintiff  
13 is/is not a neo-Nazi, does/ does not socialize with neo-Nazi’s, does/does not actively  
14 participate in neo-Nazi or white-supremacist organizations/message boards, etc.), it is  
15 on the burden of the plaintiffs, in this situation, to show falsity. *ZL Techs* at 631.  
16  
17

18 While a plaintiff is not normally required to show falsity in its pleadings, “[w]hen  
19 the speech involves a matter of public concern...a private-figure plaintiff must prove the  
20 falsity of the offensive speech.” *Id.* In this case, the allegedly defamatory speech is a  
21 matter of public concern. As the complaint alludes, the author(s) of the article are  
22 concerned about the safety of individuals in their community given the violent history of  
23 white supremacists and Nazis in the U.S. and elsewhere. Complaint ¶ 8.  
24  
25

26 Even if the court determines that the statements are not a matter of public  
27 concern, when a defamation action involves the disclosure of the identities of  
28

1 anonymous individuals engaged in speech implicating their First Amendment rights,  
2 the question for the court is “whether there is reason to believe the lawsuit has  
3 sufficient merit to require the unmasking of the Doe defendants in the face of First  
4 Amendment and privacy rights.”<sup>1</sup> *ZL Techs.* at 632. The court in *ZL Techs* ultimately  
5 concluded that, “whether or not the defendant bears the burden of proving falsity in a  
6 particular action, the constitutional protections weigh in favor of requiring the plaintiff  
7 to make a prima facie evidentiary showing of the elements of defamation, including  
8 falsity, before disclosure of a defendant’s identity can be compelled.” *ZL Techs.* at 633.  
9  
10

11 Of import to the instant case, the court in *ZL Techs* noted the importance of this  
12 merit requirement because “there is reason to believe that [at least some] defamation  
13 plaintiffs bring suit merely to unmask the identities of anonymous critics,” with “the  
14 primary goal being to silence John Doe and others like him.” *ZL Techs* at 632, citing *Doe*  
15 *v. Cahill* (Del. 2005) 884 A.2d 451 at 457. The Court in *ZL Techs* went on to explain that  
16 “[s]ome minimal precautions should be undertaken to protect the right of a speaker to  
17 put ideas into the public marketplace without fear or harassment or retaliation.” *ZL*  
18 *Techs* at 633. Such precautions should be taken in this case.  
19  
20

21 The complaint alleges the following “defamatory” statements: 1) “that Sherman  
22 was a neo-nazi...”; 2) who operated a “white supremacist Twitter account”; 3) that she  
23 believed in “the ‘Jewish conspiracy’ at the heart of neo-Nazi ideology”; “and that she  
24  
25

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26 <sup>1</sup> Courts also give weight “to an anonymous speaker’s right to protect his or her privacy interest, which is safeguarded by  
27 [the California] constitution. (Cal. Const., art. I, § 1.). ‘This express right is broader than the implied federal right to  
28 privacy [citation omitted].’ The California privacy right ‘protects the speech and privacy rights of individuals who wish to  
promulgate their information and ideas in a public forum while keeping their identities secret,’ and ‘limites what courts  
can compel through civil discovery.’” *ZL Techs* at 632 (citing *Digital Music News LLC v. Superior Court* (2014) 226  
Cal.App.4th 216, 228.

1 ‘acts ‘in ways that put non-white, queer, and alter-abled communities in danger.’”  
2 Plaintiffs’ Complaint, ¶ 8. Plaintiffs also claim that defendant(s)’ statement that  
3 Sherman “will not be tolerated in our businesses and communities” is somehow  
4 defamatory.  
5

6 None of these statements are defamatory on their face as there is ample evidence  
7 for their truth and plaintiffs have made no effort to present evidence of their falsity as  
8 required under California law.  
9

## 10 **2. Plaintiffs Have Failed to Produce Sufficient Evidence to State a** 11 **Prima Facie Cause of Action on Any Claims**

12 To enforce a subpoena that would disclose the identity of anonymous speakers in  
13 a defamation case, plaintiffs must produce sufficient evidence to state a prima facie  
14 cause of action. *Krinsky* at 1171-1172; *See also Glassdoor* at 634; *ZL Techs* at 608. Here,  
15 plaintiffs have utterly failed to make a prima facie case for defamation or their  
16 remaining two claims. Plaintiffs have produced no evidence of any kind to support their  
17 claims. Plaintiffs could have submitted declarations or affidavits of themselves or  
18 friends/family to show that the alleged defamatory statements were false. Plaintiffs  
19 could have submitted the article at issue. Plaintiffs could have submitted evidence  
20 disputing that the anonymous online accounts that were linked to plaintiff Sherman  
21 were not, in fact, her accounts (or that she did not operate or register those accounts).  
22 Instead, plaintiffs made a bare recitation of the elements of defamation and included  
23 unsupported “statements” that they allege are false.  
24  
25

26 Disclosure of Doe(s)’ identifying information, under *Krinsky*, requires both a  
27 factual and legal basis to support defamation claims and to support the disclosure of  
28



1 anonymous identities. *Krinsky* at 1172. This includes a requirement that the plaintiff  
2 provide some evidence of the falsity of the alleged defamatory statements. *Id.* In  
3 *Krinsky*, the Court favorably cited to New Jersey and Delaware cases that have set  
4 standards for revealing anonymous identities in defamation cases across the country, to  
5 support the notion that a “plaintiff need produce evidence of only those material facts  
6 that are accessible to her.” *Id.* (citing *Dendrite v. Doe*, 775 A.2d 756 (N.J. Super. App.  
7 Div. 2001) and *Doe v. Cahill*, 884 A.2d 451 (Del. 2005)). Here, the plaintiffs, as the  
8 subjects of the alleged defamatory statements, have all the information at their disposal  
9 to provide proof of the falsity of the statements. Plaintiff, nevertheless, provided no  
10 proof.  
11  
12

13           The *Krinsky* court went on to explain that the plaintiff in that case, in meeting its  
14 burden to compel the disclosure of identities of anonymous Does, submitted evidence of  
15 the falsity of the allegedly libelous statements. Again, plaintiffs have made no such  
16 showing. The record, including the complaint, is entirely absent of any evidence  
17 indicating the falsity of the statements referenced in the complaint.  
18

19           As the court in *Krinsky* noted, this requirement is necessary to ensure that  
20 “plaintiff is not merely seeking to harass or embarrass the speaker or stifle legitimate  
21 criticism.” In this case, there is no factual basis present in the record or plead in  
22 plaintiffs’ complaint to support plaintiffs’ claims that the statements at issue are  
23 defamatory in any way. Indeed, given the bare and paltry nature of the complaint, the  
24 venue chosen by plaintiff (it is clear, on the face of the complaint, that venue is proper  
25 in Oregon, not California), and the history of white-supremacists identifying and then  
26  
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1 violently attacking those who speak out against Nazism/white-supremacy, it appears  
2 that this complaint was only filed for the purpose of harassing and intimidating Doe(s).

3 As noted, none of the words in plaintiffs' complaint are, on their face, defamatory.  
4 Other than a conclusory recitation that the statements of Does were false and caused  
5 injury, plaintiffs have made no attempt to demonstrate the falsity of those statements  
6 as required under *Krinsky*. See *Krinsky* at 1172.

7  
8 In their claim for "Violation of Right to Privacy," plaintiffs assert that Doe(s)  
9 publicly disclosed private information of plaintiff Sherman on the website. Complaint ¶  
10 14. None of the information disclosed was private or in any way privileged. The address  
11 of plaintiff Sherman was public information, accessible through the Oregon Secretary of  
12 State's website. A copy of this information from the Oregon Secretary of State website is  
13 attached as Exhibit C. Brinson Decl. ¶ 8. The article at issue claims that pictures posted  
14 to the website at issue were originally posted by plaintiff Sherman on social media and  
15 on Plaintiff OG Analytical's own website. See Brinson Decl., Exhibit A. The article  
16 claims that all of the photos disclosed on the website at issue were first published by  
17 plaintiffs. Brinson Decl. ¶ 6, Exhibit A.

18  
19 Plaintiffs appear to claim, but do not outright plead, that this public information,  
20 when coupled with the statement that Sherman and her views "will not be tolerated in  
21 our businesses and communities" constitutes some kind of infringement of plaintiffs'  
22 rights. Private persons, whether anonymous or not, are well within their rights to use  
23 public information to call for a boycott based on the repugnancy of a business or  
24 business owners political views or practices. Despite plaintiffs' apparent belief that they  
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1 are special because they are white, plaintiffs are not immune or exempt from the long-  
2 standing precedents protecting boycotts. *See, e.g., NAACP v. Claiborne Hardware Co.*  
3 458 U.S. 886 (1982). It is well established that when businesses or their owners engage  
4 in socially and politically repugnant behavior, they may be boycotted in the U.S. and  
5 plaintiffs have no special protections from that long-standing precedent. *Id.*

7 Plaintiffs' last claim for "intentional interference with prospective economic  
8 relations" is based on the alleged defamatory statements noted above. Because  
9 plaintiffs did not provide any evidence of their falsity, and otherwise failed to present a  
10 prima facie case for defamation, nothing in plaintiffs' third claim for relief permits the  
11 disclosure of the identities of the owners, operators, or users of the website at issue.

13 **3. Even if Plaintiffs Presented a Prima Facie Case, Doe(s)' First**  
14 **Amendment Right to Engage in Anonymous Speech Outweighs the**  
15 **Disclosure of the Identity of Doe(s)**

16 The First Amendment right of Doe(s) to speak anonymously outweighs the need  
17 of plaintiffs to, at this stage, unmask the identity of Doe(s). Unmasking the identity of  
18 Doe(s) will likely expose Doe(s) to extrajudicial retaliation on the part of neo-Nazis and  
19 white supremacists and will otherwise chill the constitutionally protected anonymous  
20 political speech of Doe(s) and others that are similarly situated. At this stage in the  
21 litigation, prior to any motion under California's anti-SLAPP statute, disclosure of the  
22 identity of Doe(s) would be premature. Like a motion under the anti-SLAPP statute,  
23 which would require plaintiffs to, at the outset of litigation, " 'demonstrate that the  
24 complaint is both legally sufficient and supported by a prima facie showing of facts to  
25 sustain a favorable judgment if the evidence submitted by the plaintiff is credited,'" the  
26  
27  
28

1 court, in this case should apply “the same prophylactic conditions [to] counterbalance ...  
2 a defendant speaker’s constitutional rights to privacy and anonymous speech.” See *ZL*  
3 *Techs* at 634.

4  
5 **CONCLUSION**

6 This Court should grant Doe(s)’ motion to quash the subpoena directed toward  
7 Weebly, Inc. because the subpoena would grossly infringe on the right of Doe(s) to  
8 engage in protected anonymous political speech, plaintiffs have failed to plead valid  
9 claims, failed to identify any actionable words on the part of Doe(s), failed to present a  
10 prima facie case for defamation, “violation of right to privacy,” and intentional  
11 interference with prospective economic relations.  
12

13  
14 Additionally, in light of the failure of plaintiffs to comply with the California  
15 Rules of Civil Procedure, the array of facial defects on the complaint, the apparent  
16 intent to harass and intimidate Doe(s), and the general frivolity of the complaint and  
17 subpoena, this Court is authorized to impose attorney fees and costs against plaintiff  
18 under section 1987.2(b) of the California Code of Civil Procedure in an amount to be  
19 determined by further motion if the parties cannot agree on the amount.  
20

21 Doe(s) request that the Court quash the subpoena and award he/she/them  
22 attorney fees.  
23

24 Dated: October 4, 2018.

25  
26 By:           /s/ Cooper Brinson            
27 COOPER BRINSON  
28 Attorney for Movant Doe(s)

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14 Attorneys for Movant Doe(s)

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**10/05/2018**  
Clerk of the Court  
BY: VANESSA WU  
Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

*In the Matter of the Subpoena Issued to  
Weebly in:*

BETHANY SHERMAN, an individual,  
and OG ANALYTICAL, an Oregon  
limited liability company,  
Plaintiffs,

vs.

DOES 1 through 10, inclusive,

Defendants.

Case No. CGC-18-569429

**DECLARATION OF COUNSEL,  
COOPER BRINSON**

**DATE:** November 9, 2018

**TIME:** 9:00a.m.

**DEPT:** 302

1. My name is Cooper Brinson. I am lead counsel for John/Jane Doe(s) in opposing the subpoena that Bethany Sherman and OG Analytical served on Weebly, Inc. seeking Doe(s) identifying information. This declaration may use the pronoun she/her to refer to Doe(s) but this does not in any way imply the actual gender identity or sex of Doe(s).

