

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

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

**ORDER GRANTING MOVANT
JOHN/JANE DOE'S MOTION TO QUASH
SUBPOENA DUCES TECUM**

[DISCOVERY]

Date: November 9, 2018

Time: 9:00 a.m.

Dept.: 301

The hearing on Movant John/Jane Doe's Motion to Quash Plaintiffs' Subpoena Duces Tecum to Weebly, Inc. was regularly heard at the time and place indicated above.

Having considered the oral and written submissions of the parties, and good cause appearing, it is hereby ordered:

Movant's motions to quash Plaintiff's subpoena to Weebly, Inc. is Granted. Plaintiff seeks to discover the anonymous identity of the creator(s) of the webpage at eugeneantifa.weebly.com ("Website") and information that would help her identify visitors to this website. In November 2017, anonymous authors posted a story on the Website that asserted that Plaintiff was a neo-Nazi operating a white supremacist Twitter account, believed in the "Jewish conspiracy" espoused by neo-Nazis, and acts in ways that put non-white, queer, and alter-abled communities in danger. The authors of the

1 article on the Website also published Plaintiff's personal details. After the article's publication, and
2 the attending negative publicity, Plaintiff alleges that she had to close her business and move from
3 her home in Oregon. Plaintiff filed a complaint alleging, among other things, damages arising from
4 defamation. Plaintiff seeks a subpoena to Weebly, Inc. to identify the authors of the article on the
5 Website so that she can name them as defendants in this action.

6 Anonymous speech is protected by the First Amendment to the Constitution, and there is a
7 right to use anonymous political speech. As California courts have held, there is value to anonymous
8 political speech on the internet because it allows people to "experiment with novel ideas, express
9 unorthodox political views, or criticize corporate or individual behavior without fear of intimidation
10 or reprisal." *Krinsky v. Doe 6*, 159 Cal.App.4th 1538, 1154, 1162. Accordingly, "[j]udicial
11 recognition of the constitutional right to publish anonymously is a longstanding tradition." *Id.* at
12 1163. The Website's authors right to speak anonymously, however, must be weighed against
13 Plaintiff's interest in discovery the authors' identity in order to pursue her defamation claim. Plaintiff
14 must make a *prima facie* showing that a case for defamation exists. *Id.* at 1171. Namely, she must
15 make a showing that the authors' statements on the Website were false and that the statements caused
16 her damage. Plaintiff has made a *prima facie* showing that she was harmed by the authors'
17 statements because it damaged her reputation in the community, forced her to close her business, and
18 to relocate from her home. The issue is whether she has made a showing that the authors' statements
19 were false.

20 To make the required showing, Plaintiff signed a declaration. Her declaration states that:
21 "I do not operate a 'white supremacist Twitter account' and that her only "public" Twitter account is
22 one used to tweet about her business. Plaintiff Declaration at ¶¶ 10, 11. She goes on to state that she
23 has "no other Twitter accounts and any other Twitter accounts that have had were private and used
24 solely to communicate with friends privately, and when I shared or commented on other posts, I was
25 not harassing r threatening to harm anyone or advocating that anyone do violence against anyone or
26 cause anyone else harm." *Id.* at ¶ 12. She also declares that she has "never stated that [she]
27 believe[s] in a 'Jewish conspiracy' or in a conspiracy of Jews against white people." *Id.* at ¶ 13.
28 The Website's authors identified Plaintiff on Twitter as Mrs. Blackhat, using the handle @14th_word.
The handle @14th_word is a likely reference to the 14 Words, which is a well-known white

1 supremacist slogan. The Website noted that the Twitter user known as Mrs. Blackhat likes tweets of
2 white men using the Nazi salute and a quote from the American Nazi Party accompanied by pictures
3 of the Nazi swastika. Mrs. Blackhat retweeted other information related to the “dream of a White
4 homeland.” Plaintiff could have proven the falsity of the Website’s claims by providing evidence
5 that she did not post on Twitter as Mrs. Blackhat and that she did not use the handle @14th_word.
6 Instead, she only claimed that her business Twitter account was her “only *public* Twitter account.” *Id.*
7 at ¶ 11 (emphasis added). The issue is not whether she used the Mrs. Blackhat account publicly or
8 privately, but whether she used it at all. Her failure to deny that this was her Twitter account is
9 critically important. While she states that she currently has no other Twitter accounts, she notes that
10 she has had other Twitter accounts in the past, but that these were meant to be private
11 communications among her friends. *Id.* at ¶ 12. Again, she does not deny using the Twitter account
12 identified by the Website, but she simply states that she has never used such a Twitter account
13 publicly. When asked at oral argument whether Plaintiff denies that she used this Twitter account,
14 counsel would only reference back to her declaration. The Website’s authors have identified a
15 Twitter account that likes and retweets white supremacist material, and have linked this Twitter
16 account to Plaintiff. Plaintiff does not deny that it is her account, so she has not made a *prima facie*
17 showing that the Website’s claims about her Twitter account are false. Without any showing as to
18 falsity, there is no viable claim for defamation.

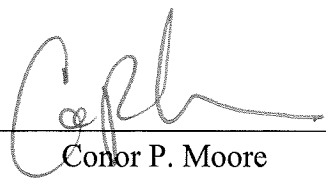
19 Similar carefully worded phrases and noticeable omissions appear in other parts of her
20 declaration. For instance, instead of flatly denying that she believes in a “Jewish conspiracy,” she
21 only declares that she has “never stated that [she] believe[s] in a ‘Jewish conspiracy.’” *Id.* at ¶ 13.
22 The Website’s claim is that she believes the “Jewish conspiracy,” not that she has used those exact
23 words. Plaintiff’s evidence needed to refute this is not just that she has never uttered those exact
24 words, but that she does not believe it. Plaintiff has failed to provide this evidence or address this
25 point directly.

26 Given that Plaintiff has not made a *prima facie* showing that the Website’s claims are false,
27 there is no viable claim for defamation. Without this showing, Plaintiff does not have enough
28 support to overcome John/Jane Doe’s constitutional right to speak anonymously. Therefore,
Movant’s motion to quash Plaintiff’s subpoena to Weebly, Inc. must be granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: November 28, 2018



Conor P. Moore
Judge Pro Tem