

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE FOR THE ETHICAL TREATMENT OF
ANIMALS, INC.,

Petitioner,

v.

THEHUFFINGTONPOST.COM, INC.,

Respondent.

For an Order Pursuant to Article 31
Of the Civil Practice Law and Rules

Index No.

NOTICE OF PETITION

PLEASE TAKE NOTICE that upon the accompanying Verified Petition of People for the Ethical Treatment of Animals, Inc., (“PETA”) dated May 23, 2013, PETA, by its undersigned attorneys, will make an application at the Supreme Court of the State of New York in the County of New York, located at the New York County Courthouse , 60 Centre Street, New York, NY, 10013, on Wednesday, June 5, 2013, at 9:30 a.m, or as soon thereafter as counsel may be heard, for an Order pursuant to CPLR § 3102(c): (1) directing TheHuffingtonPost.com, Inc. (“TheHuffingtonPost.com”) to produce the Requested Information, identified in paragraph two of the Verified Petition, in electronic form to undersigned attorneys for PETA within ten calendar days of an Order of this Court; (2) directing TheHuffingtonPost.com to preserve the Requested Information until further Order of this Court; and (3) for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 403(b), a demand is hereby made for the service of an answer and supporting affidavits, if any, on or before Monday, June 3, 2013.

Respectfully submitted,

DATED: May 23, 2013



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Animals, Inc.*

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VERIFIED PETITION

PRELIMINARY STATEMENT

1. Petitioner People for the Ethical Treatment of Animals, Inc. (“PETA” or “Petitioner”), a non-profit, tax-exempt organization dedicated to the protection of animals, brings this Petition for pre-action disclosure under Section 3102(c) of the New York Civil Practice Law and Rules from TheHuffingtonPost.com, Inc. (“TheHuffingtonPost.com” or “Respondent”), seeking identifying information regarding prospective John and Jane Doe defendants, who posted false and defamatory statements on TheHuffingtonPost.com under various user names.

2. Specifically, Petitioner seeks identifying information concerning the TheHuffingtonPost.com user accounts “Lucy Van Pelt,” “Eyema Nurde,” and “ambersommerville,” including names, addresses, email addresses, phone numbers, IP addresses, Internet Service Provider access records, account histories and user activity records (log on and log off times) (collectively, the “Requested Information”). The Requested Information is material and necessary to ascertain the true identities and locations of proper parties, locate those

parties for service of process, preserve evidence and properly frame a complaint for defamation. As described below, this application is the only means by which to obtain this information.

3. No prior application has been made for the relief sought herein.

PARTIES

4. PETA is a Virginia non-stock corporation.

5. Respondent TheHuffingtonPost.com, Inc. is a corporation whose principal office is located at 770 Broadway, New York, NY, 10003, in New York County. Respondent conducts business in New York County.

SUBJECT-MATTER JURISDICTION

6. This Court has subject-matter jurisdiction over this special proceeding pursuant to CPLR § 3102(c).

7. This Court has subject-matter jurisdiction over the contemplated action for defamation.

VENUE

8. Pursuant to CPLR § 506(a), venue in this proceeding lies in New York County, the judicial district in which the principal office of Respondent TheHuffingtonPost.com, Inc. is located.

FACTS SUPPORTING PRIMA FACIE ACTION FOR DEFAMATION

9. On April 2, 2013, a third party published a blog on TheHuffingtonPost.com website containing false and defamatory statements concerning certain PETA practices (“the April 2 blog”).

Jane Doe 1
“Lucy Van Pelt”

10. On April 3, 2013, at 9:16 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

You would be correct about PeTA [sic]. The only effort they make is the effort to deceive people into giving them animals to kill.

11. On April 4, 2013, at 11:34 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

Not only that, [PETA’s mobile free and low-cost spay and neuter clinical service is] not free or discounted – or even paid for by PETA. In fact, according to their very own IRS form 990, PeTA [sic] generates approximately \$500k in REVENUE [sic] from their measly 9000 or so spay/neuter surgeries that they provide.

12. On April 4, 2013, at 3:11 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

[By the way] BeauBoi [another TheHuffingtonPost.com user] – I wouldn’t be surprised if Mooninnorfolk [another TheHuffingtonPost.com user] is Ingrid Newkirk [PETA’s founder and president] herself. She always defends PeTA [sic] and always lies for them.

13. On April 5, 2013, at 11:59 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

[PETA] want[s] the “shelter” status so that they are able to purchase all the poison to kill healthy and treatable animals that their little black hearts desire! When they are criticized (rightly so) for not actually providing any sort of “shelter” then they try to deny being a shelter. Let’s be clear here: They [sic] want the Shelter [sic] status so that they can KILL ILLEGALLY [sic]. Not so they can actually provide any sort of shelter to homeless animals.

14. On April 5, 2013, at 5:17 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

Yet none of that has anything to do with the subject of this blog: Which [sic] is PeTA [sic] killing healthy, treatable and adoptable animals and PeTA turning a blind eye to abusive Animal Care and Control facilities and even protecting these abysmal places.

15. On April 6, 2013, at 1:01 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

[PETA] would kill humans in larger numbers if they were given the opportunity to do so. Is there any doubt? I have absolutely no doubt about that.

16. On April 7, 2013, at 11:52 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

There is also a lot of money to be lost if/when The Public [sic] become [sic] more aware that PeTA [sic] is a hypocritical, animal abusing and killing organization. Open your eyes, to what you, yourself are saying.

17. On April 7, 2013, at 12:22 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

Except PeTA [sic] – the corrupt, hypocritical fake ‘animal welfare’ organization DEFENDED [sic] and protected the abusive shelter and it’s [sic] employees.

18. On April 7, 2013, at 5:42 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

[PETA] may indeed do some good, but sorry, that will never justify the lies, deceit and outright fraud they have perpetrated on the animal lovers of the world. Other people and groups are more than capable of exposing the cruelty of factory farms etc. . . . PeTA [sic] should be shut down and prosecuted at this point. There is no defending them or their corrupt organization.

19. On April 8, 2013, at 3:28 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to a blog by PETA founder and president Ingrid E. Newkirk (“the Newkirk blog”):

You are wrong – they don’t even give the animals “two days” and there is no “adoption floor.” . . . Only facilities for the animals PeTA [sic] “rescues” is in their big, walk in freezer.

20. On April 8, 2013, at 10:43 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the Newkirk blog:

Kill yes, maybe not torture. . . . But they will and do turn a blind eye to others who torture in the animal control facilities all over the country. They even defend the very places that have been found to be torturing the animals.

21. On April 9, 2013, at 10:48 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the Newkirk blog:

Which is why eventually, PeTA [sic] wants to do away with humans too.

22. On April 9, 2013, at 10:52 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the Newkirk blog:

We know that PeTA [sic] is lying. Why is that so difficult for you to understand?

Not everything is always what it seems. People lie. . . . All the time. . . .

Organizations lie all the time. PeTA [sic] lies, all the time.

23. On April 9, 2013, at 2:13 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the Newkirk blog:

[PETA has] also given money to ALF, who is also a terrorist organization and listed as such by the FBI.

24. On April 10, 2013, at 10:38 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

Oh yeah, and with PeTA’s [sic] money, they could provide free spay/neuter to every single animal that needs it. But they don’t they just provide a handful (paid for by someone else) and then turn around and LIE [sic] and claim they provide it. This is not up for debate, I have already PROVEN [sic] beyond any doubt that PeTA [sic] is LYING [sic] when they claim that they provide free or low cost spay and neuter. They OWN [sic] the mobile clinics used and someone else is paying for the surgeries. That someone else is NOT PeTA [sic].

25. On April 11, 2013, at 3:58 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

Apparently there was one incident with PeTA [sic] confiscating the local sheriff’s dog and removing and discarding his tracking device, then bringing the dog back to headquarters to kill.

26. On April 14, 2013, at 3:36 p.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

It would be more honest to read, “PeTA [sic] will basically HIRE [sic] anything that comes through the door.” . . . As long as they are willing to lie, kill animals, and stalk the interwebs [sic] day and night to defend their Dear Leader.

27. On April 15, 2013, at 12:28 a.m., Jane Doe 1 published the following comment on TheHuffingtonPost.com, under the user name “Lucy Van Pelt,” in response to the April 2 blog:

I think my comment is pretty self explanatory and I wasn’t trying to be snarky. PeTA [sic] does indeed kill anything they get their hands on. Sick/healthy/young and old alike.

John Doe
“Eyema Nurde”

28. On April 8, 2013, at approximately 1:15 a.m., John Doe published the following comment on TheHuffingtonPost.com, under the user name “Eyema Nurde,” in response to the April 2 blog:

I volunteered at a local PETA “shelter” for roughly 6 months a few years ago. I was trying to impress a girl I was dating who worked

there. I witnessed first hand [sic] many of these things and more. I saw 3 kittens in a cage without food or water & when I went to feed them I was told “Don’t bother, they will be put down soon.” I saw a mother cat, after giving birth to its first kitten, euthanized, put in a bag and tossed in a freezer. She had not yet finished giving birth to the other kitten/kittens. I have seen people call in & stop by looking to adopt cats and/or dogs & be turned away. They were told “Sorry, we don’t have any available” all the while there were several cats, dogs, puppies & kittens sitting in cages awaiting euthanization [sic]. While I’ll admit I’m no “animal lover”, what I saw there was #@\$&ed [sic] up. Of the 100 or so animals I saw euthanized I can recall 5 that were unhealthy or old. My last day there, I stole 2 kittens & took them home with me. They sit here with me now as I type this, healthy and alive. I broke up with the girl a week later. (The breakup & the PETA situation were unrelated.)

Jane Doe 2
“ambersomerville”

29. On April 8, 2013, at 11:59 a.m., Jane Doe 2 published the following comment on TheHuffingtonPost.com, under the user name “ambersomerville,” in response to the April 2 blog:

One: PETA is crazed and needs to be shut down. They’re animal Kevorkians driven by a bizarre combination of beliefs – a love of euthanasia, and a hatred of

people who've domesticated animals. There was probably compassion for animals in their distant past, but that is long gone. Animals are a mere focal point for anger at people. I interviewed with PETA in 1994, and euthanasia was an important topic in that interview. Based on that, I suspect that they've been doing this wholesale slaughter of adoptable pets for over twenty years.

Here's a volunteer's account of his experience: [link to John Doe's comment].

Other comments have brought up how PETA will go into disaster areas to try to quickly euthanize lost pets before the owners can find them.

Two: I've learned that the mark of a PETA supporter is that they live in their own echo chamber. They think this story is about No-Kill shelters (which are excellent, by the way). Nothing could be further from the truth. This story is about PETA's hypocrisy and their killing 90% of the animals that come into their care.

30. On April 8, 2013, at 12:51 p.m., Jane Doe 2 published the following comment on TheHuffingtonPost.com, under the user name "ambersomerville," in response to the April 2 blog:

Here's one PETA volunteer's experience: [link to John Doe's comment].

PETA had healthy, adoptable animals and turned away people, saying they didn't, opting to euthanize them instead. At one point a mother cat was giving birth to kittens, and after giving birth to her first kitten, PETA euthanized her and put her in the freezer. After six months, that volunteer left with two of PETA's to-be-killed kittens, who are now his cats today.

Bottom line, PETA's anti-pet stance is extreme enough that they kill nearly all the animals at their Virginia shelter (numbers which are self-reported by PETA to the state of Virginia) [link to Virginia Department of Agriculture and Consumer Services, Online Animal Reporting, People for the Ethical Treatment of Animals, Reporting Year 2012].

We have sworn testimony from vets in a 2005 court case, not denied by the PETA volunteers involved, that PETA picked up healthy cats and dogs from two shelters, killed them in their van, and dumped the bodies in trash bags in a dumpster [link to Findlaw.com, State v. Hinkle, No. COA07-1014 (NC Ct. App. Apr. 15, 2008) (holding that the trial court erred by denying defendants' motion to dismiss criminal littering charges and vacating judgments against both defendants)].

31. On April 8, 2013, at 2:10 a.m., Jane Doe 2 published the following comment on TheHuffingtonPost.com, under the user name "ambersomerville," in response to the April 2 blog:

Here, this is from a PETA volunteer who witnessed PETA turning away prospective adopters of healthy animals in PETA's care. (The volunteer left with two kittens PETA planned to kill, both of whom are healthy and alive today.)
[Link to John Doe's comment.]

32. On April 8, 2013, at 2:42 a.m., Jane Doe 2 published the following comment on TheHuffingtonPost.com, under the user name "ambersomerville," in response to the April 2 blog:

PETA self-reports to the state of Virginia their statistics, and they kill virtually every animal in their care: [link to Virginia Department of Agriculture and Consumer Services, Online Animal Reporting, People for the Ethical Treatment of Animals, Reporting Year 2012].

PETA claims that they are a shelter of last resort, that these animals were sick.

However, anecdotal evidence from PETA volunteers belies that claim. People who wish to adopt from PETA are turned away, even with healthy, adoptable animals right there: [link to John Doe's comment].

PETA also strongly supports euthanasia, calling it a compassionate gift.

I consider their views sick and twisted. But the most offensive part is how they choose to spin it and even lie to keep the money flowing.

33. On April 8, 2013, at 11:42 a.m., Jane Doe 2 published the following comment on TheHuffingtonPost.com, under the user name “ambersomerville,” in response to the April 2 blog:

Here's an account of a volunteer's experience at PETA. At one point a mother cat PETA had “rescued” was giving birth, and after the mother had given birth to her first kitten, PETA administered the euthanasia, then threw her body in a freezer: [link to John Doe's comment].

The volunteer later left, rescuing two healthy kittens from them, now cats who are alive today.

Facts Regarding PETA

34. PETA maintains only one animal shelter, at its headquarters in Norfolk, Virginia.

35. PETA's animal shelter makes use of comfortable holding rooms, where dogs, cats, or other companion animals can lounge free of cages. There are no cages in PETA's animal shelter.
36. PETA did not euthanize a cat who was in the process of giving birth.
37. PETA did not deny food or water to any animal.
38. PETA has not lost, or had stolen from its animal shelter, any animal.
39. Upon information and belief, John Doe never volunteered for PETA.
40. PETA's euthanasia policy and practice is completely transparent and conducted lawfully. PETA reports its euthanasia statistics to the Commonwealth of Virginia and describes its policy and the reasons for it publicly, including on its website, peta.org.
41. PETA's animal shelter is a shelter of last resort. Owners of companion animals often bring them to PETA's animal shelter in Norfolk because they have nowhere else to go, thereby sparing them pain, suffering, and/or abandonment to a life on the streets, often fraught with risks of starvation, disease and predation. Often, animals delivered to PETA's care have been denied room at other, non-PETA animal shelters. Often, animals delivered to PETA's care are suffering from chronic ailments, terminal illnesses, life-threatening injuries and/or behavioral issues that preclude adoption.
42. When appropriate, PETA makes efforts to rehabilitate animals delivered to its care and to transfer them to other open-admission shelters for adoption. PETA also keeps regular adoption hours at its Norfolk shelter.
43. Because PETA does not turn away sick or unadoptable animals, oftentimes euthanasia is the only ethically appropriate and humane course of action under the circumstances. This results in a euthanasia rate higher than at some other, more selective open-admission shelters or at so-

called “no-kill” shelters, which discriminate against unadoptable animals and refuse to admit them. Certain members of the “no-kill movement,” including, apparently, Jane Doe 1, seize on PETA’s euthanasia rate without considering the baseline condition of animals delivered to PETA’s care.

44. PETA operates three mobile and low-cost spay or neuter clinics in the Hampton Roads, Virginia region, which operate at a significant net loss to PETA. Jane Doe 1 falsely accuses PETA of lying about its provision of free and low-cost spay or neuter services.

Causes of Action for Defamation

45. Petitioner has meritorious causes of action for defamation against John Doe and Jane Does 1 and 2.

46. Each of the published items identified in paragraphs ten through thirty-three contains statements that are false, defamatory and/or defamatory *per se*.

47. As a direct and proximate result of the statements made by John Doe and Jane Does 1 and 2, reiterated in paragraphs ten through thirty-three, PETA has suffered harms to its reputation.

48. This Court has subject-matter jurisdiction over the contemplated action for defamation.

49. Insofar as PETA is a public figure and must demonstrate malice to make out a prima facie complaint for defamation, evidence of such malice is in the sole possession of John Doe and Jane Does 1 and 2. PETA seeks the Requested Information precisely so that it can frame a complaint for defamation against these unknown prospective defendants. *See Ottinger v. Non-Party The Journal News*, No. 08-03892, 2008 WL 4375330 (N.Y. Sup. June 27, 2008) (holding that a public figure petitioner in a special proceeding for pre-action disclosure alleging

defamation does not need to prove the element of malice to obtain such disclosure where prospective defendants anonymously posted false and defamatory statements online, because evidence of malice was not within the control of the petitioner).

50. Upon information and belief, TheHuffingtonPost.com's Terms and Conditions alert users to the possibility that identifying user information, such as users' IP addresses, user names, names, IP locations or other information may be disclosed without prior notice to, or consent from, users in response to a subpoena issued by a court or from a law enforcement or government agency.

51. On April 19, 2013, PETA, through counsel, sent a letter to TheHuffingtonPost.com moderation manager Sara Rochford, respectfully requesting records relating to the removal of John Doe's false and defamatory statement posted under user name "Eyema Nurde," including contact and identifying information relating to John Doe. PETA's counsel further requested that Ms. Rochford confirm whether she would be unable to provide this information without a subpoena, and that she retain all information relating to John Doe until such time as PETA could initiate these proceedings.

52. On May 1, 2013, Chief Counsel to TheHuffingtonPost.com replied by email that it is Respondent's policy not to provide user information without a subpoena.

53. To the extent that Respondent fails to retain and preserve the Requested Information, Petitioner will be irreparably harmed in its ability to identify John and Jane Does and to frame and bring a complaint for defamation against them.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Petitioner respectfully requests that this Court issue an Order pursuant to CPLR § 3102(c):

- (1) directing TheHuffingtonPost.com to produce the Requested Information, identified in paragraph two herein, in electronic form to undersigned attorneys for PETA within ten calendar days of an Order of this Court;
- (2) directing TheHuffingtonPost.com to preserve the Requested Information until further Order of this Court; and
- (3) for such other and further relief as the Court deems just and proper.

Respectfully submitted,

DATED: May 23, 2013



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*Attorneys for Petitioner People for the Ethical Treatment of
Animals, Inc.*

VERIFICATION


WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

Jeffrey S. Kerr, being duly sworn, states under penalty of perjury that the following is true:

1. I am General Counsel and Senior Vice President, Corporate Affairs, of PETA Foundation, and an agent of People for the Ethical Treatment of Animals, Inc. (“PETA”), authorized to make this Verification on PETA’s behalf. I make this Verification pursuant to CPLR § 3020(d)(3).

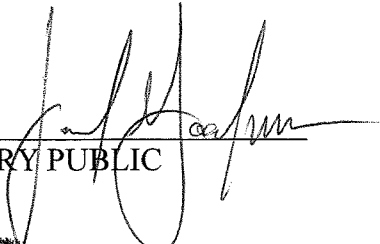
2. I have read the attached Verified Petition and know its contents.

3. The statements in the Verified Petition are true to my own knowledge, except for such statements expressly stated to be upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.



Jeffrey S. Kerr

Sworn to before me this
23rd day of May, 2013



NOTARY PUBLIC

