

**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. 154795/2013

AMENDED VERIFIED PETITION**PRELIMINARY STATEMENT**

1. Petitioner People for the Ethical Treatment of Animals, Inc. (“PETA” or “Petitioner”), a non-profit, charitable animal protection organization exempt from taxation pursuant to Internal Revenue Code Section 501(c)(3), brings this Amended Verified 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”). Petitioner seeks information that will or may tend to identify a prospective John Doe defendant, who posted false and defamatory factual allegations on TheHuffingtonPost.com under the anonymous user name “Eyema Nurde” (“John Doe”).
2. Specifically, Petitioner seeks information concerning the “Eyema Nurde” user account profile on TheHuffingtonPost.com, 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) (“the Requested Information”). In addition, if the Requested

Information from the “Eyema Nurde” user account does not disclose the identity of John Doe, but the Requested Information is associated with any other user account profile at TheHuffingtonPost.com, then Petitioner seeks the Requested Information concerning each other user account containing the Requested Information to the extent it will or may tend to identify John Doe. The Requested Information is material and necessary to ascertain the true identity and location of John Doe, locate John Doe 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. Petitioner previously filed a Verified Petition, dated May 23, 2013, seeking information about John Doe and two other anonymous defamatory commenters, Jane Does 1 and 2. PETA believes that it now has identified each Jane Doe and, therefore, brings this Amended Verified Petition. No other 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”).

10. 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 @ 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.)

11. Upon information and belief, John Doe did not volunteer at Petitioner's Norfolk, Virginia shelter, the only shelter it operates. There are no other "local" PETA shelters.
12. PETA denies that John Doe was told to not provide food or water to animals awaiting euthanasia.
13. PETA denies that it euthanized a cat who was in the process of giving birth as alleged by John Doe.
14. PETA denies that it turned away prospective adopters as alleged by John Doe.
15. PETA denies that John Doe stole animals from PETA's shelter.
16. Petitioner operates its shelter in accordance with Virginia law and regulations, and is licensed and inspected by the state. As required, Petitioner annually reports to the state the numbers of animals handled at its shelter and the disposition of each animal, has not excluded any animal handled from those reports, and no animal has been stolen from Petitioner. Therefore, John Doe's false allegation of stealing animals from Petitioner is an allegation that Petitioner has violated Virginia law and regulations by falsely reporting the number of animals handled at its shelter and/or their disposition.
17. John Doe's defamatory allegations contained in the comment identified in paragraph 10 were republished or linked to on TheHuffingtonPost.com by various other users.

18. John Doe's allegations contained in paragraph 10, are false, defamatory and/or defamatory *per se*.
19. As a direct and proximate result of John Doe's defamatory allegations identified in paragraph 10, PETA has suffered harm to its reputation.
20. Petitioner has a meritorious cause of action for defamation against John Doe.
21. Insofar as Petitioner may be 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. Petitioner seeks the Requested Information precisely so that it can frame a complaint for defamation against this unknown prospective defendant. *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).
22. On an unknown date between April 8 and April 25, 2013, Respondent deleted John Doe's false and defamatory allegations identified in paragraph 10, because they violated TheHuffingtonPost.com's Comments and Moderation Guidelines, which include a prohibition on the spreading of misinformation.
23. According to TheHuffingtonPost.com's Terms and Conditions, users "agree that in the event [TheHuffingtonPost.com receives] a subpoena issued by a court or from a law enforcement or government agency, [TheHuffingtonPost.com] shall comply with such subpoenas without [the

user's] consent or prior notice to [the user] and may disclose [the user's] IP address, username, name, IP location or other information in response thereto.”

24. On April 19, 2013, PETA, through counsel, sent a letter to TheHuffingtonPost.com moderation manager, Sara Rochford, respectfully requesting records relating to John Doe's false and defamatory statements posted under the 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.

25. 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.

26. To the extent that Respondent fails to retain and preserve the Requested Information, Petitioner will be irreparably harmed in its ability to identify John Doe and to frame and pursue a complaint for defamation against him.

27. Petitioner has unsuccessfully searched the Internet, including social media sites, for identifying information regarding John Doe. Without the relief sought in this Amended Verified Petition, Petitioner will not be able to identify John Doe or to serve him with process in the contemplated action for defamation.

PRAYER FOR RELIEF

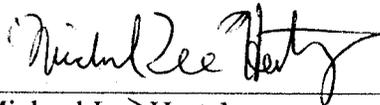
WHEREFORE, based on the foregoing, Petitioner respectfully requests that this Court issue an Order pursuant to CPLR § 3102(c):

(1) directing TheHuffingtonPost.com to produce the Requested Information, identified in paragraph 2 herein, in electronic form to the undersigned attorneys for PETA within ten (10) calendar days of an Order of this Court;

(2) directing TheHuffingtonPost.com to preserve the Requested Information, identified in paragraph 2 herein, until further Order of this Court; and

(3) for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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DATED: June 17, 2013

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