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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

St. Lucia Free Press,

Petitioner,

vs.

Oliver Gobat,

Respondent.

Case No. CPF-13-513220

RESPONDENT OLIVER GOBAT'S OPPOSITION TO MOTION TO QUASH SUBPOENA AND REQUEST FOR SANCTIONS

Date: January 29, 2014
Time: 9:00 am
Dept.: 302
Judge: Hon. Marla J. Miller

DISCOVERY

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I. INTRODUCTION

Oliver Gobat ("Gobat") issued a valid subpoena to Automattic, Inc., based upon a valid order from a U.K. court that established a *prima facie* case of defamation, to obtain identifying information about an anonymous person ("Petitioner") responsible for that defamation. California law permits the issuance of a subpoena based on a foreign subpoena that satisfies the pleading standard for a *prima facie* case of defamation in that foreign jurisdiction. Therefore, Gobat's subpoena is valid, and third party Petitioner's motion to quash should be denied.

Contrary to Petitioner's assertions that *res judicata* applies based on an earlier subpoena, *res judicata* does not apply since Gobat is not seeking to re-litigate any issue that has been finally determined on the merits. Also, contrary to Petitioner's argument, Gobat has fully pled a *prima facie* defamation case under both U.K. and U.S. law, including the particulars of malice. Petitioner's SPEECH Act argument as it does not apply to foreign discovery orders. And, Petitioner's regurgitated argument questioning the U.K. court's jurisdiction is wrong.

II. BACKGROUND

Gobat is a national of both St. Lucia and the United Kingdom who has been seriously defamed by the publication of completely false statements made on an anonymous Wordpress blog, http://stluciafreepress.wordpress.com (the "Blog"). (Gobat Decl. ¶¶ 14, 16, 17.)[1] Automattic hosts the Blog website. (*Id.*)

Petitioner made these defamatory statements impugning Gobat's reputation as a businessman in his professional endeavors in St. Lucia and the U.K. Among other things, Petitioner called Gobat a "pirate" seeking to raid St. Lucia and accused him of fraudulently and dishonestly exploiting his position as a sales agent. (*Id.* ¶¶ 14, 20.) To restore the damage to his reputation, in June 2013 Gobat filed an "Application Notice" in the High Court of Justice, Queen's Bench Division, in the U.K. seeking an order permitting him to obtain information from Automattic relating to the Blog, including registration data and contact details for the Blog and website. (Owens Decl. ¶ 2, Ex. A ("Application Notice" dated June 12, 2013).)[2] The U.K. court

[1] The Declaration of Oliver Gobat in support of Defendant Oliver Gobat's Opposition to Motion to Quash Subpoena and Request for Sanctions is filed concurrently with this Opposition and is referred to herein as "Gobat Decl. ___."

[2] The Declaration of David R. Owens in support of Defendant Oliver Gobat's Opposition to Motion to Quash

granted this request. (Owens Decl. ¶ 3, Ex. B ("Order" dated June 12, 2013).)

Based on this U.K. order, Gobat served a subpoena on Automattic[3] (*Id.* ¶ 4.) Petitioner, however, filed a Motion to Quash this subpoena, which was granted on October 16, 2013. (*See* Owens Decl. ¶ 7, Ex. E ("Tentative Order").) As described in the Tentative Order, and during the hearing, this Court, with specific reference to the Claim Form (Owens Decl. ¶ 5, Ex. C), ruled that Defendant had not formally pleaded a cause of action in the U.K. proceedings as required by California law and that the Court could not, therefore, evaluate whether a *prima facie* case had been made and on that basis granted Petitioner's earlier motion to quash. (*Id.*, *see* Owens Decl. ¶ 8.) In response to this Court's conclusion that there was insufficient information in the U.K. pleadings to permit analysis of whether Gobat had plead a *prima facie* case, Gobat revised its formal pleading papers in the U.K. in November 2013. (*See* Owens Decl. ¶ 9, Ex. F ("Application Notice"), Ex. G ("Particulars of Claims"), and Ex. H (Second Witness Statement of Ashley Hurst).) Based upon these pleadings, the U.K. court issued another order again permitting Gobat to obtain discovery to identify the person responsible for the defamation. (Owens Decl. ¶ 10, Ex. I ("Order" dated November 8, 2013).) Importantly, an English High Court judge has, now on two occasions, found as a matter of public record that it has jurisdiction, that such statements are defamatory, and that Gobat therefore has a *prima facie* defamation claim in England. (Owens Decl. ¶¶ 11, Ex. J ("Proceedings" dated June 12, 2013), Ex. B ("Order" dated June 12, 2013), Ex. C ("Order" dated November 8, 2013).)

Accordingly, having believed that it cured what this Court deemed to be a defect in its initial pleadings in the U.K., Gobat served a second subpoena on Automattic. Petitioner has now again moved to quash the present subpoena.

Subpoena and Request for Sanctions is filed concurrently with this Opposition and is referred to herein as "Owens Decl. ___."

[3] Automattic objected to an earlier subpoena because there did not appear to be an underlying action in that the Application Notice indicated that it was based upon an "Intended Action" and did not contain a specific case number. (Owens Decl. ¶ 4.) Although U.K. law permits such an Application Notice without having to formally file an underlying claim form, based upon a conversation with counsel for Automattic and in the interests of avoiding having to involve the Court in a dispute over this issue of U.K. procedure, Gobat filed a Claim Form in the U.K. court and re-served the subpoena on Automattic. (Owens Decl. ¶ 5, Ex. C ("Claim Form" dated August 22, 2013), ¶ 6, Ex. D (email providing revised subpoena to counsel for Automattic to address its concern over the "Intended Action.")

III. ARGUMENT

Petitioner relies on three faulty arguments. First, Petitioner incorrectly argues that Gobat is barred by *res judicata* from a second subpoena, despite the absence of any final judgment on the underlying merits of Gobat's cause of action. Second, Petitioner incorrectly argues that Defendant has still failed to properly plead a *prima facie* defamation claim, despite an English High Court judge's acceptance of Gobat's claim as demonstrating a *prima facie* case and despite these pleadings demonstrating a *prima facie* case under U.S. and California law. Third, Petitioner incorrectly argues that the SPEECH Act bars Gobat's subpoena, even though that Act applies to the enforcement of foreign *judgments*, not discovery orders.

Despite Petitioner's tangential arguments to the contrary, the purpose of these proceedings is simply to provide assistance to the English courts by giving effect to an English court order to identify Petitioner, the Blog author, so Gobat can properly continue defamation proceedings in the U.K. Indeed, Petitioner, not Gobat, is attempting to misuse this Court to achieve one objective: to avoid being identified and held responsible in a foreign jurisdiction. Failure to allow discovery in this case would allow Petitioner to thumb his or her nose at the U.K. legal system and avoid being haled into English court to address their defamatory statements.

A. *Res judicata* does not apply since Gobat is not seeking to re-litigate any issue that has been finally determined on the merits.

Petitioner incorrectly claims that the doctrine of *res judicata* applies because "[t]he parties . . . have already litigated whether [Defendant] was entitled . . . to unmask [Plaintiff]." (Pet.'s Mot. to Quash 4.) *Res judicata* requires (1) a claim or issue raised in the present action identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 797 (2010). The first two elements, however, are not met here, and therefore Plaintiff's *res judicata* argument should be rejected.

1. The instant issue has not been previously litigated.

Petitioner incorrectly contends that this Court previously "ruled that [Gobat] was not

entitled to violate the rights of privacy and free speech of [Petitioner]." (Pet.'s Mot. to Quash 1.) That issue has *not* been previously litigated. In its earlier order, this Court ruled that Gobat had not adequately pled a cause of action and, as a result, expressly refrained from ruling on the adequacy of that cause of action. Specifically, this Court stated it would "refrain from ruling on the adequacy of a cause of action that was never pleaded." (Tentative Order.) The Court opined that "Plaintiff has never pled a cause of action[] for libel or any other cause." *Id.* Thus, the Court did not need to consider, and did not consider, the issue of whether the claim gave rise to a *prima facie* defamation case. The only holding was that Gobat's pleading was insufficient to make such an assessment.

Gobat has now remedied the perceived procedural defect by filing in November 2013 full particulars of his claim in a 9-page document with the English court and included in the present subpoena. (Owens Decl. Ex. G ("Particulars of Claims"); *see also* Ex. F ("Application Notice"), and Ex. H (Second Witness Statement of Ashley Hurst).) Thus, the instant issue is whether the amended claim is sufficient to demonstrate a *prima facie* defamation claim. This is *not* the same issue that was contested previously; indeed, the text of the claims is not the same. As Petitioner itself has pointed out, *res judicata* applies to preclude re-adjudication of issues that "were actually litigated and determined in the first action." (Pet.'s Mot. to Quash 2 (citing *Boeken*, 48 Cal. 4th at 797).) The issue of whether Gobat's prior U.K. pleading was sufficient to set forth a *prima facie* case is different from whether Gobat's amended, current U.K. pleading is sufficient. Therefore, Petitioner is incorrect that the current issue has already been previously litigated.

2. The prior proceeding did not result in a final judgment on the merits.

Petitioner is also incorrect in asserting that the prior proceeding resulted in a final judgment on the merits. To the contrary, there has been no judgment on the underlying merits of Gobat's defamation claim, and, in any event, a motion to quash a discovery order is not a final judgment on the merits for *res judicata* purposes.

No court has considered, much less rendered judgment, on the substantive merits of this case, other than the English court issuing its order. For this reason alone, Petitioner's *res judicata* argument should fail. Although Petitioner argues that "the subpoenas are virtually identical" and

that this Court has already answered the question of whether Gobat has "shown that these blog posts could support a *prima facie* case for defamation," Petitioner is simply incorrect as a factual matter. As Gobat has stated above, the issue of whether the blog posts could support a *prima facie* defamation case has not been previously litigated. As a result, no California court has issued any sort of judgment on the issue. Indeed, this Court expressly refrained from ruling on the adequacy of Gobat's underlying defamation case under either U.K. or U.S. law. The Court explicitly stated that it would "refrain from ruling on the adequacy of a cause of action that was never pleaded." (Tentative Order.) Accordingly, there is no conceivable basis for Petitioner's contention that "[t]his Court has already answered [Gobat]'s question on that point" and issued a "final, appealable judgment" on the issue. (Pet.'s Mot. to Quash 3.) The very opposite is true.

Additionally, even if this Court had issued a final judgment on the merits, a ruling on a motion to quash a discovery order is not a final judgment for *res judicata* purposes. Petitioner cites no case applying *res judicata* principles to discovery order rulings. Petitioner only notes that the Court's previous discovery order could have been appealed, not that an appealable discovery order implicates *res judicata*. Indeed, as a legal matter, whether Gobat could have appealed the Court's previous order is at best unclear. As a general rule, no order in a civil action is appealable unless it is embraced within the list of appealable orders prescribed by California Civil Procedure Code § 904. An order granting a motion to quash a subpoena is not on that list. Cal. Civ. Proc. Code § 904. California courts from 1963 to the present have specifically stated that a motion to quash a subpoena is not appealable. *See Oak Grove School Dist. v. City Title Ins. Co.*, 217 Cal. App. 2d 678, 709 (1963); *Fox Johns Lazar Pekin & Wexler, APC v. Superior Court*, 219 Cal. App. 4th 1210, 1216 (2013). Petitioner cites only one court that has recognized an exception to this general rule. *See Warford v. Medeiros*, 160 Cal. App. 3d 1035, 1039-41 (1984). The weight of authority, however, indicates that an order granting a motion to quash is not appealable.[4] Even if *Warford* allowed Gobat an appeal from this Court's previous order, it does

[4] California courts have previously held that the proper remedy if a party wishes a higher court to reconsider a discovery order is a writ of mandate or mandamus. *Flora Crane Service, Inc. v. Superior Court of San Francisco*, 234 Cal. App. 2d 767, 775 (1965) *and Fox Johns*, 219 Cal. App. 4th at 1217 (specifically considering an order denying a motion to quash a subpoena).

not follow that Gobat's failure to appeal bars the issuance of a second subpoena. The ability to appeal a discovery order under *Warford* is still not the same as a final determination *on the merits* for *res judicata* purposes. A judgment cannot be considered to be a final one on the merits if the court in question has not considered the merits of the case. Additionally, Petitioner cites no authority, and Gobat knows of none, stating the adjudication of a discovery order bars a party from pursuing future discovery, such as issuing a second subpoena.

B. Gobat has fully pled a *prima facie* defamation case under both U.K. and U.S. law, including particulars of malice.

Petitioner incorrectly claims that Gobat has failed to plead a *prima facie* defamation case because Gobat has failed to "show that Plaintiff published a false statement about [Gobat] to a third party and that the false statement caused injury to [Gobat]." Pet.'s Mot. to Quash 4-5.) Petitioner misunderstands the relevant law.

In a similar case involving defamation and an attempt to ascertain an anonymous poster's identity for use in an out-of-state suit, the California Court of Appeal held that courts must determine whether a complainant meets his or her *prima facie* burden under the law of the foreign jurisdiction. *See Krinsky v. Doe 6*, 159 Cal. App. 4th 1154, 1173 (2008). In *Krinsky*, the appellate court had to determine whether to quash a subpoena issued against Yahoo!, Inc. to disclose the identity of an anonymous blogger so that the plaintiff could sue the blogger in Florida. *Id.* at 1158, 1172-73. The court recognized that "California subpoenas in Internet libel cases may relate to actions filed in other jurisdictions, *which may have different standards governing pleadings and motions*." *Id.* at 1154 (emphasis added). Therefore, the court held that the plaintiff's *prima facie* burden should be "defined and satisfied according to Florida law," not California law. *Id.* at 1173. In this case, then, the question of whether Gobat has demonstrated an adequate *prima facie* case is not a question of California law, but one of English law. The transcript of the U.K. court hearing shows that Gobat's U.K. counsel made clear that Gobat needed to satisfy a California court that he met the *prima facie* defamation standard under U.K. law. (Owens Decl. Ex. J ("Proceedings" dated June 12, 2013).). The English High Court then conclusively determined that Gobat had demonstrated and pled his case with sufficient detail to

make out a *prima facie* case for defamation under English law. *Id.*

Even if this Court applies U.S. law, Gobat would still prevail. Petitioner's statements are statements of fact, not opinion, and therefore not entitled to First Amendment protection. Plaintiff attempts to argue that Gobat is a "public figure" under the test elucidated in *New York Times v. Sullivan*. (Pet.'s Mot. to Quash 5.) This argument, however, misunderstands the meaning of the term "public figure." Simply because Petitioner may be a "businessman closely and publicly involved with highly-visible property development," *id.*, it does not necessarily follow that he is a "public figure" for First Amendment purposes. A "public figure" is a person who has either achieved "pervasive fame or notoriety" in this country or has participated in "a particular public controversy." *Gertz v. Welch*, 418 U.S. 323, 351 (1974). *See also id.* at 351-52 (holding that petitioner attorney was a private individual even though he was active in community and public affairs). Petitioner has presented no evidence that Gobat has achieved pervasive fame or notoriety in the U.S. or that he has injected himself into a particular public controversy in this country.[5]

Additionally, even if Gobat is a public figure, therefore requiring him to plead malice, (*see* Pet.'s Mot. to Quash 5) Gobat has done so in his U.K. claim papers. Under U.S. law, "malice" is the "knowledge that [a statement] was false or . . . reckless disregard of whether it was false or not." *New York Times v. Sullivan*, 376 U.S. 254, (1964). The actual presence of malice, therefore, is based on the speaker's state of mind. Thus, courts have stated that a defamation plaintiff "need produce evidence of only those material facts that are accessible to her." *Krinsky*, 159 Cal. App. 4th at 1172. According to *Krinsky*, this burden "should not be insurmountable" in an Internet libel case. *Id.* A plaintiff is required to make "a preliminary showing of only those facts accessible to the plaintiff." *Id.* at 1171, n. 12. Here, Gobat has made a preliminary showing of malice based on the facts accessible to him. (Owens Decl. ¶ 9, Ex. G ("Particulars of Claims") ¶¶ 25-26.) Gobat has claimed that the Blog's allegations were published maliciously as demonstrated by various factors. (*Id.*) In particular, it is apparent from the face of the Blog that

[5] While certain highly visible businessmen, such as Donald Trump, may indeed be "public figures" for First Amendment purposes, it does not logically follow that all highly visible businessmen (especially those who do business in the U.K. and St. Lucia) are "public figures."

its primary aim was to damage Gobat by, for example, calling him a "pirate" and implying he was a corporate raider of St. Lucia. As in *Krinsky*, Gobat produced evidence the statement was made and "produced evidence of its falsity and the effect it had." *Krinsky*, 159 Cal. App. 4th at 1172. Gobat also specifically identified words in the Blog that constituted libel under U.K. law. Additionally, he set out, as required by English law, the meanings that he ascribes to the words complained of when read as a whole. (*Id.* at ¶¶ 17, 23.) Gobat therefore followed all proper U.K. rules and procedures, setting forth facts that show malice even under the relevant U.S. defamation standard.

C. Petitioner's SPEECH Act argument is unpersuasive; it would not violate public policy to enforce the U.K. court order.

Petitioner improperly relies on the SPEECH Act, 28 U.S.C. § 4102 *et seq.*, in arguing that enforcement of the U.K. court order would violate public policy. (Pet.'s Mot. to Quash 6-7.) Petitioner again attempts to raise the specter of First Amendment violations, but the SPEECH Act only applies to "foreign judgments," *i.e.*, final judgments rendered by a foreign court, not discovery orders issued by a foreign court. *See* 28 U.S.C. § 4102(a)(1)(B). Here, Gobat is simply asking the Court to enforce an order that provides him an opportunity to identify Petitioner and bring a U.K. lawsuit. There has been no final judgment by any U.K. court. In the event that an English court awards a judgment in favor of Gobat and Gobat seeks to enforce it in the U.S., Petitioner can, at that time, contest enforcement of the judgment in this country under the SPEECH Act. To do so now would be procedurally improper, notwithstanding that it is unclear whether Gobat would seek to enforce such a judgment in the U.S. since Petitioner's place of residence and location of assets is unknown.

D. Petitioner's remaining arguments are unpersuasive since this Court previously rejected them.

Petitioner's remaining arguments consist of a regurgitation of previously rejected arguments. For example, Petitioner argues that the U.K. court lacks jurisdiction to hear the underlying claim. That argument is not one that any non-U.K. court should evaluate; an English court has already twice considered the matter and found that it has proper jurisdiction to hear the

claim as currently filed, (*see* Owens Decl. ¶¶ 3, 5, 11, Ex. J (Proceedings), Ex. B (Order dated June 12, 2013), Ex. C (Order dated November 8, 2013)). Such an outcome is not surprising since Gobat is a U.K. national and maintains numerous other ties to that country. (Gobat Decl. ¶¶ 2-3.) Additionally, Gobat's business largely consists of acting as a sales agent for English property owners and marketing St. Lucian properties to English tourists. (*Id.*) Gobat also has numerous business relationships with St. Lucian property owners that are also U.K. residents. (*Id.* at ¶¶ 25-27.) If Petitioner wishes to challenge the U.K. court's jurisdiction based on these findings, he or she can do so in the proper forum. Furthermore, this Court did not credit Petitioner's jurisdictional argument in its previous order, indicating that it did not find such an argument persuasive. (Tentative Order.)

E. Petitioner is not entitled to discovery sanctions since Gobat has not misused the discovery process.

Petitioner argues that monetary sanctions are appropriate under California Civil Procedure Code § 2023.030(a), despite failing to show that Gobat misused the discovery process. Misuse of the discovery process includes "failing to respond or submit to . . . discovery, providing evasive discovery responses, disobeying a court order . . . , unsuccessfully making or opposing discovery motions without substantial justification, and failing to meet and confer in good faith . . . when required by statute to do so." *Clement v. Alegre*, 177 Cal. App. 4th 1277, 1285 (2009). Gobat has not misused the discovery process by serving the instant records subpoena on Automattic to determine the identity of an anonymous poster. Indeed, California law authorized the service of such a subpoena. The California Civil Procedure Code explicitly allows the "deposition for production of business records and things" to obtain discovery from a third party. Cal. Civ. Proc. Code § 2020.010(a)(3). Additionally, a subpoena from a foreign jurisdiction, defined as a "document, however denominated, issued under authority of a court of record," *see id.* at § 2029.200(e), is sufficient to request issuance of a subpoena in California. *Id.* at 2029.300(a). Thus, Gobat's subpoena, served with a U.K. court order, was valid pursuant to all of the applicable California rules. There is no misuse of the discovery process here. Gobat has not disobeyed a court order, evaded discovery, or made discovery motions without substantial

justification. *See Clement*, 177 Cal. App. 4th at 1285. Indeed, quite the opposite: California law has authorized all of Gobat's actions. Gobat has requested information regarding an anonymous poster in order to continue a U.K. defamation action; such a course of action is a *proper* use of the discovery process. "The purpose of the discovery statutes is to enable a party to obtain evidence under the control of his adversary in order to further the efficient and economical disposition of a lawsuit." *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 793 (1978). Efficient and economical disposition of a lawsuit is exactly what Gobat seeks. Indeed, to believe Petitioner is to believe the remarkable proposition that California law does not allow a foreign complainant to request information necessary to continue a foreign suit. That cannot, and is not, the case; Gobat has complied with all applicable discovery statutes and monetary sanctions are inappropriate.

1. Even if monetary sanctions were appropriate in this case, joint and several imposition of such sanctions are not.

Even if monetary sanctions were appropriate, Petitioner incorrectly claims that such sanctions should be awarded jointly and severally against both Gobat and his local counsel, David Owens. (Pet.'s Mot. to Quash 8-9.) Petitioner's counsel argues that Mr. Owens "has been complicit in this campaign of harassment" against Petitioner after the latter exercised his free speech rights. (*Id.*) Petitioner's counsel is placing the cart before the horse. First, she assumes that Petitioner's anonymous postings are protected under the free speech protections of the First Amendment of the U.S. Constitution. No court has addressed, much less answered, that question. Even if Petitioner's First Amendment rights are implicated in this case, Petitioner's counsel is not entitled to assume that there has been a "campaign of harassment." Indeed, Gobat has simply requested the identity of the anonymous poster in order to file a proper legal complaint in the U.K. Requesting a person's identity in order to add that person's name to a lawsuit can hardly be described as "harassment."[6]

[6] Petitioner's apparent suggestion that Gobat's California counsel should be sanctioned so that Petitioner need not "chase down [Gobat] all over the world to recover fees and costs" (Pet.'s Mot. to Quash 9), is an improper one. There is no legal basis for levying expenses against a party's counsel as a proxy for levying those expenses against the party himself. Petitioner cites no statute or case law allowing such a practice. Additionally, Petitioner fails to show how he or she would need to "chase down" Gobat. In the event that Petitioner needs to collect a judgment from Gobat, he or she could easily do so by instituting an appropriate action in the U.K.

Next, Petitioner argues that the provisions of California Civil Procedure Code § 1987.2 mandate joint and several discovery sanctions. (Pet.'s Mot. to Quash 9.) Petitioner's argument, however, suffers from several logic gaps. California Civil Procedure Code § 1987.2 mandates that a court "shall award the amount of the reasonable expenses incurred" if a motion to quash a subpoena is successful and that subpoena relates to personally identifiable information held by an Internet service provider. Cal. Civ. Proc. Code § 1987.2(c). This code section, however, is phrased in terms of "reasonable expenses," not "monetary sanctions." § 1987.2 does not mention sanctions at all, much less sanctions against any party's counsel. Petitioner misconstrues the code section as one relating to discovery sanctions rather than one relating to expenses. *See Gikas v. Zolin*, 6 Cal. 4th 841, 852 (under the statutory construction doctrine *expressio unius est exclusio alterius*, "[t]he expression of some things in a statute necessarily means the exclusion of other things not expressed"). As a textual and statutory construction matter, sanctions are inappropriate. Petitioner also incorrectly claims, without any support, that § 1987.2 is meaningful only if California courts hold "California counsel jointly and severally accountable for the discovery abuses of their internationally-foreign clients."[7] (Pet.'s Mot. to Quash 9.) Petitioner cites no court decision or legislative history indicating that joint and several imposition discovery sanctions are also necessary to vindicate the protections listed in the code. Indeed, if the state legislature had agreed with Petitioner, it could easily have amended the text of § 1987.2 to permit, or even require, courts to impose sanctions jointly and severally between the offending party and his or her counsel. *See Estate of Manuel*, 187 Cal. App. 4th 400, 403 (2010) (stating that "the Legislature has expressly provided for sanctions against counsel when it chose to do so"). The plain language of the statute speaks for itself; Petitioner has presented no legal or textual argument to the contrary. Petitioner's argument is purely rhetorical and has no logical force.

2. All of Plaintiff's additional sanctions arguments are unpersuasive because they are either illogical or contrary to statute.

Petitioner's remaining arguments are unpersuasive. Petitioner claims that this Court

[7] Gobat is unsure of the distinction between an "internationally-foreign" client and one who is only "international" but not "foreign" (or vice versa). Presumably, for current purposes, a client who resides outside the U.S. or does not have U.S. citizenship is both "international" and "foreign."

should quash Gobat's subpoena because failure to do so would allow Gobat to "keep[] himself and his assets beyond the reach of American courts." (Pet.'s Mot. to Quash 9.) The significance of Petitioner's argument is unclear. Gobat is not attempting to dodge a California court's jurisdiction; no one has sued him in California. Nor is Gobat hiding his assets from a California court or a California judgment. Gobat is simply requesting information as to the identity of an anonymous blogger; the role of any California court is limited to whether or not to quash the attendant subpoena. Indeed, there is no reason for Gobat to submit to the general jurisdiction of a U.S. court on the underlying merits of his case. Gobat's underlying complaint is for defamation based on U.K. law, not U.S. law. Gobat is simply requesting information from a California corporation to complete a U.K. complaint.

Additionally, Gobat was entitled to ask his local counsel to issue both subpoenas to Automattic pursuant to California Civil Procedure Code § 2029.350(a). That section permits in-state counsel of "a party to a proceeding pending in a foreign jurisdiction" to issue a subpoena if he or she "receives the original or a true and correct copy of a foreign subpoena." Cal. Civ. Proc. Code § 2029.350(a). Gobat's local counsel, Mr. Owens, received a true and correct copy of the U.K. court order in this case and issued a subpoena to Automattic based on that order. Gobat therefore properly complied with California statute. Indeed, Petitioner acknowledges that § 2029.350(a) allows local counsel to serve a subpoena. (*See* Pet.'s Mot. to Quash 9.) Since the actions of Gobat's counsel were permitted and appropriate under California law, any of Petitioner's arguments to the contrary are spurious. Whether Petitioner agrees or disagrees with the procedures set forth in § 2029.350(a) is of no moment. Contrary to Petitioner's assertions, California law does not require Gobat to somehow "domesticate" his foreign subpoena with a California court.[8]

F. Petitioner expense and fee requests are unreasonably high and should be denied.

Lastly, Petitioner requests reasonable expenses, including attorney's fees and costs, if this

[8] The significance of "domestication" is unclear. Gobat is unaware of the existence of this term in the context of California law on issuing subpoenas, and Petitioner provides no citations explaining the art of "domesticating" a subpoena.

Court grants the motion to quash. (Pet.'s Mot. to Quash 8.) Petitioner's accounting of "reasonable expenses," however, is incorrect and misleading and on that basis should be denied.

First, Petitioner's counsel is improperly repeating her request for fee recovery with respect to time spent on the first subpoena and her first motion to quash. (Fourth Decl. of Catherine Gellis ("Fourth Gellis Decl.") Ex. A.) According to her time entries, she spent 71.1 hours on her previous motion to quash. (*Id.*) Additionally, she notes 6.0 hours spent for the hearing on that motion. (*Id.*) Overall, 77.1 hours of her cumulative total of 111.6 hours relate to her previous motion to quash. In the hearing on that motion, this Court noted that her requested fees were unreasonable and awarded her a reduced amount. (Tentative Order.) Thus, Petitioner's counsel has already been compensated for a vast majority of the hours she currently lists and requesting compensation again is, at best, seriously misleading. Petitioner's counsel, however, continues to request in excess of $30,000 in fees. (Fourth Gellis Decl. ¶ 9.) Petitioner's counsel cannot request double recovery for her attorney's fees.

Second, Petitioner's counsel states that she spent 34.5 hours preparing the instant motion to quash. (Fourth Gellis Decl. ¶ 9.)[9] According to her time entries, she spent an excessively long 26.5 hours researching and drafting the motion. (*Id.* at Ex. A.) Plaintiff's motion to quash is a mere 10 pages long, and two of these pages merely rehash previous arguments. (*See* Pet.'s Mot. to Quash 6-8 (SPEECH Act argument and argument that the U.K. court lacks jurisdiction).) To spend 26.5 hours on 8 new pages of briefing, or roughly 3.3 hours per page, is unreasonable. Indeed, this Court previously held that Petitioner's attorney "has failed to support her request for attorney fees with proof of the reasonable value of her services . . . , the amount of time spent, or the reasonableness thereof." (Tentative Order.) Given Petitioner's counsel's previous unreasonable request for expenses and attorney's fees, coupled with her current unreasonable time entries related to the instant motion (and her misleading request to recover fees again), should this Court entertain this request, such should be significantly reduced from counsel's request.

[9] Petitioner's counsel's record-keeping is also inaccurate. Although she reports a total of 34.5 hours preparing the instant motion to quash, the sum total of all of the time entries related to this motion is 37 hours. (*See* Fourth Gellis Decl., Ex. A (the sum of 2.5 + 1.0 + 5.0 + 1.0 + 5.5 + 7.0 + 8.0 + 7.0 is 37).)

IV. CONCLUSION

In bringing the instant motion to quash, Petitioner advances flawed arguments in the hopes of improperly shielding his identity from discovery. A legitimate, out-of-state forum has already twice issued orders requesting the disclosure of Petitioner's identity so a valid suit can proceed against him or her in that forum. Petitioner makes various illogical claims in attempting to forestall such disclosure.

First, Petitioner wrongly asserts that the doctrine of *res judicata* applies, despite presenting no authority applying that doctrine to discovery orders. Petitioner also incorrectly claims that the issue underlying the subpoena has already been litigated, when no court has resolved Gobat's underlying defamation claim. Petitioner simply overlooks the fact that Gobat has issued a second subpoena that is different from the first one.

Second, Petitioner argues, in the face of the evidence, that Gobat failed to properly plead a *prima facie* defamation claim before the U.K. court. Petitioner ignores the reality that California is not the proper place to assert that Gobat improperly fulfilled the requirements of U.K. law. Additionally, a U.K. judge already found that Gobat met the proper defamation pleading standard, forestalling any argument to the contrary. Indeed, Gobat's claims fulfill even the U.S. pleading standard regarding defamation claims and even properly allege malice, although such is not required.

Third, Petitioner misinterprets the SPEECH Act and attempts to apply it to a discovery order, rather than an actual final judgment rendered by a foreign court. Neither public policy nor the SPEECH Act would not be violated for this Court to order discovery pursuant to a valid foreign court order.

Lastly, Petitioner incorrectly claims that sanctions are appropriate against Gobat for abusing the discovery process, when Gobat has done nothing of the kind. Rather, Gobat has followed all applicable California discovery procedures in issuing subpoenas: he has obtained a valid foreign court order authorizing such discovery, and he subsequently directed his local counsel to issue a subpoena. In attempting to ascertain Petitioner's identity, Gobat is properly using the discovery process for its intended use.

Therefore, Gobat respectfully requests this Court deny Petitioner's motion to quash and allow Automattic, Inc. to respond to the instant records subpoena.

Dated: January 14, 2014

Respectfully submitted,

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By _____

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