

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

Pfizer Inc.,

Petitioner,

For an Order pursuant to Section 3102(c) of the Civil  
Practice Law and Rules to Compel Pre-Action Disclosure  
from

DreamHost LLC,

Respondent.

Index No. \_\_\_\_\_

**PETITION**

Pfizer Inc., by its counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP,  
alleges the following as to this petition seeking to compel pre-action discovery pursuant to  
C.P.L.R. § 3102(c).

**NATURE OF ACTION**

1. This special proceeding arises from false and defamatory statements transmitted online that have caused significant harm to Petitioner. The statements in question, which are outrageous assertions that Petitioner's Chairman and CEO was arrested and faced a possible sentence of life in prison for supposed fraud associated with the efficacy of Pfizer's life-saving COVID-19 vaccine, and that his wife allegedly died from side effects of the COVID-19 vaccine that he forced on her against her will, are patently false and defamatory.

2. These statements were posted on a website called the *Conservative Beaver*, hosted at [www.conservativebeaver.com](http://www.conservativebeaver.com). The identity of the person or persons responsible for permitting the offensive postings ("John/Jane Doe(s)") cannot be ascertained with certainty at this time. Petitioner therefore proposes to take steps through discovery directed

to the applicable hosting service, DreamHost LLC., to ascertain the identity of the registrant and user(s) of the website *Conservative Beaver* on which the false and defamatory communications were posted.

### **THE PARTIES**

3. Petitioner Pfizer Inc. maintains its global headquarters in New York County, New York.

4. Respondent DreamHost LLC is a technology company that provides web hosting services. DreamHost's headquarters is located in Brea, California.

### **VENUE**

5. Pursuant to C.P.L.R. § 503(a), venue is proper in New York County because Petitioner's principal place of business is in this County.

### **STATEMENT OF FACTS**

6. Upon information and belief, John/Jane Doe(s) created the *Conservative Beaver* website.

7. On November 5, 2021, John/Jane Doe(s) posted false and defamatory statements on *Conservative Beaver* concerning the purported arrest of Petitioner's Chairman and CEO, Dr. Albert Bourla, for supposed fraud and deceit in connection with the Pfizer COVID-19 vaccine.

8. Specifically, John/Jane Doe(s) stated in a posting on *Conservative Beaver* that Dr. Bourla was arrested at his home and charged with "multiple counts of fraud" related to supposed deception concerning Pfizer's COVID-19 vaccine. This is entirely a fabrication; Dr. Bourla was not arrested on fraud charges then or ever. The post goes on to state that Dr. Bourla was being held in custody, that multiple search warrants had been executed, and that he potentially faced life in prison for the supposed charges. Again, all

of this is both factually untrue and defamation *per se*. See Affirmation of Andrew J. Ehrlich (“Ehrlich Aff.”), Ex. 1.

9. The defamatory post goes on to state that Petitioner, under Dr. Bourla’s leadership, lied about the effectiveness of vaccines, paid large bribes in connection with vaccine approval, has misled the public about vaccine side effects, and has made large payments to the mainstream media and government officials to silence critics. All of this, too, is false and defamatory. See *id*.

10. Further, on November 10, 2021, John/Jane Doe(s) made a second false and defamatory post concerning Pfizer and Dr. Bourla, even more outrageous than the first. In this second post, John/Jane Doe(s) posted on *Conservative Beaver* that Dr. Bourla’s wife died from side effects of taking the COVID-19 vaccine—including details about the hospital where she purportedly passed away. This is entirely fabricated; Dr. Bourla’s wife, thankfully, is alive and well.

11. What is worse, the article suggested that Dr. Bourla pressed the vaccine on his wife against her will. It cites Mrs. Bourla’s entirely responsible statement that she had not—as of early February 2021—taken the vaccine, because at age 48, the government guidelines still reserved it for older and sicker people, as purported evidence that she was resisting taking the vaccine. This odious posting went on to state that the family requested privacy when of course no such thing had occurred. See Ehrlich Aff., Ex. 2.

12. Petitioner intends to file a lawsuit against the individual(s) operating the *Conservative Beaver* for, among other things, defamation.

13. To date Petitioner has not, having taken reasonably diligent steps, been able to determine with certainty the identity of John/Jane Doe(s). The website in question does

not identify the registrant or operator, nor does it provide any physical address or phone number, thereby rendering it impossible to identify John/Jane Doe(s).

14. Petitioner thus needs information about the registrant of the *Conservative Beaver* so that it may properly identify John/Jane Doe(s) as defendant(s) and frame its cause(s) of action against him/her/them. Specifically, Petitioner must know information about the registrant and/or operator of [www.conservativebeaver.com](http://www.conservativebeaver.com) in order to frame a complaint. The website provides only an anonymous e-mail address, to which Petitioner has written requesting that the defamatory material be taken down. To date, Petitioner has not received any response.

15. The information sought by this petition about the identity of the owner(s) and/or operator(s) of *Conservative Beaver* should be contained in records regularly maintained by Respondent, which based on searches of the Internet Corporation for Assigned Names and Numbers (ICANN) database, is the registrar for the site [www.conservativebeaver.com](http://www.conservativebeaver.com). Petitioner has asked Respondent to provide this information voluntarily, but to date has not received any response.

16. This petition thus seeks an order that DreamHost preserve all information relating to *Conservative Beaver*, and for the production of the following:

- a. All user, identification, or other information provided in connection with the registration of the website [www.conservativebeaver.com](http://www.conservativebeaver.com).
- b. All documents concerning the subscriber, registrant, or user(s) for the website [www.conservativebeaver.com](http://www.conservativebeaver.com).
- c. All documents concerning the identity of the subscriber, registrant, or user(s) for the website [www.conservativebeaver.com](http://www.conservativebeaver.com).
- d. All documents concerning any and all phone numbers associated with the website [www.conservativebeaver.com](http://www.conservativebeaver.com).
- e. All documents concerning any street address associated with the

website [www.conservativebeaver.com](http://www.conservativebeaver.com).

f. All documents concerning the geographical location of the subscriber, registrant, or user(s) of the website [www.conservativebeaver.com](http://www.conservativebeaver.com).

### **ARGUMENT**

17. Pursuant to C.P.L.R. § 3102(c), the Court may order pre-action disclosure in order “to aid in bringing an action.”

18. As New York courts have made clear, “a petition for pre-action discovery limited to obtaining the identity of prospective defendants should be granted where the petitioner has alleged facts fairly indicating that he or she has some cause of action.” *Leff v. Our Lady of Mercy Acad.*, 150 A.D.3d 1239, 1241 (2d Dep’t 2017) (brackets and citation omitted); *Lemon Juice v. Twitter, Inc.*, 2014 N.Y. Slip Op. 51335(U), at \*4 (Sup. Ct. Kings County 2014) (pre-action discovery is available under C.P.L.R. § 3102(c) “where a petitioner demonstrates that he or she has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong”).

19. To state a claim for defamation in New York, a plaintiff must allege: “(1) a written defamatory statement of and concerning the plaintiff, (2) publication to a third party, (3) fault, (4) falsity of the defamatory statement, and (5) special damages or per se actionability.” *Palin v. N.Y. Times Co.*, 940 F.3d 804, 809 (2d Cir. 2019). Each of these elements is present here.

20. *First*, the statements by John/Jane Doe(s) about Petitioner, published on *Conservative Beaver*, are undoubtedly defamatory because they falsely accuse Petitioner of fraud, deceit, and other misconduct. *See Davis v. Boenheim*, 24 N.Y.3d 262, 268 (2018) (a defamatory statement is one “that tends to expose a person to public contempt, hatred, ridicule, aversion or disgrace”) (citation omitted). They also attack the reputation and

integrity of Petitioner's senior-most executive.

21. As false statements of fact, the statements at issue in the posts are actionable defamation. *See Cojocaru v. City Univ. of New York*, 2020 WL 5768723, at \*5 (S.D.N.Y. Sept. 28, 2020) ("In context, a reader would take these statements to imply sexual abuse, harassment, and other forms of misconduct . . . . Thus, they are actionable."); *Lucking v. Maier*, 2003 WL 23018787, at \*6 (S.D.N.Y. Dec. 23, 2003) (finding that passage in book "permits the reasonable inference that [plaintiff] engaged in an illegal stock transaction," which "implicated and disparaged" plaintiff's "standing in her office and profession," and was actionable defamation).

22. *Second*, John/Jane Doe(s) published the defamatory statements regarding Petitioner without authorization or privilege.

23. *Third*, the actions of John/Jane Doe(s) demonstrate actual malice. *See Palin*, 940 F.3d at 809 ("[A] public figure plaintiff must prove that an allegedly libelous statement was made with actual malice, that is, made with knowledge that it was false or with reckless disregard of whether it was false or not.") (internal quotation marks and citation omitted); *World Wrestling Fed'n Enter., Inc. v. Bozell*, 142 F. Supp. 2d 514, 527–28 (S.D.N.Y. 2001) ("To prove actual malice, a plaintiff must prove that the defendant 'had a subjective awareness of either falsity or probable falsity of the defamatory statement, or acted with reckless disregard of its truth or falsity.' . . . Actual malice 'typically' will be inferred from 'objective facts[.]'" (citations omitted). Specifically, upon information and belief, John/Jane Doe(s) published the defamatory statements regarding Petitioner with knowledge that the statements were false, and did so in an effort to cause Petitioner financial, professional, and reputational harm. Indeed, it is deeply telling that when



legitimate media, such as *USA Today*, sought to fact-check these assertions, John/Jane Doe(s) responded that “USA Today is . . . the enemy of the people,” and provided no information about potential sourcing. Ehrlich Aff., Ex. 1. Indeed, numerous legitimate media organizations, including the Associated Press, Reuters, *Forbes Magazine*, and *USA Today* have fact-checked these postings and determined them to be false. *See, e.g.*, Bruce Y. Lee, *No, Pfizer CEO Albert Bourla Was Not Arrested, Here’s How This Conspiracy Theory Emerged*, FORBES (Nov. 6, 2021), <https://www.forbes.com/sites/brucelee/2021/11/06/was-pfizer-ceo-albert-bourla-really-arrested-heres-how-unfounded--claims-emerged/?sh=45d2888e1702>.

24. *Fourth*, because the defamatory statements allege conduct in connection with Petitioner’s business, and that were intended to subject Petitioner to opprobrium, they constitute defamation per se and thus no showing of actual damages is required. *Shaw v. Club Mgrs. Ass’n of Am., Inc.*, 84 A.D.3d 928, 930 (2d Dep’t 2011) (defamation per se includes disparagement as to a person “in their trade, business, or profession”); *see also Feist v. Paxfire, Inc.*, 2017 WL 177652, at \*8 (S.D.N.Y. Jan. 17, 2017) (“New York law generally presumes that damages will result from “statements that fall within” established categories of *per se* defamation’ . . . . Yet “[w]hile a pleading of special damages is not necessary in a case of defamation per se, there must be something that addresses the element of injury to reputation.”) (quoting *Zherka v. Amicone*, 634 F.3d 642, 645 (2d Cir. 2011); *Sandals Resorts Int’l Ltd. v. Google, Inc.*, 925 N.Y.S.2d 407, 412 (1st Dep’t 2011)). Petitioner has suffered harm to its corporate reputation as a result of these malicious rumors regarding its business, as a simple search for the company’s name in recent news articles will demonstrate, and need not prove actual damages to demonstrate a legitimate cause of

action for defamation.

25. As outlined above, Petitioner has “alleged facts fairly indicating” that it has a cause of action for defamation against John/Jane Doe(s). *Leff*, 150 A.D.3d at 1241. Petitioner thus is entitled to pre-action disclosure pursuant to C.P.L.R. § 3102(c) in order to frame the allegations and causes of action asserted in a complaint, identify the proper parties to the lawsuit, and preserve relevant evidence. *Id.*; see also *Lualdi Inc. v. T-Mobile USA, Inc.*, 2018 N.Y. Slip Op. 33348(U), \*1, \*2 (Sup. Ct. N.Y. County 2018) (granting pre-action disclosure of “documents relevant to identifying the person(s) who obtained unauthorized access to Petitioner’s New York office computer network,” where petitioner suspected former consultant of such access and pre-action disclosure to identify potential defendants was “material and necessary to the actionable wrong”).

26. Accordingly, because Petitioner “has met his burden of demonstrating that he has a meritorious cause of action,” and “has further met his burden to show that the discovery from [DreamHost] is needed in order to obtain information relevant to determining who should be named as a defendant,” pre-action discovery, including preservation of relevant evidence, is warranted. *Lemon Juice*, 2014 N.Y. Slip Op. 51335(U), at \*7 (ordering pre-action discovery from Twitter of subscriber information, records, IP addresses, “and other similar information sufficient to identify the owner or operator” of a Twitter account, as well as preservation of relevant evidence).

27. WHEREFORE, Petitioner Pfizer Inc. respectfully requests an order requiring Respondent DreamHost LLC to make the pre-action disclosures specified herein.



Dated: New York, New York  
November 16, 2021

**PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP**

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