S235968

IN THE SUPREME COURT OF CALIFORNIA

DAWN HASSELL et al.,
Plaintiffs and Respondents,

v.

AVA BIRD,
Defendant.

YELP INC.
Appellant.

AFTER A DECISION BY THE COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FOUR
CASE NO. A143233

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF ACLU OF NORTHERN CALIFORNIA, ACLU OF SAN DIEGO & IMPERIAL COUNTIES, ACLU OF SOUTHERN CALIFORNIA, AVVO, CALIFORNIA ANTI-SLAPP PROJECT, ELECTRONIC FRONTIER FOUNDATION, FIRST AMENDMENT COALITION, AND PUBLIC PARTICIPATION PROJECT, IN SUPPORT OF APPELLANT AND PETITIONER YELP INC.

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APPLICATION TO FILE AMICI CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.200, amici curiae ACLU of Northern California, ACLU of San Diego & Imperial Counties, ACLU of Southern California, Avvo, California Anti-SLAPP Project, Electronic Frontier Foundation, First Amendment Coalition, and Public Participation Project respectfully request permission to file the accompanying amici curiae brief in support of appellant Yelp Inc.[1]

The American Civil Liberties Union of Northern California (ACLU-NC) is a nonprofit, nonpartisan civil liberties organization with more than 150,000 members dedicated to the principles of liberty and equality embodied in both the United States and California Constitutions. For more than 75 years, the ACLU-NC has worked to protect the free speech and due process rights of Californians through litigation and other advocacy.

The American Civil Liberties Union of San Diego & Imperial Counties (ACLU-SDIC) is a nonprofit, nonpartisan civil liberties organization with approximately 16,000 members dedicated to the protection of fundamental rights and freedoms under the United

[1] No party or counsel for any party authored this brief, participated in its drafting, or made any monetary contributions intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.200(c)(3).) Amici certify that no person or entity other than amici and their counsel authored or made any monetary contribution intended to fund the preparation or submission of the proposed brief.

States and California Constitutions. ACLU-SDIC has regularly appeared in this Court and other California courts in defense of freedom of speech and due process.

The American Civil Liberties Union of Southern California (ACLU So Cal) is a nonprofit, nonpartisan civil liberties organization with more than 100,000 members. Founded by Upton Sinclair in 1923 after he was arrested for reading the Bill of Rights at a rally in support of striking workers, ACLU So Cal has regularly appeared as a party or amicus, or represented parties, in cases in this Court to advance the free speech and due process rights of Californians.

Avvo is an online legal service marketplace that provides attorney referrals and a database of legal information, including a searchable collection of 10 million legal questions and answers by attorneys. One of Avvo's integral features is attorney ratings. Its attorney directory includes ratings of lawyers in all 50 states and the District of Columbia, comprising about 97 percent of all registered attorneys in the United States. Although many plaintiffs have filed lawsuits against Avvo based on its attorney ratings, courts have protected Avvo's rating system under the First Amendment. If the Court of Appeal's decision is affirmed, Avvo may be exposed to new legal threats despite the protection of the First Amendment.

The California Anti-SLAPP Project (CASP) is a public interest law firm and policy organization dedicated to fighting SLAPPs in California. It also operates a website dedicated to educating the legal profession and the public on SLAPP issues. CASP led the

statewide coalition that secured the enactment and amendment of California's anti-SLAPP laws, and has continued its legislative advocacy. In particular, CASP co-sponsored influential legislation facilitating SLAPPback suits and protecting the rights of Internet speakers. CASP also represented the prevailing defendant in *Barrett v. Rosenthal* (2006) 40 Cal.4th 33 (*Barrett*), in which this Court reaffirmed the broad immunity conferred by 47 U.S.C. § 230 (section 230). The lower court's decision here jeopardizes CASP's efforts in ensuring free speech in California and on the Internet.

The Electronic Frontier Foundation (EFF) is a nonprofit, member-supported civil liberties organization with roughly 36,000 active donors and dues-paying members nationwide, working to protect consumer interests, innovation, and free expression in the digital world. EFF is particularly interested in the First Amendment rights of Internet users and views the protections provided by the First Amendment as vital to the promotion of a democratic society.

The First Amendment Coalition (FAC) is a nonprofit advocacy organization based in San Rafael, California, which is dedicated to freedom of speech and government transparency and accountability. FAC's members include news media outlets, both national and California-based, traditional media and digital, together with law firms, journalists, community activists, and ordinary citizens.

The Public Participation Project (PPP) is a nonprofit organization working to pass federal anti-SLAPP legislation in Congress. Its coalition of supporters currently includes numerous organizations and businesses, as well as prominent individuals,

each of whom is dedicated to protecting the right of free speech and petition. PPP also assists individuals and organizations working to pass anti-SLAPP legislation in the states. An important part of its work includes educating the public regarding SLAPPs and the consequences of these types of destructive lawsuits. As part of its nationwide educational efforts, the PPP seeks to advance generally the principles of free speech and petition as embodied in the First Amendment. The Court of Appeal's opinion here threatens those principles for the reasons expressed in the body of this amici brief.

The accompanying amici curiae brief by ACLU-NC, ACLU-SDIC, ACLU So Cal, Avvo, CASP, EFF, FAC, and PPP argues that the injunction issued against Yelp violates the First Amendment as an unconstitutional prior restraint, violates Yelp's due process rights by enforcing an injunction against a nonparty, and violates section 230 by treating Yelp as the publisher of user-created content. Amici believe this Court would benefit from additional briefing on these issues. Accordingly, amici request that this Court accept and file the attached amici curiae brief.

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AMICI CURIAE BRIEF

INTRODUCTION

The First Amendment generally prohibits prior restraints on even allegedly actionable speech because they suppress communication before an adequate judicial determination can be made that the challenged speech lacks constitutional protection. Due process also generally bars courts from issuing injunctions against nonparties to lawsuits because they have not had the opportunity to defend themselves. Similarly, 47 U.S.C. § 230 broadly immunizes interactive computer services from lawsuits challenging postings made by third parties using their platforms. Without such immunity, interactive computer services would effectively be required to remove any third-party content upon a mere claim that it is defamatory, thereby inevitably removing protected speech from the marketplace of ideas. This statutory protection, coupled with the First Amendment and general notions of due process, has permitted the Internet to flourish as the greatest information platform in the history of our civilization.

Here, the Court of Appeal approved a prior restraint—specifically, an injunction ordering nonparty Yelp to remove third-party content from its website—with only minimal substantive consideration, let alone a full trial on the merits to determine whether the challenged speech was in fact defamatory, as required by the First Amendment. In doing so, the Court of Appeal ignored not only long-established precedent prohibiting such prior

restraints, but also precedent barring the issuance of injunctions against nonparties and providing immunity to interactive computer services under section 230 in similar circumstances. This error was particularly egregious in the context of this case, where Yelp was also denied the protections that are afforded by a full and complete trial, and the challenged judgment resulted from cursory default judgment procedures. Furthermore, the injunction violated Yelp's due process rights because no court made a judicial determination that Yelp had aided or abetted Bird.

In short, the injunction was riddled with deficiencies, violating the First Amendment, due process, and section 230. By allowing this improper injunction to stand, the Court of Appeal's opinion opens the Internet to a new wave of litigation that threatens its continued existence.

This Court should reverse the decision below and direct the trial court to grant Yelp's motion to vacate the judgment. To the extent the Court of Appeal properly interpreted this Court's precedent in reaching its speech-restricting conclusion, such precedent should be overruled.

ARGUMENT

I. THE INJUNCTION IN THIS CASE VIOLATES THE FIRST AMENDMENT.

A. Prior restraints on speech are presumptively unconstitutional.

Prior restraints are " 'administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur' " (*Alexander v. U.S.* (1993) 509 U.S. 544, 550 [113 S.Ct. 2766, 125 L.Ed.2d 441], emphasis omitted), or in advance of a " 'judicial determination that specific speech is defamatory' " (*Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1154 (*Balboa Island*) [" 'Once speech has judicially been found libelous . . . an injunction for restraint of continued publication of that *same* speech may be proper' "]).

The First Amendment generally prohibits prior restraints on speech. (*Balboa Island*, *supra*, 40 Cal.4th at p. 1159.) Prior restraints are "the most serious and the least tolerable infringement on First Amendment rights" because they carry an "immediate and irreversible sanction." (*Nebraska Press Assn. v. Stuart* (1976) 427 U.S. 539, 559 [96 S.Ct. 2791, 49 L.Ed.2d 683].) "The special vice of a prior restraint is that communication will be suppressed . . . before an adequate determination that it is unprotected by the First Amendment." (*Pittsburgh Press Co. v. Pittsburgh Commission on

Human Relations (1973) 413 U.S. 376, 390 [93 S.Ct. 2553, 37 L.Ed.2d 669] (*Pittsburgh Press*).)

Thus, prior restraints are presumptively unconstitutional. (See, e.g., *CBS, Inc. v. Davis* (1994) 510 U.S. 1315, 1317 [114 S.Ct. 912, 127 L.Ed.2d 358] ["For many years it has been clearly established that any prior restraint on expression comes to this Court with a heavy presumption against its constitutional validity" (internal quotation marks omitted)]; *Bantam Books, Inc. v. Sullivan* (1963) 372 U.S. 58, 70 [83 S.Ct. 639, 9 L.Ed.2d 584].)

B. Injunctions against speech are permitted against parties to a lawsuit only after a full and fair trial on the merits and should not be permitted against nonparties.

In *Balboa Island*, this Court recognized a limited exception to the general rule barring speech injunctions, holding that "following a *trial* at which it is determined that the defendant defamed the plaintiff, the court may issue an injunction prohibiting the defendant from repeating the statements determined to be defamatory." (*Balboa Island, supra*, 40 Cal.4th at pp. 1155-1156, emphasis added; see also *id.* at p. 1148 ["an injunction issued following a trial . . . is not a[n unconstitutional] prior restraint"]; *id.* at p. 1158 ["it is crucial to distinguish requests for preventive relief prior to trial and post-trial remedies to prevent repetition of statements judicially determined to be defamatory"]; *id.* at p. 1155 ["we hold that, following a trial at which it is determined that the

defendant defamed the plaintiff, the court may issue an injunction"].)

The opinion in *Balboa Island* extended no further than injunctions against repeating specific speech, issued after a full trial on the merits.[2] Indeed, the cases cited by this Court in its opinion each involved speech "judicially determined to be unlawful" after such a full and complete trial. (*Balboa Island*, *supra*, 40 Cal.4th at

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[2] Indeed, *Balboa Island* departs from the traditional common law rule that injunctions may not be issued against defamatory speech, even after a trial. (*Oakley, Inc. v. McWilliams* (C.D.Cal. 2012) 879 F.Supp.2d 1087, 1089-1090 ["Indeed, injunctions against speech were not permissible in defamation cases under early English and American common law, and the [United States] Supreme Court has never departed from this precedent"]; *Kramer v. Thompson* (3d Cir. 1991) 947 F.2d 666, 677 ["the maxim that equity will not enjoin a libel has enjoyed nearly two centuries of widespread acceptance at common law"].) Numerous courts have denied prior restraints of defamatory speech on this basis. (See, e.g., *Tilton v. Capital Cities/ABC Inc.* (N.D.Okla. 1993) 827 F.Supp. 674, 681 ["The fundamental law of libel in both Oklahoma and Texas is that monetary damages are an adequate and appropriate remedy and that injunctive relief is not available"]; *New Era Publications Intern., ApS v. Henry Holt and Co., Inc.* (S.D.N.Y. 1988) 695 F.Supp. 1493, 1525 ["we accept as black letter that an injunction is not available to suppress defamatory speech"]; *Demby v. English* (Fla.Dist.Ct.App. 1995) 667 So.2d 350, 355 ["It is a 'well established rule that equity will not enjoin either an actual or a threatened defamation' "]; *Prucha v. Weiss* (1964) 233 Md. 479, 484 [197 A.2d 253, 256] ["We agree with the prevailing concept in other jurisdictions that a person allegedly injured by a libelous publication has no right to seek injunctive relief in equity"]; *Kwass v. Kersey* (1954) 139 W.Va. 497, 511 [81 S.E.2d 237, 245] ["equity has no jurisdiction to enjoin publication of defamatory matter"].) If this Court does not reconsider *Balboa Island*, it should certainly go no further in approving speech-restricting injunctions than the narrow exception recognized in *Balboa Island*.

pp. 1151-1153, citing *Kingsley Books, Inc. v. Brown* (1957) 354 U.S. 436, 437 [77 S.Ct. 1325, 1 L.Ed.2d 1469] [upholding state law prohibiting the sale of written material found obscene after "due trial"], *Paris Adult Theatre I v. Slaton* (1973) 413 U.S. 49, 55 [93 S.Ct. 2628, 37 L.Ed.2d 446] [upholding statute banning exhibition of obscene material only after a full adversarial proceeding and a final judicial determination by the state supreme court that the material was unprotected], *Pittsburgh Press*, *supra*, 413 U.S. at p. 390 [holding order forbidding help-wanted advertisements in gender-designated columns did not constitute a prior restraint on speech because the order would not take effect until after a final determination that the advertisements were unprotected].)

Furthermore, *Balboa Island*'s limited authorization of speech-restricting injunctions applies only to injunctions issued against *parties* found liable at trial (in contrast to third parties with no involvement in the trial proceedings). The opinion carefully permitted injunctions "issued following a trial that determined that the *defendant* defamed the plaintiff that does no more than prohibit the *defendant* from repeating the defamation." (*Balboa Island*, *supra*, 40 Cal.4th at p. 1148, emphases added; see also *id.* at pp. 1155-1156 [injunction after trial prohibits *defendant* "from repeating the statements determined to be defamatory"].)

Indeed, this Court explicitly "express[ed] no view regarding whether the scope of the injunction properly could be broader if people other than [defendant] purported to act on her behalf." (*Balboa Island*, *supra*, 40 Cal.4th at p. 1160, fn. 11.) The Court was correct to not decide that post-judgment injunctions can be directed

to nonparties because in "cases evaluating injunctions restricting speech," a "more stringent application of general First Amendment principles" is required. (*Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 765 [114 S.Ct. 2516, 129 L.Ed.2d 593] (*Madsen*).) Considering the general First Amendment prohibition of prior restraints of speech, *Balboa Island* should not be extended to justify injunctions against nonparties after a default judgment.

C. The injunction against Yelp is an unconstitutional prior restraint.

The injunction in this case ordered Yelp to " 'remove all reviews posted by [Bird] . . . and any subsequent comments' " posted by Bird because they were supposedly defamatory. (*Hassell v. Bird* (2016) 247 Cal.App.4th 1336, 1345 (*Hassell*), emphasis omitted.) However, these reviews were determined to be libelous at a default prove-up hearing, at which Bird did not appear and Yelp did not attend because plaintiff did not name it as a party. (See *ibid.*) Yet, plaintiff then delivered the default judgment to Yelp, expecting it to comply with the judgment. (*Id.* at p. 1346.) However, Yelp did not know how the court determined that the reviews were defamatory because Yelp was not present to assess any of the evidence or testimony proffered by plaintiff and unchallenged by Bird. (See *id.* at p. 1344.) Even today, because "a transcript of that hearing is not in the appellate record" (*ibid.*), it is still unclear to Yelp, or to any reviewing court, how the trial court determined the speech was defamatory.

Thus, the injunction against Yelp operates as a prior restraint of speech. It mandates removal of speech *before* a trial on the merits and without a complete and full judicial determination that the speech is libelous. (See *Balboa Island*, *supra*, 40 Cal.4th at pp. 1155-1156; Nunziato, *The Beginning of the End of Internet Freedom* (2014) 45 Geo. J. Int'l L. 383, 387 ["prior restraints on speech [are] restrictions on speech imposed prior to a judicial determination of the speech's illegality" (emphasis omitted)].) The injunction compels Yelp, a nonparty to the original proceeding, to remove speech that it had no opportunity to contest at a trial on the merits (see *Balboa Island*, at pp. 1148, 1155-1156, 1178, fn. 11), or even at the default judgment stage (see pp. 14-15, *post*).

To the extent the injunction affects speech after its initial utterance, this does not change the injunction's character as a prior restraint of speech. (Nunziato, *supra*, 45 Geo. J. Int'l L. at p. 401 ["prior restraints can also be imposed *midstream, after initial circulation* but sometime *before a judicial determination* that the speech is illegal has been made" (emphases added)].) Furthermore, although Bird's alleged reviews have already been posted, the act of removing those posts is effectively a prior restraint of the "*perpetuation, or continuation* of that practice." (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 140, emphasis added.)

D. A default judgment does not provide a sufficient factual basis to justify a speech-restricting injunction.

In general, it "is the policy of the law to favor . . . a hearing on the merits." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-855 ["appellate courts are much more disposed to affirm an order where the result is to compel a trial upon the merits than they are when the judgment by default is allowed to stand"]; see *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 685 (*Fasuyi*); *Au-Yang v. Barton* (1999) 21 Cal.4th 958, 963.) In particular, the law "looks with disfavor upon a party, who, regardless of the merits . . . attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary" by obtaining a default judgment, which might have occurred in this case. (*Weitz*, at p. 855.)

To be sure, state law permits default judgments in certain circumstances. In appropriate cases, default judgments are necessary to prevent a defendant from "avoid[ing] responsibility for his actions by the irresistible expedient of ignoring the plaintiff's claims." (*Carol Gilbert, Inc. v. Haller* (2009) 179 Cal.App.4th 852, 865 (*Carol Gilbert*).) Default judgment procedures also " 'clear the court's calendar and files of those cases which have no adversarial quality,' " such as those where the defendant does not respond to the complaint. (*Lopez v. Fancelli* (1990) 221 Cal.App.3d 1305, 1309-1310.)

But default judgment procedures carry inherent risks. To obtain a default judgment, a plaintiff need only prove damages at a

prove-up hearing, which lacks key protections provided by a full trial on the merits. (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 884 (*Carlsen*).) As long as the complaint's well-pleaded allegations adequately state a cause of action, a plaintiff is entitled to default judgment if the plaintiff can prove damages. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 392.) Otherwise, "*no further proof of liability is required*," including no requirement to introduce evidence to support the allegations in the complaint. (*Carlsen*, at p. 883, citing *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 281-282.)[3]

Entry of default cuts off a defendant's right to appear at a prove-up hearing until the default is set aside or judgment is rendered (see *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385-386), and the defendant is not entitled to rebut the plaintiff's proffered claims and evidence at the hearing. (See *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303.) Default judgment procedure thus "possesses the most summary, indeed perfunctory character our law knows." (*Carol Gilbert*, *supra*, 179 Cal.App.4th at p. 865.)

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[3] Plaintiffs claim that at a default judgment prove-up hearing, "a plaintiff like Hassell who sues for defamation must still prove defamation." (ABOM 47.) Not so. So long as the complaint states a claim for defamation, plaintiff need only prove damages from the challenged statements. (*Carlsen*, *supra*, 227 Cal.App.4th at p. 884.) There are many situations where a plaintiff could suffer damage from a statement but not have a cognizable defamation claim because of the numerous constitutional and statutory requirements necessary to prove a defamation claim.

Given the risk of unfairness inherent in default judgment procedures, " 'any doubts . . . must be resolved in favor of the party seeking relief from default.' " (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980; see *Fasuyi*, *supra*, 167 Cal.App.4th at p. 685.) Thus, only " 'very slight evidence will be required to justify a court in setting aside the default.' " (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233, superseded by statute on other grounds as stated in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973.)

This case illustrates the potential for unfairness inherent in default judgment procedures when they interfere with a constitutional right of a nonparty. While the Court of Appeal merely noted that plaintiffs "served Bird by substitute service" (*Hassell*, *supra*, 247 Cal.App.4th at p. 1343), plaintiffs actually served someone in Oakland—when Bird lived in Los Angeles according to her alleged Yelp profile—and that person "told the process server that he had not seen Bird in months," (OBOM 10). Thus, it cannot be assumed that Bird ever received service of the complaint; and even if she did, she had "no duty to act upon a defectively served summons." (*Slaughter v. Legal Process & Courier Service* (1984) 162 Cal.App.3d 1236, 1251.) In view of this questionable service, it is particularly inappropriate to rely on the default judgment to support an injunction limiting Yelp's constitutional rights.

The lack of procedural protections in obtaining default judgments also casts doubt on their reliability. (See Spector, *Where the FCRA Meets the FDCPA: The Impact of Unfair Collection Practices on the Credit Report* (2013) 20 Geo. J. Poverty L. & Pol'y

479, 507 ["Widespread reports of unfair practices and fraud in the procurement of those default judgments provide additional reasons to question their reliability"].) For example, many defendants have no idea they were sued before a default judgment is entered because plaintiffs fraudulently serve them. (*Id.* at p. 490.) This problem, suitably called "sewer service," is so widespread that New York's attorney general once filed suit "to vacate thousands of default judgments." (*Id.* at p. 479, fn. 2, 490, internal quotation marks omitted; see Rivera, *Suit Claims Fraud by New York Debt Collectors* (Dec. 30, 2009) N.Y. Times <https://goo.gl/8ZAiBA>.)

Additionally, many default judgments are not obtained against the proper defendant. (See Volokh, *Dozens of Suspicious Court Cases, with Missing Defendants, Aim at Getting Web Pages Taken Down or Deindexed* (Oct. 10, 2011) Wash. Post <http://wapo.st/2dZC3nW>.) This is especially problematic in the Internet context, where speakers can hide behind obscure usernames and multiple identities. A plaintiff may have sued a defendant whom the actual speaker impersonated online, or purposely served the wrong defendant so the speaker with the real interest in litigating the case would never receive notice to appear in court. Thus, it is often difficult to ascertain if an injunction is "issued against the actual author of the supposed defamation—or against a real person at all." (*Ibid.*)

In just one of many established cases of these fraudulent lawsuits, a plaintiff filed a defamation complaint against an individual who had no record of living at the address where the

plaintiff allegedly served the complaint.[4] Such a situation is notably similar to the faulty service of process in this case, which the plaintiff allegedly completed at a house where Bird did not live at the time, if ever at all. (See Volokh, *supra*, Wash. Post ["the possibility of such shenanigans bears on the *Hassell v. Bird* litigation that is now before the California Supreme Court"].)

The default judgment in this case illustrates why such judgments are treated differently from those entered after a trial on the merits. Plaintiffs' dismissal of these concerns and subsequent invocation of the right to petition (ABOM 48) is ironic because the right to a full and fair trial on the merits is equally precious, and plaintiffs deprived Yelp of that right by not naming it as a defendant in the underlying lawsuit.

Given the instances of fraud and lack of procedural protections in obtaining default judgments, *Balboa Island* should not be extended beyond authorizing injunctions following full trials on the merits. In particular, the presumption of unconstitutionality already applied to prior restraints on speech should counsel against interpreting *Balboa Island* to allow injunctions based on default judgments. The Court of Appeal erred in extending *Balboa Island*

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[4] Volokh, *supra*, Wash. Post ("Let's focus for now on the suit in Rhode Island. The complaint objects to an allegedly defamatory comment that discussed Rescue One Financial, citing two blog posts, one of which is about Financial Rescue. But neither company sues [the proper defendant], who might well have fought back. [¶] Instead, a lawsuit is filed ostensibly on behalf of Bradley Smith—the chief executive of Rescue One Financial—against one Deborah Garcia, who supposedly lives in Rhode Island. As best we can tell, no-one by that name lives at the address given for her.")

to approve such speech-restricting injunctions in situations where there has not been anything resembling a full and fair trial on the merits.

E. The prior restraint issued here was never subjected to the heightened First Amendment mandated review procedures that are used even after a full trial.

As a general rule, "especially sensitive procedures" are required when speech is at stake. (*Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294, 311 (*Kash*); *United Farm Workers of America v. Superior Court* (1975) 14 Cal.3d 902, 909; see also *Carroll v. President and Com'rs of Princess Anne* (1968) 393 U.S. 175, 183-184 [89 S.Ct. 347, 21 L.Ed.2d 325] (*Carroll*); *Castro v. Superior Court* (1970) 9 Cal.App.3d 675, 690 ["Where the separation of legitimate from illegitimate speech is concerned, the Constitution calls for 'sensitive tools' " (quoting *Speiser v. Randall* (1958) 357 U.S. 513, 525 [78 S.Ct. 1332, 2 L.Ed.2d 1460])]; accord, *Balboa Island*, *supra*, 40 Cal.4th at p. 1159; *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1430; *California Retail Liquor Dealers Institute v. United Farm Workers* (1976) 57 Cal.App.3d 606, 610-611.)

Furthermore, injunctions issued without notice when service beforehand could have been accomplished—like the injunction here—require particularly sensitive review when First Amendment rights are at risk. (*Kash*, *supra*, 19 Cal.3d at p. 311, citing *Carroll*, *supra*, 393 U.S. at p. 180); *Gluck v. County of Los Angeles* (1979) 93

Cal.App.3d 121, 135 [an ordinance "violate[d] the *Kash* proscription upon ex parte orders enjoining the exercise of protected speech"].) In *Kash*, this Court invalidated an ordinance that permitted seizure and destruction of news racks without a prior hearing. (*Kash*, at p. 299.) While public commissioners eventually notified news rack owners of removal, the ordinance provided "absolutely no opportunity for a hearing on the merits of the seizure, either before or after the removal." (*Id.* at p. 306-307.) This Court found such ex parte deprivations of protected speech without notice violated "both procedural due process and the First Amendment." (*Id.* at pp. 307, 309 ["In the face of this fundamental constitutional defect . . . the ordinance cannot stand"].)

Plaintiffs argue that *Kash* and *Carroll* do not apply here because "Bird's libelous speech was adjudicated after notice and a hearing." (ABOM 17, fn. 6.) But Yelp did not appear at the hearing and was not a party to the case. Because Yelp never had its day in court before issuance of the injunction, the Court of Appeal denied Yelp the procedural protections required by *Kash*. Moreover, in the default hearing here, there was not even a full trial on the merits as between plaintiffs and Bird to determine whether Bird's speech was actually defamatory or not.

Additionally, the lower court failed to follow the First Amendment requirement that—even after a full trial on the merits—appellate courts must carefully " 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.' " (*Bose Corp. v. Consumers Union of U.S., Inc.*

(1984) 466 U.S. 485, 499 [104 S.Ct. 1949, 80 L.Ed.2d 502], quoting *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 284-286 [84 S.Ct. 710, 11 L.Ed.2d 686] (*Sullivan*); see also *Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1166.) Accordingly, an appellate court's factual review of the record in First Amendment cases is de novo. (*Bose Corp.*, at p. 492; *Evans*, at p. 1166.) This standard of review is in stark contrast to the deference that is ordinarily afforded to a trial court's factual findings. (*Easley v. Cromartie* (2001) 532 U.S. 234, 242 [121 S.Ct. 1452, 149 L.Ed.2d 430]; *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Given this heightened review, the use of default judgment procedures to enforce a speech-restricting injunction (with no reporter's transcript of the key hearing) hardly satisfies First Amendment protection. Because even a jury's factual findings after a full trial are not afforded deference on appeal when First Amendment rights are at stake, it is unconstitutional for such rights to be curtailed by a default judgment. This Court has never endorsed the Court of Appeal's conclusion that the kind of injunction approved by *Balboa Island* (injunction issued after complete trial on merits) can be entered after a default judgment. And, for all of the reasons set forth above, such an injunction entered after a default judgment is unconstitutional.

II. THE INJUNCTION AGAINST YELP VIOLATES DUE PROCESS.

The United States Supreme Court has held that due process prohibits a court from issuing an injunction against a nonparty. (*Zenith Radio Corp. v. Hazeltine Research, Inc.* (1969) 395 U.S. 100, 109-112 [89 S.Ct. 1562, 23 L.Ed.2d 129] (*Zenith Radio*) [" 'It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party' "]; see also *Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd.* (1987) 484 U.S. 97, 104 [108 S.Ct. 404, 98 L.Ed.2d 415] [" 'The requirement that a court have personal jurisdiction flows . . . from the Due Process Clause' "].)

Where First Amendment rights are at stake, courts must be particularly careful to ensure their orders are narrowly tailored. (See *Carroll*, *supra*, 393 U.S. at p. 183 ["An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order"].)

Here, Yelp is in the same situation as the defendant in *Zenith Radio*. Yelp had no control over Bird, the named defendant in the underlying litigation to which Yelp was a nonparty, and Yelp had no opportunity to participate in the underlying default judgment proceeding. In fact, the due process violation is even more egregious here because, unlike in *Zenith Radio*, there was not even a full trial on the merits before the injunction was issued. To the contrary, the

injunction followed a one-sided default judgment proceeding with no appearance by Bird to defend against the allegations of defamation. Furthermore, no court has made any judicial determination that Yelp acted in concert with Bird. Accordingly, the injunction against Yelp violates due process.

III. THE INJUNCTION AGAINST YELP VIOLATES TITLE 47 OF THE UNITED STATES CODE SECTION 230.

A. The Court of Appeal improperly applied section 230 by treating Yelp as the publisher instead of as an interactive computer service.

Congress enacted section 230 "to further First Amendment and e-commerce interests on the internet." (*Batzel v. Smith* (9th Cir. 2003) 333 F.3d 1018, 1028 (*Batzel*).) Courts across the country—including this Court—have interpreted section 230 broadly to insulate interactive computer services from liability. (*Barrett*, *supra*, 40 Cal.4th at p. 39 ["These provisions have been widely and consistently interpreted to confer broad immunity"]; *Fields v. Twitter, Inc.* (N.D.Cal 2016) 200 F.Supp.3d 964, 975, citing *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327 (*Zeran*).) These cases have extended immunity to claims seeking both damages and injunctive relief. (See, e.g., *Kathleen R. v. City of Livermore* (2001) 87 Cal.App.4th 684, 697-698 (*Kathleen R.*) [rejecting argument that immunity does not apply to claims for declaratory and injunctive relief], citing *Ben Ezra, Weinstein, and*

Company, Inc. v. America Online Inc. (10th Cir. 2000) 206 F.3d 980, 983-986; see also 4 Ballon, E-Commerce and Internet Law (West 2016) Injunctive Relief and Orders Directing Interactive Computer Services to Remove Third Party Content, § 37.05[8].) Congress itself has explicitly endorsed this line of cases as "correctly decided." (Carome & Rushing, *Anomaly or Trend? The Scope of § 230 Immunity Challenged by Two Courts*, Comm. Law., Spring 2004, at p. 3.)

Section 230 immunizes providers or users of an interactive computer service, defined as "any information service . . . that provides or enables computer access by multiple users to a computer server" (47 U.S.C. § 230(f)(2)), from liability "as the publisher or speaker of any information provided by another information content provider" (47 U.S.C. § 230(c)(1); *Zeran, supra*, 129 F.3d at p. 330 ["[section] 230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role"]). There is no dispute that Yelp is a provider, or at the very least, a user of an interactive computer service. (See *Batzel*, *supra*, 333 F.3d at p. 1030 ["There is . . . no need here to decide whether a listserv or website itself fits the broad statutory definition of 'interactive computer service,' because . . . § 230(c)(1) confers immunity not just on 'providers' . . . but also on 'users' of such services"].) It is likewise undisputed that Bird is also an information content provider because she is "responsible . . . for the creation or development of information provided through the Internet." (47 U.S.C. § 230(f)(3).)

The default judgment here conflicts with section 230 because it would treat Yelp as a publisher by casting Yelp "in the same

position as the party who originally posted the offensive messages." (*Zeran*, *supra*, 129 F.3d at p. 333; *PatentWizard, Inc. v. Kinko's, Inc.* (D.S.D. 2001) 163 F.Supp.2d 1069, 1071 ["The Complaint seeks to treat Kinko's as a publisher . . . . [it] seeks to place Kinko's in Jimmy's shoes, by holding Kinko's responsible for alleged defamatory matter that was published by Jimmy"].) Enforcement of the default judgment here would therefore conflict with section 230. (*Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 831 (*Gentry*) ["If by imposing liability . . . we ultimately hold eBay responsible for content originating from other parties, we would be treating it as the publisher . . . contrary to Congress's expressed intent"].)

Congress explicitly granted immunity "to promote the continued development of the Internet . . . [¶] . . . [and to] preserve the vibrant and competitive free market that presently exists for the Internet." (47 U.S.C. § 230(b)(1)-(2); see also *Batzel*, *supra*, 333 F.3d at pp. 1027, 1033.) Courts and scholars have warned that imposing liability on providers like Yelp, however, would threaten to halt the growth of the Internet. (See, e.g., *Batzel*, at pp. 1027-1028; Letter from Twenty-Three Trade Associations, Civil Liberties and Internet Groups, and Nineteen Law Professors to Congressional Leaders (July 30, 2013) <http://goo.gl/539quF> (hereafter Law Professors Letter).)

Plaintiffs claim it is somehow inconsistent for Yelp to argue it is not the publisher of Bird's speech for the purposes of section 230, but to assert it has the First Amendment right to host that speech on its website. (ABOM 3.) Plaintiffs miss the point. Yelp provides a forum for the free speech of others, and it has an independent

First Amendment interest in doing so. (See *Sullivan*, *supra*, 376 U.S. at pp. 257, 260 [reaffirming a newspaper's First Amendment rights in political advertisement created by another agency published in that newspaper]; *Pittsburgh Press*, *supra*, 413 U.S. at p. 386 [acknowledging a newspaper's First Amendment rights in help-wanted advertisements submitted by other parties]. Moreover, section 230 merely provides that interactive computer services should not be treated as publishers when information is provided by another information content provider. (47 U.S.C. § 230(c)(1).) Thus, a website does not forfeit its First Amendment rights as a publisher by virtue of claiming immunity under section 230.

B. Yelp's knowledge of an improper post does not deprive Yelp of section 230's protections.

Consistent with congressional intent, this Court, in line with others, has broadly interpreted section 230 to reject the imposition of liability on interactive computer services based on the fact that they have notice about an allegedly improper post. (*Barrett*, *supra*, 40 Cal.4th at p. 54.) Permitting liability simply based on notice would cause "deleterious effects" because if interactive computer services were liable for defamatory content upon notice of such content, they would be deterred from self-screening user content because discovering defamatory messages would increase their liability. (*Id.* at pp. 54-55.)

Under a regime in which notice yielded liability, parties who found messages they dislike would have an easy and cost-free

means of removing the messages simply by notifying the website, which would likely remove the content rather than risking costly litigation and potential liability. The result would be a profound chilling of Internet speech. (*Barrett*, *supra*, 40 Cal.4th at pp. 54-55.) This chilling effect is not merely theoretical, but "obvious," because it would be "impossible for service providers to screen each of their millions of postings for possible problems" and result in severe speech restrictions. (*Zeran*, *supra*, 129 F.3d at p. 331.) At worst, courts have found that chilled speech would result in "shutting down websites." (*Batzel*, *supra*, 333 F.3d at pp. 1027-1028.)

C. Section 230 provides important protections necessary for a free and robust exchange of ideas on the Internet.

Absent immunity under section 230, websites hosting third-party content would be subject to "crushing" and "crippling" liability. (Carome & Rushing, *supra*, Comm. Law. at pp. 3, 8.) Liability would be devastating because on many websites, "every single comment by a third-party user is automatically posted," and comments can reach "into the millions." (French, *Picking Up the Pieces: Finding Unity After the Communications Decency Act Section 230 Jurisprudential Clash* (2012) 72 La. L.Rev. 443, 474.) Therefore, heavily-trafficked providers could avoid liability only by creating a "comprehensive monitoring system" that would "be financially burdensome, unfeasible, or impossible." (*Ibid.*)

Rather than absorbing such costs or passing them on to their users, interactive computer services would likely "remove any

system of formal notification" to avoid notice-based liability. (French, *supra*, 72 La. L.Rev. at p. 475.) At worst, they would "choose instead just to remove all content that is complained about, without regard to its offensiveness or the resulting chilling effect on free speech." (*Ibid.*; see Freivogel, *Does the Communications Decency Act Foster Indecency?* (2011) 16 Comm. L. & Pol'y 17, 46 ["A notice-and-takedown procedure likely would result in sites taking down every piece of content about which a complaint is filed—whether that content was objectionable or not"].) Congress granted broad immunity to Internet companies to avoid these risks. Therefore, an expanded liability regime would actually "discourage[ ] services from setting up the self-regulatory regimes that Congress wanted to encourage." (Carome & Rushing, *supra*, Comm. Law. at p. 8.)

Scholars have recognized that broad immunity "is the only interpretation of [section] 230 that protects the interests of both prudence and justice." (French, *supra*, 72 La. L.Rev. at p. 485; see Kosseff, *Defending Section 230: The Value of Intermediary Immunity* (2010) 15 J. Tech. L. & Pol'y 123, 152 ["A tort system that imposes the costs on the person who engaged in the legal risk—the anonymous commenter—is the fairest method of imposing liability"].) Additionally, it is the "only way" to "encourage [a] website to screen content fearlessly and fairly." (French, at p. 485). If interactive computer services instead removed all content upon notice, studies have shown that "every actual defamatory message that an intermediary is pressured to remove will result in between four to nine other, non-defamatory postings also being censored."

(Ciolli, *Chilling Effects: The Communications Decency Act and the Online Marketplace of Ideas* (2008) 63 U. Miami L.Rev. 137, 221.) Because any damage to genuine defamation victims would have already occurred after publication, "such a large false positive rate is unacceptable." (*Ibid.*; see *Secretary of State of Md. v. Joseph H. Munson Co., Inc.* (1984) 467 U.S. 947, 956 [104 S.Ct. 2839, 81 L.Ed.2d 786] ["Even where a First Amendment challenge could be brought by one actually engaged in protected activity, there is a possibility that, rather than risk punishment for his conduct in challenging the statute, he will refrain from engaging further in the protected activity. Society as a whole then would be the loser."].)

Most importantly, "[b]y imposing liability on the intermediary, a court is harming society at large by reducing the amount of speech on the Internet." (Kosseff, *supra*, 15 J. Tech. L. & Pol'y at p. 152.) Imposing liability "would dramatically reduce opportunities for free expression online," and "many of the platforms that have transformed everything from entertainment and personal communications to democratic participation and social activism might not exist at all." (Law Professors Letter, *supra*, at p. 2.) Consequently, "there would be no online fora for Americans to express themselves, thus eviscerating one of the most fundamental rights in our country: the freedom of speech under the First Amendment." (Tischler, *Free Speech Under Siege: Why the Vitality of Modern Free Speech Hinges on the Survival of Section 230 of the Communications Decency Act* (2014) 24 Temp. Pol. & Civ. Rts. L.Rev. 277, 278-279.)

D. The Court of Appeal's decision imperils many widely used websites.

Section 230's broad immunity has been particularly influential on the development of websites such as "YouTube, eBay, Yahoo!, Verizon, Comcast, and others." (Lemley, *Rationalizing Internet Safe Harbors* (2007) 6 J. Telecomm. & High Tech. L. 101, 111.) Absent immunity, these websites would "face the prospect of tens of billions of dollars in statutory damages for hosting, carrying, or linking to content whose provenance they cannot determine" and "either go out of business" or "impose restrictions on the content they will carry sufficiently onerous that they would effectively lock down the Internet." (*Ibid.*) The Internet has flourished in part because courts have consistently protected these entities from crippling liability, but the Court of Appeal's decision calls this body of law into question, opening these influential websites to lawsuits that could threaten their existence.

For instance, eBay hosts third-party reviews of sellers and buyers, which opens up the bidding service to defamation claims. It also suffers from false advertising claims based on sellers' listing descriptions. Cases such as *Mazur v. eBay, Inc.* (N.D.Cal. 2009) 257 F.R.D. 563, and *Gentry*, *supra*, 99 Cal.App.4th 816, have recognized eBay is immune from such false advertising claims due to section 230. In particular, the Court of Appeal in *Gentry* reasoned that lawsuits against eBay and other providers based on third-party content would threaten freedom of speech and " 'the robust nature of Internet communication.' " (*Gentry*, at p. 829, quoting *Zeran*,

supra, 129 F.3d at p. 330.) Therefore, denying immunity would become " 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " (*Gentry*, at p. 833.) The decision below would frustrate the same congressional purposes.

Section 230 has also protected Google from liability. Google's "suggested" advertisements have not resulted in culpability due to section 230's broad protection. (*Goddard v. Google, Inc.* (N.D.Cal. 2009) 640 F.Supp.2d 1193, 1197, 1202.) Google's "sponsored" links have also been immunized against plaintiffs' attempts to "plead around" section 230 by claiming Google actually created user content. (*Jurin v. Google Inc.* (E.D.Cal. 2010) 695 F.Supp.2d 1117, 1123.) Like Yelp's reviews, Google's organic search results have also been protected from complaints targeting allegedly defamatory third-party websites and Google's decisions in removing or de-indexing them. (*Manchanda v. Google* (S.D.N.Y., Nov. 16, 2016, No. 16-CV-3350 (JPO)) 2016 WL 6806250, at p. *3 [nonpub. opn.] [immunizing Google under section 230].) However, the decision below threatens these protections. Google "has no realistic way of knowing which of the over 10 billion Web pages it searches" could be defamatory "[e]ven if it employed an army of lawyers to scrutinize all of the content." (Lemley, *supra*, 6 J. Telecomm. & High Tech L. at p. 102.)

Courts have also protected Facebook from liability for content on user profiles. (*Caraccioli v. Facebook, Inc.* (N.D.Cal. 2016) 167 F.Supp.3d 1056, 1066 [no responsibility for a third-party account because "[l]iability based on that sort of vicarious responsibility . . . is exactly what § 230(c) seeks to avoid"].) When

courts have rejected efforts to plead around immunity against Facebook, they have emphasized that " 'what matters is whether the cause of action inherently requires the court to treat the defendant as the " 'publisher or speaker' " of content provided by another.' " (*Sikhs for Justice "SFJ" Inc. v. Facebook, Inc.* (N.D.Cal. 2015) 144 F.Supp.3d 1088, 1094, quoting *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1101.) Thus, contrary to the Court of Appeal's reasoning below, it is irrelevant whether a lawsuit names a particular website as a defendant, because ultimately the website is treated as a publisher if its Internet speech is enjoined. Under such a liability regime, Facebook could be subjected to " 'costly and protracted legal battles' " (*Sikhs*, at p. 1096), and risk " 'shutting down' " (*Caraccioli*, at p. 1065).

Amazon, the largest Internet retailer, has also avoided crippling liability because of section 230. (*Joseph v. Amazon.com, Inc.* (W.D.Wash. 2014) 46 F.Supp.3d 1095, 1106 ["The CDA's express terms preclude [Plaintiff] from treating Amazon as a publisher"]; *Corbis Corp. v. Amazon.com, Inc.* (W.D.Wash 2004) 351 F.Supp.2d 1090, 1117-1118.) Like Yelp, Amazon allows its users to post reviews, which makes it a target for defamation actions. But courts have "repeatedly barred similar claims against countless websites that allow anonymous reviews or other allegedly defamatory content to be posted by third parties," and this case is no different. (*Joseph*, at p. 1106.) If the decision below were extended to Amazon, Amazon would have no incentive to self-regulate its customer reviews to find fake posts since it would be easier and more cost-effective to simply remove messages upon any

allegation of defamation. (See *Schneider v. Amazon.com, Inc.* (Ct.App. 2001) 108 Wash.App. 454, 463 ["Congress intended to encourage self-regulation, and immunity is the form of that encouragement" (footnote omitted)].)

Likewise, the effect of imposing liability on Twitter would be "untenable." (Lee, *Subverting the Communications Decency Act*: J.S. v. Village Voice Media Holdings (2016) 7 Cal. L.Rev. Circuit 11, 18.) Since takedown requests can "span [an] entire range of daily tweets," which can number 500 million, Twitter might instead overregulate its users' speech to avoid liability for such a voluminous number of posts. (*Ibid.*)

Avvo, one of the preeminent websites for attorney ratings, has also avoided liability for its rating system due to the prospect of section 230 immunity. (King, Amicus Letter of Avvo, Inc. to Chief Justice Cantil-Sakauye and Associate Justices of the California Supreme Court, Aug. 10, 2016, p. 1 ["The fact that none of these cases have made it past the pleadings . . . is due in large measure to what we call 'the law that makes the internet go:' 47 U.S.C. § 230"].) Similarly, Avvo's rating system has been protected by the First Amendment. (*Browne v. Avvo Inc.* (W.D.Wash. 2007) 525 F.Supp.2d 1249, 1251-1253 [not reaching the issue of immunity under section 230 because plaintiffs disavowed all claims based on third-party content].) However, the Court of Appeal's decision threatens Avvo's success in this regard, introducing the possibility that courts will not entertain section 230 immunity at all. Furthermore, "[i]n the absence of this immunity, [Avvo] would likely need to have rigidly open forums—to avoid allegations of abuse of some standard of

care—or simply stop providing the public with a resource in which people could read and post about experiences with legal representation." (Avvo Amicus Letter, at p. 2.)

Furthermore, section 230 protects smaller startups and entities such as public libraries that integrate third-party content. (See *Kathleen R.*, *supra*, 87 Cal.App.4th at pp. 691-692 [protecting a public library from liability for unrestricted access to the Internet].) Without immunity, these smaller yet equally important entities are even more likely to restrict user content in order to avoid liability because of their limited financial resources to defend themselves in litigation. (See *Zeran*, *supra*, 129 F.3d at p. 331.) The Court of Appeal's opinion, if affirmed, would have devastating consequences for these smaller entities, at significant cost to the overall marketplace of ideas.

By enforcing an injunction against Yelp, the Court of Appeal inadequately considered the catastrophic impact on the Internet that could result. It has treated Plaintiffs' claim inconsistently from all other judgment enforcement actions against interactive computer services simply because Plaintiffs never named the Internet provider as a defendant in the underlying defamation suit. If affirmed, the Court of Appeal's decision will undoubtedly "lead[ ] to litigation abuses by plaintiffs who seek to recast claims subject to significant immunity as different types of claims with lesser or nonexistent immunity." (Lemley, *supra*, 6 J. Telecomm. & High Tech. L. at p. 108.) Plaintiffs dismiss these effects as a "sky-is-falling" argument (ABOM 46), but ignore the fact that the immunity

they seek to override is precisely why the sky has not fallen and the Internet has flourished.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision below and direct the trial court to grant Yelp's motion to vacate the judgment.

April 14, 2017

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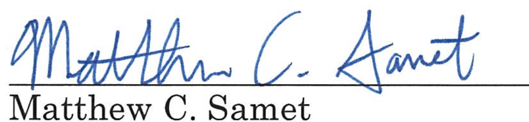

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

On April 14, 2017, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF ACLU OF NORTHERN CALIFORNIA, ACLU OF SAN DIEGO & IMPERIAL COUNTIES, ACLU OF SOUTHERN CALIFORNIA, AVVO, CALIFORNIA ANTI-SLAPP PROJECT, ELECTRONIC FRONTIER FOUNDATION, FIRST AMENDMENT COALITION, AND PUBLIC PARTICIPATION PROJECT, IN SUPPORT OF APPELLANT AND PETITIONER YELP INC.** on the interested parties in this action as follows:

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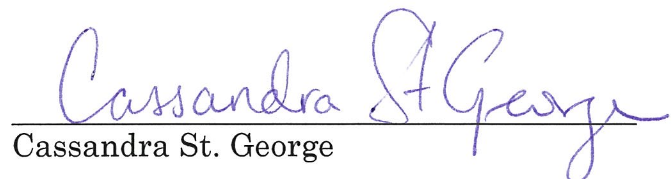

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