

IN THE COUNTY COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT COURT  
IN AND FOR MIAMI-DADE COUNTY,  
FLORIDA

INCONGRUITY, LLC and  
MIKE BOUDET,

CASE NO. 2020-001165-CC-25

Plaintiffs,

v.

JOHN DOE, a/k/a U/BOUDETTAWAY, a  
REDDIT USER,

Defendant.

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**MOTION FOR REDDIT TO DISCLOSE IDENTIFYING INFORMATION AND  
MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiffs Incongruity, LLC (“Incongruity”) and Mike Boudet (“Mr. Boudet,” and collectively with Incongruity, “Plaintiffs”), hereby move for entry of an order requiring Reddit Inc. (“Reddit”) to respond to Plaintiffs’ subpoena by disclosing information sufficient to uncover the identities of the presently unknown Defendant John Doe a/k/a u/boudettaway, a Reddit user (“Doe” or “Defendant”).

**PRELIMINARY STATEMENT AND ISSUE TO BE DECIDED**

Through this pure bill of discovery, Plaintiff Incongruity, the parent company and owner of the popular true-crime podcast, *Sword and Scale*, and its host, Mr. Boudet, seek to learn Defendant’s identifying information from Reddit so that Plaintiffs may determine the identity of the individual who published defamatory content and private facts regarding Plaintiffs on Reddit’s website (reddit.com) and subreddit (r/SwordAndScale).

Defendant used Reddit’s website to author and distribute information regarding a Florida company Incongruity and Mr. Boudet—who Defendant likely understood to be, and was

formerly, a Florida resident with a phone number with a “305” area code prefix—falsely accusing Mr. Boudet of inappropriate contact with someone who was a minor, purportedly Doe his or herself, and engaging in pedophilia during the period of time Mr. Boudet was a resident of Miami-Dade County, Florida.

Defendant, using the Reddit profile “u/boudettaway,” was not required to *publicly* disclose its true name or identity in order to operate the profile on Reddit’s website. However, Reddit can correlate the username/profile “u/boudettaway” with such identifying information that Reddit requires from and/or collects about its users, such as their name, address, email address, and/or IP address during such usage of their website. Accordingly, Reddit is the *only* entity capable of identifying (or providing initial identifying information, such as an IP address) regarding Defendant.

Given Defendant has no right to defamatory speech, much less remain anonymous during this distribution of same, disclosing the identity of Defendant provides sufficient information allowing Plaintiffs to uncover such information as would be necessary to pursue their claims at law. Here, Plaintiffs only know the Reddit username “u/boudettaway” that Defendant used to defame Plaintiffs—hence his or her identity is unknown. As Reddit’s business records containing user identifying information are generally preserved only a brief period of time, and as Reddit threatened that (a) it would no longer preserve such data after January 23, 2020 and (b) it would not disclose such data absent a court order, this Bill of Discovery complaint and corresponding motion is both urgent and necessary.

Plaintiffs will only use this information to resolve its defamation dispute with Defendant and will abide by any other notice restrictions or conditions instructed by the Court’s order. As such, the Court should grant Plaintiffs’ motion.

## **FACTUAL BACKGROUND**

### **Plaintiff Mr. Boudet's Goodwill and Incongruity's Online Media Business**

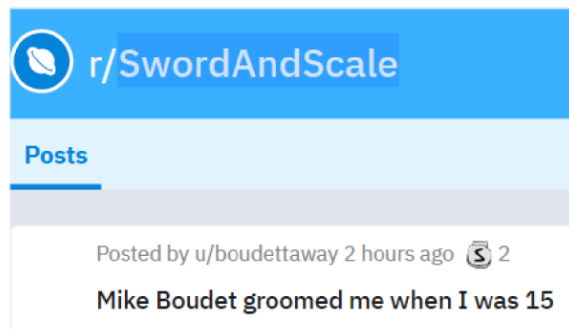
Mr. Boudet has been active in the world of podcasting since 2007, and his love of broadcasting and desire to see higher quality independent podcasts led him to create his own podcast, under the umbrella of Plaintiff Incongruity, in late 2013. In early 2014, Incongruity began to market an internet radio show called “Sword and Scale.” Mr. Boudet is, and at all relevant times was, the host and commentator of the program available on the Incongruity’s podcast network. *Sword and Scale* catapulted to success in 2014 as one of the very first podcasts of its kind, an immersive storytelling experience that puts the listener in the middle of a real-life true crime. Told from the narrator’s point of view, *Sword and Scale* goes beyond the news clips and the sensationalist headlines to give listeners the whole story and deeper insight into the cases it covers than any other medium. Incongruity’s show enjoyed early accolades for its no-holds-barred approach to police interrogations and courtroom audio describing some of these events. *Sword and Scale* has been an Apple Podcasts Top 100 show year after year, and won a Podcast Award in 2017.

Incongruity is the beneficial owner of the trademark registration, US Trademark Registration No. 4692398, with the United States Patent & Trademark Office (“USPTO”) for the design mark including the words “SS SWORD AND SCALE” for “Entertainment services, namely, providing podcasts in the field of true crime,” as well as US Trademark Registration No. 5216335 for the design mark including the words “SWORD AND SCALE” for “Entertainment services, namely, providing podcasts in the field of true crime and criminal justice topics and stories.” Given the popularity of the show, and Mr. Boudet’s social media presence and profile, Mr. Boudet has received significant attention and recognition for his achievements in

podcasting—acting as executive producer to several other popular podcasts in the genre.

**Defendant's Campaign of Disparaging Statements and Defamation**

Defendant has endeavored to ruin both Mr. Boudet's reputation and Incongruity's good will and podcast, *Sword and Scale*. Specifically, on or about May 13, 2019 at 12:49:12 (EDT) accessible on the Internet at (<https://www.reddit.com/user/boudettaway/posts/>) and ([https://www.reddit.com/r/SwordAndScale/comments/bo5yc8/mike\\_boudet\\_groomed\\_me\\_when\\_i\\_was\\_15/](https://www.reddit.com/r/SwordAndScale/comments/bo5yc8/mike_boudet_groomed_me_when_i_was_15/)), Defendant Doe authored a Reddit post of the r/SwordAndScale Subreddit entitled below (the May 13<sup>th</sup> Reddit Post):



Doe used the Subreddit, which promotes discussion about Incongruity's podcast, *Sword and Scale*, in order to make false and defamatory statements about Plaintiffs, including as set forth in detail in the attached exhibit, falsely accusing Mr. Boudet—the show's host— of inappropriate contact with someone who was minor, purportedly Doe, and engaging in pedophilia during the period of time Mr. Boudet was a resident of the State of Florida, County of Miami-Dade.

A full recitation and true and accurate copy of the May 13<sup>th</sup> Reddit Post is attached as **Exhibit A** to the Complaint.

All of the statements concerning Mr. Boudet within the May 13<sup>th</sup> Reddit Post, are false and completely fabricated. They have been published by Doe on their Reddit profile for the overt

purpose of destroying the personal reputation of Mr. Boudet and business of Incongruity.

The May 13<sup>th</sup> Reddit Post was available and could be viewed on Doe's Reddit account and was accessible and viewable the more than 8,000 members of the Subreddit, r/SwordAndScale—including by several members who reside and viewed same in Florida. To date, the May 13<sup>th</sup> Reddit Post, in which Doe defames Mr. Boudet, had nearly 150 comments and, upon information and belief, has been viewed tens of thousands of times.

Mr. Boudet has not “groomed” any fan, person nor minor; none of the events or conduct, i.e. engaging the serious crime of pedophilia, set forth in the post are true. Undeterred by skeptics of Doe's false story, Doe doubled down by adding a comment in response to a users' query of Mr. Boudet's cell phone number by posting his private number at on May 13, 2019 at 16:10:48 (EDT) accessible at ([www.reddit.com/r/SwordAndScale/comments/bo5yc8/mike\\_boudet\\_groomed\\_me\\_when\\_i\\_was\\_15/end5wy6/](http://www.reddit.com/r/SwordAndScale/comments/bo5yc8/mike_boudet_groomed_me_when_i_was_15/end5wy6/)). Specifically, because of Doe's additional commentary on the May 13<sup>th</sup> Reddit Post including what users were led to believe to be Mr. Boudet's phone number, Doe's gave users the imprimatur of credibility on their otherwise incredible (and fabricated) statements.

In other words, Doe wanted users to believe this false story was true. Further, Doe's false statements and implications of misconduct has caused Mr. Boudet deep anger, mental anguish and distress.

The May 13<sup>th</sup> Reddit Post was viewed and accessed by N.T., of Doral, Florida, an acquaintance of Mr. Boudet, while N.T. was within the State of Florida, on or around May 14, 2019. Upon viewing the May 13<sup>th</sup> Reddit Post within the State of Florida, N.T. reached out to Mr. Boudet and expressed shock and dismay at the accusations set forth therein.

Doe's user profile on Reddit does not provide contact information for John Doe. Thus, on

or around September 2019, Plaintiffs requested that Reddit provide identifying information regarding the defamatory profile on Reddit under the username “u/boudettaway.” Upon information and belief, based on discussions with Reddit’s counsel, Reddit provided Doe with notice of Plaintiffs’ request for Doe’s identifying information.

However, on or around November 2019, Reddit refused to provide Doe’s contact information without a court-ordered subpoena. Between November 2019 and January 2020, counsel for Plaintiffs and counsel for Reddit discussed Reddit’s willingness to provide Doe’s contact information, and counsel for Reddit again reiterated that it would not provide same absent a court order.

## **ARGUMENT**

### **A. A Pure Bill of Discovery is Appropriate to Identify the Anonymous Defamer**

“A pure bill of discovery is an equitable remedy under state law which serves to obtain the disclosure of facts . . . in aid of the prosecution or defense of an action pending or about to be commenced in some other court.” *See Spector v. Suzuki Motor of Am., Inc.*, 2018 WL 345925, at \*2 (M.D. Fla. Jan. 10, 2018) (*quoting First Nat’l Bank v. Dade-Broward Co.*, 171 So. 510, 510-11 (Fla. 1937)) (internal quotations and citations omitted). “The purpose of a pure bill is to identify the proper parties against whom and the proper legal theories under which to subsequently sue for relief.” *Prudential Prop. & Cas. Ins. Co. v. Am. Plywood Ass’n*, 1994 WL 463527, at \*1 (S.D. Fla. Aug. 3, 1994) (internal quotations and citation omitted). “Specifically, a bill of discovery may be used ‘[i]n the absence of an adequate legal remedy . . . ‘to identify potential defendants ... and to obtain information necessary for meeting a condition precedent to filing suit.’” *Vorbeck v. Betancourt*, 107 So. 3d 1142, 1145 (Fla. Dist. Ct. App. 2012).

A bill of discovery is appropriate when identifying people engaged in tortious conduct online, particularly when their identity is unknown. *See, e.g., Malibu Media, LLC v. Pelizzo*, 2012 WL 6680387, at \*2 n.3 (S.D. Fla. Dec. 21, 2012) (granting pure bill of discovery in copyright infringement case); *Catalyst Pharm., Inc. v. Yahoo, Inc.*, 2016-000204-CA-01 (Fla. 11th Cir. Ct. Jan. 22, 2016) (granting pure bill of discovery in online defamation case); *see also Catalyst Pharm., Inc. v. Fullerton*, 2017 WL 6558397, at \*2 (S.D. Fla. Aug. 8, 2017) (same).

**B. Seeking Discovery to uncover the identify of a Defendant who espoused Defamatory Speech is Not Protected by the First Amendment.**

As a threshold matter, the law is clear that there is no First Amendment right to spout false, harmful and defamatory speech. *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245-46 (2002) (noting that “[t]he freedom of speech has its limits; it does not embrace certain categories of speech, including defamation”); *see also LRX, Inc. v. Horizon Assocs. Joint Venture*, 842 So. 2d 881, 885 (Fla. 4th DCA 2003) (“[A]n action for libel will lie for a false and unprivileged publication by letter, or otherwise, which exposes a person to distrust, hatred, contempt, ridicule or obloquy or which causes such person to be avoided, or which has a tendency to injure such person in his office, occupation, business or employment.”). Accordingly, there is no general right to anonymous defamatory speech.

Further, in an Internet defamation case not dissimilar to this one, *Internet Solutions Corp. v. Marshall*, the Supreme Court of Florida held that First Amendment principles do not apply to the first prong of the jurisdictional analysis. *See Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1214 (Fla. 2010) (“[W]e decline to make the policy decision that defamation actions should be treated differently under Florida’s long-arm statute.”); *see also Catalyst Pharm., Inc. v. Yahoo, Inc.*, 2016-000204-CA-01 (Fla. 11th Cir. Ct. Jan. 22, 2016) (granting pure bill of

discovery to uncover anonymous defamer's identity notwithstanding First Amendment concerns).

Here, plaintiffs have adequately alleged, at a minimum, a *prima facie* cause of action for defamation, warranting the discovery relief requested in this action. Under Florida Law, the elements of a defamation cause of action are: “(1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damage; and (5) statement must be defamatory.” *Internet Solutions Corp. v. Marshall*, 39 So. 3d at 1214 n.8 (internal quotation marks omitted). When Doe published the Post above to the thousands of Subreddit members who followed the *Sword and Scale* podcast, they knew and/or reasonably anticipated that republication of the defamatory and disparaging statements contained therein by those Subreddit members and other social media was the natural and probable consequence. Upon information and belief, Defendant published and posted the Post and Comment for the sole purpose of harming Plaintiffs’ reputations and causing them to lose revenue as the statements within bear directly on Plaintiffs’ services, professional capabilities, and business practices—all key aspects of Plaintiffs’ business and factors that any person considers before donating to a person or cause or choosing to frequent a podcast focused on a particular topic.

In particular, the statement that Mr. Boudet “groomed” a minor, in a sexually explicit way, is and has been devastating to his reputation and business interests. No one wants to do business with or contribute to a person who is a pedophile. Defendant posted the Post and Comment on the high-profile Subreddit account (r/SwordAndScale) precisely because they knew that persons interested in the topic of Incongruity’s popular true crime podcast “Sword and Scale,” review that Subreddit regularly. Accordingly, Defendant has intentionally made



knowingly false statements of fact about Plaintiffs, including but not limited to false accusations of pedophilia, including sexual and suggestive content involving a minor. Such statements are not only false, but defamatory in that such statements are injurious to the reputations of Incongruity and Mr. Boudet and are injurious to the ability of Incongruity to conduct its business and serve its audience and listeners.

Under the circumstances, Doe has no right (First Amendment or otherwise) to anonymously defame and attack Incongruity and Mr. Boudet and the motion for a pure bill should be granted.

### **C. The Court Has Jurisdiction over Defendant**

At this juncture, this Court need not evaluate whether there may exist personal jurisdiction over Doe with respect to the claims that Plaintiffs may eventually plead. *See Internet Solutions*, 39 So. 3d at 1214. Here, Plaintiffs merely seek identifying information that Doe has already voluntarily given to a third-party, Reddit, when Doe committed an act against a Florida resident (Incongruity) and a former Florida resident who it believed to be in Florida (Mr. Boudet). As the entire purpose of this proceeding is for Plaintiffs to identify a potential defendant that has defamed them over the Internet and determine potential claims. *See, e.g., Maverick Entm't Grp., Inc. v. Doe*, 810 F. Supp. 2d 1, 18 (D.D.C. 2011) (“To be clear, at this stage in the proceedings, the plaintiff is engaged in discovery to identify the proper defendants to be named in this lawsuit, including *whether* the exercise of jurisdiction over each potential defendant is proper.”) (emphasis added). Depending upon the information obtained, Plaintiffs may initiate litigation against Doe or they may not, in Florida or elsewhere.

In any event, the Court would have personal jurisdiction over Doe pursuant to Fla. Stat. § 48.193(1)(a)(2) (“committing a tortious act within the state”), because Doe placed defamatory

material about Plaintiffs on Reddit, which was accessible in Florida and accessed by an identified third-party Florida resident, to wit: N.T.<sup>1</sup> of Doral, Florida. *See* Fla. Stat. § 48.193(1)(a)(2); *see also Internet Sols.*, 39 So. 3d at 1214 (“We conclude that allegedly defamatory material about a Florida resident placed on the Web and accessible in Florida constitutes an “electronic communication into Florida” when the material is accessed (or “published”) in Florida. . . . When the posting is then accessed by a third party in Florida, the material has been “published” in Florida and the poster has communicated the material “into” Florida, thereby committing the tortious act of defamation within Florida [pursuant to Fla. Stat. § 48.193(1)(a)(2)].”).

### **CONCLUSION**

For all the foregoing reasons, Plaintiffs respectfully request the Court enter an order granting Plaintiffs a pure bill of discovery to identify Defendant.

Dated: March 11, 2020

Respectfully submitted,

By: /s/ Jonathan K. Osborne

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<sup>1</sup>For purposes of N.T.’s privacy, Plaintiffs have only identified N.T. by their initials. If necessary, to support this motion, Plaintiffs are willing to identify N.T.’s name *in camera* or as directed by the Court.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this 11<sup>th</sup> day of March, 2020, a true and correct digital copy of this paper has been served electronically in accordance with Fla. R. Jud. Admin. 2.516.

By: /s/ Jonathan K. Osborne

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