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

In the Matter of the Application of KATHRYN TEWSON,

                    Petitioner,

For an Order to Preserve Evidence and for Pre-Action Disclosure Pursuant to CPLR § 3102(c), and for a Temporary Restraining Order Pursuant to
CPLR § 6313(a),

         -against-

DONOTPAY, INC. and JOSHUA BROWDER,

                   Respondents.
--X

PETITION

Index No.

Hon.

IAS Part No.

Motion Seq. No.

       Petitioner Kathryn Tewson, by her duly authorized attorneys, Cohen&Green P.L.L.C., hereby brings the following Verified Petition against Respondents seeking to compel them to provide pre-action discovery pursuant to New York Civil Practice Law and Rules ("CPLR") § 3102(c), and to preserve documents, as follows:

PRELIMINARY STATEMENT

       "There isn't a lawyer that will get out of bed over a $35 Wi-Fi refund."

                                -Respondent Joshua Browder

       1)   This action seeks pre-action discovery preliminary to a consumer rights suit over, at its core, a $36 dollar fraud. Respondents appear to have lied to consumers and are pretending to have cutting edge legal technology, all to scam them out of about $36 a person.

       2)   To get there, we should zoom out.

3)   DoNotPay boldly claims it has created "The World's First Robot Lawyer."

Indeed, that is the subtitle of its website (https://donotpay.com/).

4)   Like many technology start-ups before it, DoNotPay operates with a motto of, in

essence, "move fast, break things." DoNotPay's founder and CEO has made the news several

times in recent months, first by proposing to pay a lawyer $1,000,000.00 to violate the United

States Supreme Court's rules and "let our robot lawyer argue the case by repeating exactly what

it says."[1]

5)   Later, having set their sights more modestly, Browder and DoNotPay decided to

smuggle their "robot lawyer" into traffic court without a judge's knowledge. That decision led to

— for obvious reasons — a number of warnings from various state bar organizations, and a

further retreat by Respondents. *See, e.g.,* Bobby Allyn, A robot was scheduled to argue in court,

then came the jail threats, NPR (Jan. 25, 2023).

6)   Curiously, what Respondents **have not** done is schedule a moot. If their "robot

lawyer" had Supreme Court (or, for that matter, traffic court) chops, a demonstration at some

kind of formal moot would allay concerns and move the legal world forward.

7)   Indeed, what Respondents say they are trying to achieve — providing access to

high quality legal representation, at scale, for folks who simply cannot afford it — is noble.

8)   But providing **bad** legal services is often worse than providing none.

Respondents try to provide immigration[2] and bankruptcy[3] services. And any error in an

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[1] https://web.archive.org/web/20230205175034/https://twitter.com/jbrowder1/status/1612312707398795264
[2] "If you're worried about the length and complexity of the application process for a certificate of naturalization, rely on DoNotPay." https://web.archive.org/web/20230127023724/https://donotpay.com/learn/certificate-of-naturalization/
[3] "Let DoNotPay walk you through your bankruptcy options and help you determine whether a Chapter 7, Chapter 12, or Chapter 13 bankruptcy is right for you!" https://web.archive.org/web/20230129053952/https://donotpay.com/learn/filing-for-bankruptcy/

immigration proceeding or bankruptcy can have devastating consequences. So too with criminal courts.[4]

9)   The problems do not stop there.

10)   By all appearances, DoNotPay *does not actually have any AI or "robot"* undergirding its systems.

11)   As explained at length below, the one service Petitioner — a paralegal interested in cutting edge services and figuring out how to employ them at her firm[5] — was able to access ran little more than a poorly designed document wizard.[6]

12)   This episode smacks of nothing so much as the Theranos fraud.

13)   Theranos, like DoNotPay, was built on a noble idea. It was designed to cut through medical testing using cutting edge technology. Theranos was built on the claim it had a unique technology for blood testing that made it cheaper, more accessible, and less painful for patients. It drew investments from across the ideological spectrum and was valued at over $10 Billion at its peak.

14)   But Theranos never actually had that technology.

15)   Instead, once cornered and forced to deliver a product, Theranos dressed up an existing Seimens testing machine and ran it using too little blood for valid results.

16)   So too here: By all appearances, Respondents are dressing up an old-fashioned document wizard and calling it a "Robot Lawyer." Certainly that's what Respondents did with

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[4] Indeed, in the run up to the abandoned traffic court proceeding, Respondents appear to have made such an error. They subpoenaed the state's only witness, rather than forcing the state to put on its own case. Had that officer failed to appear, it is quite likely the client would have won by default. Thus, if he appeared only because Respondents sent a subpoena, that would seem to create a situation where the only reason Respondents' client faced legal consequences was because of something Respondents did.

[5] Which, of course, would require her to test the products before using them in real cases.

[6] That is, the kind of wizard that this Court has been providing — in significantly more user-friendly and legally thoughtful ways — for many years at this point as part of the "DIY Forms" program. *See, e.g.,* https://nycourts.gov/courthelp//diy/nameChange.shtml

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the one document Petitioner was able to get before Mr. Browder personally began re-writing the DoNotPay terms of service to basically say "***TELL NOTHING TO KATHRYN TEWSON, SHE IS BANNED FOR LIFE***."

17)   Before bringing a consumer class action alleging this is all a house of cards, while Petitioner believes she is able to plausibly allege the fraud, Petitioner would like to be able to allege the details with specificity. And she would like to give Respondents a chance to show that at least *somewhere* in their start up, *something* was running on Artificial Intelligence.

18)   So, this Petition for pre-action discovery seeks that information: Information that fills out the details of whether Respondents were only engaged in *some* fraud — or whether the entire affair was a scam.

NATURE OF THE APPLICATION

19)   This application under CPLR § 3102(c) arises from the need to obtain pre-action discovery and document preservation in anticipation of litigation over Respondents' large scale fraud on consumers (and, presumably, investors and so on), as detailed below.

20)   No previous application for the relief requested herein has been made.

21)   This matter is not on any trial calendar.

PARTIES

22)   Petitioner Kathryn Tewson (Ms. Tewson; she/her) is an investigator and paralegal at New York law firm Kamerman, Uncyk, Soniker & Klein P.C.

23)   Ms. Tewson is a resident of Bothell, Washington. She works remotely and her primary place of business is in New York County, New York.

24)   Upon information and belief Respondent Browder is a resident of New York County and has his primary place of business in New York County.

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25) Upon information and belief, Respondent DoNotPay currently has its corporate headquarters and primary office in New York County.

26) Ms. Tewson has opted out of all arbitration and class action waivers in DoNotPay's terms of service.

VENUE

27) Venue is proper under CPLR §§ 503(c) and 504(3) as Respondents' offices and principal places of business, and the locations at which the documents that are the subject of this litigation are stored and accessible, are in the County of New York.

STATEMENT OF FACTS[7]

Background

28) Petitioner Tewson first became aware of DoNotPay's claims to offer an "artificially intelligent robot attorney" that "uses artificial intelligence to provide legal assistance instead of the usual human knowledge" on or around January 21, 2023. Affidavit of Kathryn Tewson ("Tewson Aff.") Ex. 1.

29) On January 22, 2023, she signed up for an account at DoNotPay.com, which required connecting a credit card to the account.

30) She was immediately charged $36 – two months' subscription fees at $18 per month.

31) DoNotPay specifically advertises the ability to create "unlimited documents." Tewson Aff. Ex. 2.

32) Ms. Tewson is a paralegal and legal professional in a practice which frequently litigates at the bleeding edge of technology and the law.

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[7] These facts are also set out, in very close to the same fashion, in the Tewson Affidavit accompanying this pleading.

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33) Ms. Tewson came into legal services later in her life — and got there because of a fundamental curiosity and creativity in how she approaches the space.
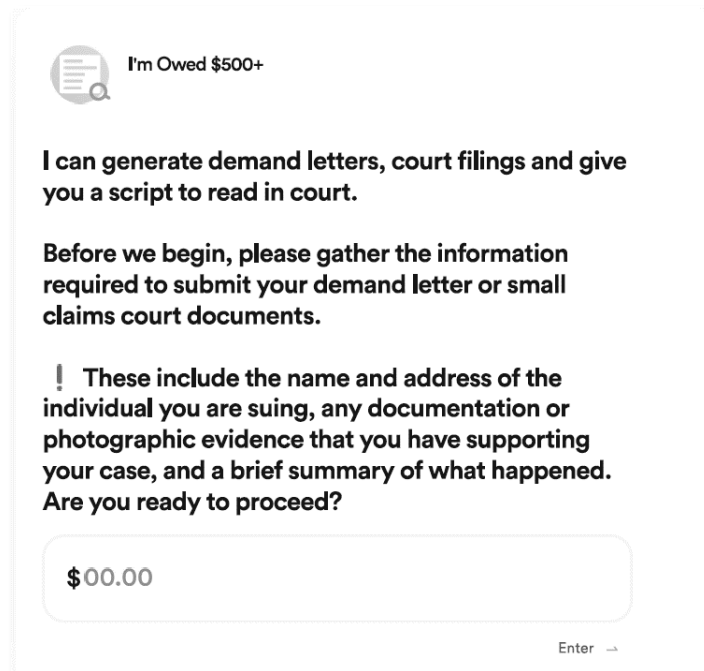
34) In short, Ms. Tewson's services are valuable (among other things) because she has a practical know how that comes from trying things out in the digital world.

35) DoNotPay piqued her curiosity both because of the potential it had for good *and* the potential it had for evil.

36) Thus, she selected three products to try out: "Defamation Demand Letter," Tewson Aff. Ex. 3, "Divorce Settlement", Tewson Aff. Ex. 4, and "Sue Now," Tewson Aff. Ex. 5.

37) All of these products were either advertised as using AI, or were accessed from pages that advertised the use of AI.

38) Each of the DoNotPay products she used collects user information via a series of interactive prompts, such as the one pictured here.

I'm Owed $500+

I can generate demand letters, court filings and give you a script to read in court.

Before we begin, please gather the information required to submit your demand letter or small claims court documents.

! These include the name and address of the individual you are suing, any documentation or photographic evidence that you have supporting your case, and a brief summary of what happened. Are you ready to proceed?

$00.00

Enter →

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No DoNotPay Product Delivers What Was Promised.

39)   Ms. Tewson's trial of the three DoNotPay products was — even in a world of "over-promise and under-deliver" — shocking.

40)   Not a single one of the three products delivered an AI generated legal document. One only spit out an amateurishly designed — and poorly reasoned — document-wizard created demand letter. The others gave Ms. Tewson bizarrely[8] long wait times that seem designed to hide that DoNotPay is — much like Theranos at its early demos — hiding the fact that it is not using technology at all.

41)   Moreover, the sole product that was delivered — as explained below — seemed designed to get anyone who sent it in hot water.

42)   Ms. Tewson, consistent with how anyone testing the product for real world use would behave, input information that was designed to test whether the AI could actually spot issues: she used dates that might raise statute of limitations problems; locations that might involve complex jurisdictional analysis; and otherwise used facts that would require the robot *lawyer* that DoNotPay so prominently advertises — not just a document wizard of the sort offered by so many other services.

43)   The first product Ms. Tewson tried was the "Defamation Demand Letter," which promised "Based on your location, DoNotPay will generate a formal demand letter on your behalf with the most relevant state legislation regarding defamation." Tewson Aff. Ex. 7.

44)   When she was finished with the prompts, DoNotPay told her the letter would be ready in one hour.

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[8] That is, if an AI was genuinely working on the document, it might take *some* time, but many hours is simply not plausible. Moreover, given DoNotPay's claim that its legal AI was ready to respond *live* to speech in a courtroom, the idea that it took many hours to generate a simple document is suspect.

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45) She found this odd, because in her experience with computer-generated products, they are produced instantly.

46) Not only that, but the product promised "Defamation Demand Letters *in Minutes*!" (emphasis added). Tewson Aff. Ex. 8.

47) The second product she tried was the "Divorce Settlement Agreement," which promised a "tailor-made contract" that "encapsulates everything you have agreed on," "is legally airtight," and "requires no lawyers." Tewson Aff. Ex. 9.

48) When she was finished with the prompts, DoNotPay told her the letter would be ready in *eight* hours.

49) She found this even more odd; the only kinds of tasks she would expect would take an AI eight hours to perform would involve extraordinarily intense computation, such as rendering CGI animation or producing complex mathematical models from very large data sets.

50) That is, generating pure text should never take that long — it's simply not the kind of task that requires meaningful time.

51) And again, this was the technology that Respondents had claimed very publicly was ready to cross-examine a witness on the stand, or respond to complex hypotheticals at a United States Supreme Court argument.

52) At the risk of stating the obvious, the Supreme Court does not allow a lawyer to spend 8 hours of silence before answering a question.

53) The third product Petitioner tried was "Sue Now!", also apparently called "I'm Owed $500+," which promised to "generate demand letters, court filings, and give you a script to read in court." Tewson Aff. Ex. 6.

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54)   This product generated a demand letter, which was available instantly upon completion of the prompts. Tewson Aff. Ex. 10.

55)   This demand letter did not appear to have been generated using AI at all. When Ms. Tewson, who frequently performs forensic investigation of documents in the course of her employment as an investigator and paralegal, examined the underlying structure of the Microsoft Word file she was provided, she discovered that it was consistent with a document generated via standard document assembly techniques using a Google Docs plugin. Tewson Aff. ¶ 10.

56)   In addition, the demand letter contained several objective errors.

57)   For example, but without limitation:

   a) It threatened to bring her claim in small claims court, despite the fact that the amount in controversy ($17,000) exceeded the jurisdictional maximum for Petitioner's jurisdiction;

   b) It included terms which DoNotPay did not ask her about, including offering the recipient a payment plan; and

   c) Sought 10% interest, when Petitioner's jurisdiction permits 12% interest.

58)   As to the payment plan, in Washington in particular, that term may prejudice the letter sender.

59)   Washington has particular rules about when an action for failure to pay is ripe, and offering of a payment plan has been found to reset the "reasonable" period for payment.

60)   Further, as to the interest, if used on a New York matter or in any state that does not permit 10% interest, use of Respondent's document wizard would lead to a person seeking an unlawful amount of interest — and indeed, may even lead to the user running afoul of criminal or civil usury statutes.

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61)   A user, using a document wizard, might at least *know* such mistakes are to be expected.

62)   However, because of Respondents' extensive promises about how their application applies jurisdiction-specific legal analysis, users are not on notice of these risks.

63)   Indeed, upon information and belief, DoNotPay permits and encourages users to simply click "send" from within its digital interface — ***never even seeing the final letter*** DoNotPay signs their name to, and remaining unaware of whatever claims DoNotPay may have made on their behalf.

64)   When the time limits for the other two documents Ms. Tewson generated expired — and again, these were time limits well beyond what a real AI would need — the DoNotPay UI changed to show a clock icon and a caption of "more time needed," with a message that read "We're solving it behind the scenes. We will reach out if we need anything more from you."

65)   At this point she became deeply suspicious that the analysis involved in the production of the other two documents was being done by human beings, not by AI.

66)   It is impossible to think of what "behind the scenes" could even mean when the whole process was supposedly being done by AI.

Publicity Results In DoNotPay Banning Petitioner, Rewriting Its Terms of Service, and Ultimately Seemingly Abandoning Its Core Business Model — Rather Than Providing Either Missing Document.

67)   Two days later, Petitioner had still not received either missing document.

68)   At that point, she composed a long tweet thread and posted it to Twitter.

(https://twitter.com/KathrynTewson/status/1617930070911488000).

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69)   As part of that thread, she shared her suspicions that "this isn't AI at all; that

@DoNotPay collects the information from the prompt and then hands it to a human to go find

the relevant law and customize the doc."

70)   She also posted substantially similar content as an article on Techdirt, which

contained the same observation. (https://www.techdirt.com/2023/01/24/the-worlds-first-robot-

lawyer-isnt-a-lawyer-and-im-not-sure-its-even-a-robot/).

71)   Shortly after she posted the thread, Respondent Browder, the CEO of DoNotPay,

contacted her via Twitter's Direct Message (DM) function.

72)   Direct Messages are private messages viewable only by the sender and receiver.

73)   Browder thanked her for her feedback, told her he had (on his own, without any

request) refunded her money, and represented to her that her account had been locked for

"inauthentic activity."

74)   He also told her that "The robot lawyer stuff is a controversial marketing term,

but I would [sic] get too wound up over it" and "No, the letters aren't being typed out by hand

and in general are all generated instantly[.]"

75)   Further, he represented to her that he was "happy to engage in good faith and

respond to your feedback" and "happy to answer any questions you have in good faith."

76)   She asked him when she would be able to see the other two documents she had

generated, and he told her, "2PM PT tomorrow. The engineer who understands the blocking code

is out until 12 or so."

77)   The next morning, Ms. Tewson received an email from Browder.

78)   Among other things, he said "We have decided to remove all non consumer rights

products from DoNotPay, including defamation demand letters, settlement agreements and

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others, effective immediately. It may take up to 24 hours for the products to disappear from your dashboard […] Arguing with lawyers on complicated issues is a distraction from refunding in flight wifi and consumer rights issues. There isn't a lawyer that will get out of bed over a $35 Wi-Fi refund."

79)   He ended the email with "Please feel free to email me if you have any other feedback and Happy Wednesday!" Tewson Aff. Ex. 11.

80)   It, of course, did not escape her notice that the two examples he gave of documents that would no longer be available on his site were the two documents she was waiting to receive.

81)   That said, she took Browder at his word, and responded to his email with the following four questions:

a) Can you describe for me the process DoNotPay used to identify the relevant law for a demand letter? (Cf. "Based on your location, DoNotPay will generate a formal demand letter on your behalf with the most relevant state legislation regarding defamation," from here https://donotpay.com/learn/cease-and-desist-order/)

b) Were humans involved in the generation of any client documents described by anything under your "Legal Tools" section? I don't mean the creation of the templates, etc., I mean in the production of a document based on client responses to prompts.

c) Are the articles in the "Learn" section of your website written by ChatGPT or equivalent, or by humans?

d) Who signed the subpoena for the officer in the traffic case that was referenced in your now-deleted tweet?

82)   Browder never responded to her email, nor did he ever grant her access to my documents, despite his promise that he would have them for her by 2 PM Pacific that day.

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83)   His refusal to either provide her the products she had generated or to answer her

questions about **how** they were generated strongly suggests fraudulent use of human researchers

rather than AI.

84)   The next day, Ms. Tewson messaged Mr. Browder again through Twitter's Direct

Message function to ask when she would receive her documents, and got no answer.

85)   Further investigation of the DoNotPay site revealed that all of the articles

advertising DoNotPay's legal tools and services were still live and being served to the public,

along with "signup teaser" links promising access to the tools themselves but which, when

clicked, took the user to a signup page, requiring them to connect a credit card and agree to pay

for two months' services up front before granting them access to the tool.
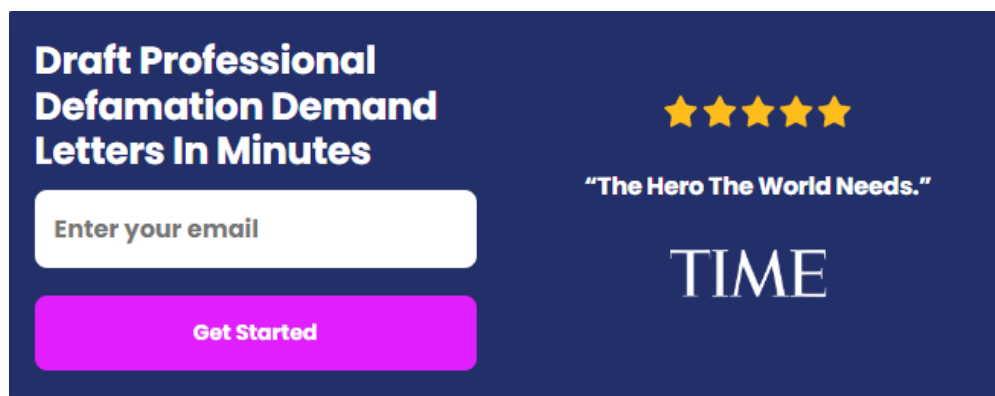
86)   Although Browder had refunded Ms. Tewson's money, her account was still

active, and she was able to access these tools and generate more documents via the links

embedded in these web pages.

87)   Relying on DoNotPay's promise that users could create "unlimited documents,"

Tewson Aff. Ex. 2, she tried ten or fifteen different tools.

88)   She only received one document which, when examined, proved once again to be

created by very standard document assembly techniques.

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89)   While she was engaging in this testing of the site functionality, her account suddenly stopped working, and redirected her to the sign-in page.

90)   When she entered her email address, she got a message that said "Something went wrong. Please email support@donotpay.com."

91)   Entering a different address took her to a page where she could continue with the creation of a second account. Based on this difference in behavior, she concluded that her account access had been terminated and she had been banned from the site.

92)   Once again, Ms. Tewson took to Twitter and posted a Tweet thread detailing her experiences, including her findings that the legal tools were still active despite Browder's promise that they would be disabled "effective immediately" and the information that she had been banned from the site.

93)   She ended it with a tweet which read, "Why is Joshua Browder (@jbrowder1), CEO of @DoNotPay, which so proudly advertises that it offers "free legal advice" through such complex and fraught processes as applying for US citizenship, so unwilling to keep his promises?" (https://twitter.com/KathrynTewson/status/1618800540410089474)

94)   Browder contacted her via Twitter Direct Message within the hour, telling her that "[t]he products were pulled for all users" and "This is disappointing that you would say [that the products were still enabled]. You know that the products you used were pulled."

95)   She told him that she was still able to access the products via the embedded links on the web pages and that she had generated "a TON of cases" while testing them.

96)   Browder responded by asking her, "Was the usage authentic?"

97)   She answered, "It certainly complied with every provision of the Terms of Service."

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98) At this point Browder disappeared from the conversation and did not respond for more than an hour.

99) Based on the timing, and on the topic of the conversation at the time he stopped responding, Ms. Tewson checked to see if he had made changes to the Terms of Service, and **she discovered that he had.**

100) A Wayback Machine[9] archive link created while Ms. Tewson was still composing her tweet thread, **after** she was banned, showed that the DoNotPay.com Terms of Service had not been updated since July 6, 2021.[10]

101) An hour after Browder stopped responding to Tewson's direct messages, however, the Terms of Service showed that they had last been updated **that very day**.[11]

102) The only change that was made was the insertion of a new clause, which read "You represent that any dispute or request submitted is an authentic problem you are having. You are responsible for any damages to DoNotPay or others from fake, inauthentic or test disputes."

103) Shortly after Tewson discovered this change, Browder returned to their conversation and sent the following message:

> "My apologies my phone has been out of battery. "
>
> We have removed 7 products and are going in one by one to get them out in doing a review. It is just not true that "nothing has changed." Eg divorce, bankruptcy, child settlement agreements, defamation demand letters, the ones you pointed out. You clearly didn't know or care to check the products we removed yesterday before falsely stating that nothing has changed. It is misleading to suggest that a blog post is a product.

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[9] The Wayback Machine, found at http://www.archive.org, is judicially noticeable within the Second Circuit. *See, e.g., Distributorsoutlet.com, LLC v. Glasstree, Inc.*, No. 11CV6079PKCSLT, 2016 WL 3248310, at *2 (E.D.N.Y. June 10, 2016) (collecting cases). This Court may, under the similar state rule, take the same approach.
[10] https://web.archive.org/web/20230127023739/https://donotpay.com/learn/terms-of-service-and-privacy-policy
[11] https://web.archive.org/web/20230127151750/https://donotpay.com/learn/terms-of-service-and-privacy-policy/

In relation to the questions, no the letters aren't being hand typed out and no we didn't write them.

In relation to the authentic usage, I messaged you on the 24th to tell you that and reactivated your account but you should keep it real to stop our systems flagging you. Who is James Joyce? You are clearly operating in bad faith by creating fake names and "generating a TON of" (your words) of fake cases. Then, after you trigger our anti-spam systems for the ton of cases, you then create a fake narrative that a DoNotPay employee has banned you, which you know to be untrue. We respect your feedback, but don't want to do business with you; you are not permitted to use DoNotPay in any capacity for breaching our terms of service.

Finally, I have received no fewer than 300 notifications from your posts. I like to keep twitter notifications on. I'm sorry but i am going to block you here, because there is a way to give feedback without tagging me hundreds of times.

104)   Many of the statements in this message were false.

105)   Browder never told Ms. Tewson to "keep it real to stop [DoNotPay's] systems from flagging me."[12]

106)   Rather, she was operating in good faith in reliance on DoNotPay's promise that users could create "unlimited cases," and she had – and has – every reason to believe that she had been banned, since she could no longer log in with her email address nor could she re-activate her account under that email address.

107)   Similarly, Ms. Tewson's account usage was completely consistent with the DoNotPay terms of service as they existed at the time she was banned, which required only that she "agree that you will not use a username or email address for your DoNotPay Account or a Linked Account that belongs to someone else, impersonates someone else, violates another's intellectual property rights, or is offensive in DoNotPay' [sic] discretion. You agree to provide

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[12] While not legally actionable, later statements demonstrate the literary offense that Mr. Browder genuinely appears not to know who James Joyce is.

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true, current and complete registration information about yourself, and to update this information promptly when it changes or upon our request."[13]

108) Indeed, Mr. Browder's premise — that the **only** time a member of the public should use a legal tool is when there is a person's actual life and livelihood at stake — is stunningly misguided.

109) Ms. Tewson was doing what any reasonable user would do before using the product for themselves — testing to make sure it was actually designed in a way that would not **create** more problems that it solved.

110) Moreover, it appears Mr. Browder made this change to the DoNotPay Terms of Service in order to prevent Ms. Tewson or anyone else from doing any more investigation into the truth behind the purported use of AI in DoNotPay's products.

111) That act also strongly suggests — particularly with the rest of the context here — that Browder's and DoNotPay's claims were fraudulent.

112) If Respondents actually had a legal AI capable of doing the things they claimed, letting a user generate a sample demand letter to test it would be no issue at all.

113) Instead, however, if they were cynically attempting stunts they **knew** would never come to fruition, not so that they could demonstrate their technology, but so that they could claim the "industry has instituted protectionist measures"[14] and pitch themselves as disrupters to investors, their actions make sense.

114) That is, the only thing that makes sense of Mr. Browder's total delamination over Ms. Tewson trying to generate a small handful of products is that he has no AI product to begin

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[13] https://web.archive.org/web/20230127023739/https://donotpay.com/learn/terms-of-service-and-privacy-policy/
[14] *See, e.g.,*
https://web.archive.org/web/20230210044917/https://twitter.com/jbrowder1/status/1568248342752423937

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with — and that the complex hypotheticals Ms. Tewson is presenting are overtaxing whatever mechanisms (probably one or two inhouse human lawyers) are DoNotPay's equivalent of Theranos's hidden Seimens machine.

115)   Because Browder had banned Ms. Tewson from the service, she solicited other users of the site to tell her about their experiences and to send her the documents they had created in conjunction with their disputes.

116)   Several responded.

117)   None of the documents she received showed any evidence of being generated through AI in any way; all were consistent with well-established document assembly techniques.

118)   One even clearly used the same template as the sole document she had been granted access to during her second round of investigation.

119)   In apparent response to this solicitation, Browder *once again* altered the Terms of Service to add the following clause:

> "Specifically, you must have a good faith basis for believing any piece of information or personal detail you provide to DoNotPay. You may not use any part of our website or intellectual property if you have been notified that you are not permitted to do so ("Ban Notification"). You may receive a Ban Notification through an automated DoNotPay system, by email to the address on file (from support@donotpay.com) or from a message from a DoNotPay employee."

The only other change to the Terms of Service is that the heading immediately following this paragraph is no longer in bold type.

120)   It appears Browder made this change to the Terms of Service in order to inhibit other users from sharing documents with Petitioner and impede her ability to investigate the nature of the products DoNotPay offers.

121)   Petitioner never agreed to the amended Terms of Service.

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122) Based on Browder and DoNotPay's refusal to provide Ms. Tewson access to the documents she generated through legitimate use of DoNotPay's tools, Browder's abrupt announcement of DoNotPay's intention to withdraw from a business sector for which he had developed a reported one thousand bots and raised significant capital, Browder's refusal to answer any questions about the degree of human involvement in DoNotPay's "AI-generated" products, Browder and/or DoNotPay's decision to terminate her account and later alter the Terms of Service to create a post-hoc justification for doing so as well as extinguishing any further ability for anyone to test its products, and Browder and/or DoNotPay's further alteration of the Terms of Service to chill its users' willingness to share their experiences, **the only reasonable conclusion is that DoNotPay's claim that its products use AI technology is false and that the only "analysis" provided is performed by human beings.**

123) Petitioner submits that the only reason Browder and DoNotPay would have gone to these extraordinary lengths to prevent her from investigating, testing, or even learning more about DoNotPay's service and products because they do not want their fraud to become public.

124) This is not the first time Browder and DoNotPay have come under scrutiny for their dubious claims, and it is not the first time they have responded by refusing to provide the relevant information and turning instead to attack their interlocutor.

125) In 2016, Browder publicly claimed that DoNotPay had challenged 250,000 parking tickets "and won 160,000."[15]

126) This claim was facially untrue, and perhaps even entirely made up.

127) It was recently reported on by technology publication TechDirt, in an article that they held when it was initially written in 2017, and ultimately published recently. *See* Mike

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[15] https://www.theguardian.com/technology/2016/jun/28/chatbot-ai-lawyer-donotpay-parking-tickets-london-new-york

Masnick and David Colarusson, Here's The Article We Didn't Run Back In 2017 About DoNotPay, Tech Dirt (Feb. 7, 2023).

128)   According to Tech Dirt, Browder even early on admitted that his early claims involved "some minor puffery with his original numbers, telling [Tech Dirt] that his initial 86,000 appeals claim is off by 10-20%." *Id.*

129)   However, when compared to the ***entire*** scope of tickets that in the world, the numbers are completely implausible — there simply are not enough tickets.

130)   As explained in the Tech Dirt piece, requests to explain were met with personal insults and the like. *Id.* ("this is when we cut off contact as this was not the first time he had made a veiled threat and it was clear he was not acting in good faith").

131)   Moreover, although the answers cannot be conclusively established without access to DoNotPay's internal data, the analysis Tewson was able to perform suggests that the total number of tickets overturned on appeal between New York and London in 2014-2016 was less than 50,000. Tewson Aff. ¶ 27.

RELIEF REQUESTED

132)   Ms. Tewson now seeks an order pursuant to CPLR § 3102 (c) directing that Respondents preserve and promptly produce documents that will allow her to frame a consumer fraud suit, including under N.Y. Gen. Bus. L. § 349[16] and Wash. St. § 19.86.020 *et seq.*, to wit:

a) Pre-discovery relief pursuant to CPLR § 3102(c) in the form of an Order requiring Respondents to immediately produce the following information and documents to Petitioner:

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[16] "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful," and "any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages" along with fees and other enhanced damages.

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i) The documents, with all metadata intact, generated in response to Ms. Tewson's use of DoNotPay, or a certification that such documents never existed;

ii) Documents concerning whether or not DoNot Pay *in fact* has any AI or "Robot Lawyer" operating in its products at all;

iii) The signed subpoena, with all metadata intact, that was generated by AI as described by Joshua Browder in his since-deleted tweet of January 21, 2023;

iv) Documents concerning DoNotPay's claim it has resolved over one million cases for its customers;

v) Documents concerning DoNotPay's claim it had successfully contested 160,000 parking tickets by June 16, 2016;

vi) Documents concerning the process DoNotPay uses to identify the relevant law for a demand letter;

vii) Documents concerning any legal analysis, input, training, or the like that DoNotPay used in creating any of its AI or other legal or consumer products;

viii) Identification of all lawyers or other legal professionals who DoNotPay consulted with regarding its substantive legal output;

ix) Documents concerning how many people have created an account with DoNotPay via any page linked to from the "Legal Tools" section of the website, both before and since January 26, 2023;

x) All investor prospectuses and the like concerning DoNotPay;

xi) All technical and other documentation of DoNotPay's AI application(s), including, but not limited to:

      i) Respondents' AI model;
      ii) Code, whether in Python or otherwise;
      iii) Documentation of Respondents' MLA libraries;
      iv) Visualizations and diagnostics of the model;
      v) Any and all production plans;
      vi) Any and all notebooks, including in Jupyter;
      vii) All model validations;
      viii) All model outputs;
      ix) Documentation of data in training, validation, and test sets;
      x) Documentation of the live implementation of DoNotPay's AI;
      xi) All slide decks about DoNotPay's AI, including slides directed to the Board, to engineers, to technology teams, and otherwise;

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b) An Order compelling Respondents to allow Petitioner to inspect and test any AI implementation; and

c) An Order compelling such depositions as are appropriate based upon the documents produced (or not) in response to the requests above.

ARGUMENT

2)   CPLR § 3102 (c) provides, in relevant part: "Before an action is commenced, disclosure to aid in bringing an action, to preserve information., may be obtained, but only by court order."

3)   "Pre-action discovery is available . . . 'where a petitioner demonstrates that [it] has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong.'" *Sandals Resorts Int'l Ltd. v. Google, Inc.*, 86 A.D.3d 32, 38 (1st Dept. 2011) (quoting *Bishop v. Stevenson Commons Assoc., L.P.,* 74 A.D.3d 640, 641 (2010)).

4)   As seen in the facts above, Ms. Tewson has shown that she — individually and as a potential class representative — has a number of meritorious claims and causes of action against Mr. Browder and DoNotPay.

5)   Specifically, those claims include, but are not limited to, common law fraud, an action under N.Y. Gen. Bus. L. § 349, an action under Wash. St. § 19.86.020 *et seq.*, and other consumer-oriented fraud-type actions.

6)   However, fraud pleading must be done with particularity.

7)   While Ms. Tewson is capable of plausibly showing that Respondents are engaged in wholesale fraud and in fact ***do not use AI*** in their "robot lawyer," a better pleading would explain ***exactly*** how that fraud took place.

8)	Nor is it reasonable for Ms. Tewson to await the inevitable government investigation — such investigations take many years (and would run out the statute of limitation on some of her claims). For example, details are *still* only just becoming available to the public about the Theranos fraud — and the basic details of that fraud became public long after consumers were tricked into taking Theranos tests (and receiving false test results).

9)	The document Ms. Tewson seeks will allow her and her counsel to frame an appropriate class action directed at DoNotPay's shocking fraud — and engage appropriate experts (if necessary) to unravel exactly what, if anything, DoNotPay is doing beyond dressing up a conventional document wizard with false claims.

A. The Court should direct Respondents to provide Ms. Tewson with the discovery sought.

10)	CPLR § 3102(c) is most commonly used as means to learn the identities of prospective defendants and to preserve relevant evidence. *See, e.g., Stewart v. New York City Transit Authority*, 112 A.D.2d 939, 940 (2nd Dep't 1985).

11)	That said, its language is very broad — and even anticipates that, as may be necessary here, the Court "may appoint a referee to take testimony." CPLR 3102(c).

12)	If a petitioner demonstrates that a cause of action exists and the information sought is material and necessary for the pursuit of those claims, pre-action discovery is appropriate. *See Holzman v. Manhattan & Bronx Surface Tr. Operating Auth.*, 271 A.D.3d 346, 347 (1st Dept. 2000); *Bishop v. Stevenson Commons Assocs., L.P.,* 74 A.D.3d 640, 641 (1st Dept. 2010) (internal quotations and citations omitted); *Rosenberg v. Brooklyn Union Gas Co.*, 80 A.D.2d 834 (2nd Dept. 1981) ("Since petitioners have demonstrated that a cause of action exists, C.P.L.R. § 3102(c) would authorize pre-action discovery to allow them to frame their complaint and obtain the identity of prospective defendants."); *see also Bumpus v. N.Y.C. Trans. Auth.*, 66

A.D. 3d 26, 33 (2nd Dept. 2009).

13)   "Additionally, the First Department has held that the Court has broad discretion in assessing the propriety of pre-litigation discovery." *Sokolova v. City of New York,* 2022 N.Y. Misc. LEXIS 7310, at *5 (Sup. Ct. NY County November 22, 2022) (citing *Thomas v. New York City Transit Police Dept.*, 91 AD2d 898 (1st Dept. 1983)).

14)   At present, Ms. Tewson only knows that *some* documents were falsely advertised as being generated with AI.

15)   She does not have anything that suggests DoNotPay has ever used AI — but she also does not have exhaustive information.

16)   The pre-action discovery Ms. Tewson seeks will shed light on that question — a question clearly raised by Mr. Browder's own actions.

17)   There is essentially no serious question Ms. Tewson has several viable consumer and common law fraud claims.

18)   Those fall into essentially three categories: (1) fraud as to the "robot" part of the "Robot Lawyer" claim; (2) fraud as to the "lawyer" part of the "Robot Lawyer" claim; and (3) fraud on claims about what DoNotPay has accomplished.

19)   First, as detailed above at some length, it appears DoNotPay is not using AI (e.g., a "robot"[17]) at all — and definitively is not using it in many of its products it advertises as being created by its "Robot Lawyer."

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[17] In the unlikely event DoNotPay attempts to claim a traditional document wizard is in some sense a "robot," it will run into other problems (beyond the absurdity of that claim). Namely, DoNotPay advertises that it has the "World's *First* Robot Lawyer" (emphasis added), and there is no question in any sense that document wizards existed long before DoNotPay, whether through programs like the ones run by New York State Courts, or through applications like LegalZoom.

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20)   That claim, when made to consumers, is false, misleading, deliberate, and substantial.

21)   Indeed, the "Robot Lawyer" claim is the primary selling point of DoNotPay's product.

22)   DoNotPlay places the claim front and center in virtually all of its advertising and consumer facing content.

23)   Second, the "lawyer" part appears to be wholly invented.

24)   As detailed above, it is not even clear whether a single lawyer has consulted on any DoNotPay product.

25)   Public advice Browder has given shows a tenuous grasp of the basic legal principles, and he has recently advised people to commit acts that are well-settled to be criminal bank fraud.

26)   For example, in recent Tweets, Browder told people who had lost money in the FTX collapse they could recover it by simply telling their banks that the wire transfers were unauthorized, thereby triggering an ACH reversal:

27)   "Under Federal rules, any ACH transfer can be reversed within 60 days, if it was fraudulent. Call your bank and choose words carefully[,]"[18] he said in one tweet; in another, he responded to a tweet asking "Isn't this chargeback fraud?" by saying "No, this is not a chargeback. This is an ACH reversal, because NACHA rules were not followed correctly and the authorization obtained for the payment was arguably invalid (for the reasons stated in the letter)[.]"[19]

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[18] https://web.archive.org/web/20230210035814/https://twitter.com/jbrowder1/status/1592221706172743680
[19] https://web.archive.org/web/20230210040011/https://twitter.com/jbrowder1/status/1594192207061274626

28)   One news source was forced to issue a full-throated retraction after republishing

Browder's advice, noting that anyone "who requests the reversal of an ACH charge claiming that

debits against an account were 'unauthorized' even if they were, in fact, authorized 'would be

committing a federal crime (see 18 U.S.C. Section 1344),'" and citing Michael Herd, senior vice

president of ACH Network administration at NACHA.[20]

29)   As also detailed above, the basic legal mistakes on rules (for example,

Respondents' lack of understanding of the Supreme Court's rules or the duty of candor to a

tribunal in bringing technology that records into the court room[21]) made throughout DoNotPay's

ventures into various legal fields seem to show that no lawyers, legal professionals, or even

people with a passing familiarity with substantive law have been involved in creating the legal

work Respondents sell as being conducted by their "Robot Lawyer."

30)   This too is a fraud on consumers: Reasonable consumers would understand the

"Robot Lawyer" claim to describe an AI that had at least *some* lawyers working to train it — and

some safeguards against making costly legal mistakes.

31)   Instead, it appears Respondents are simply making things up.

32)   Finally, the claims above — for example, the claim that DoNotPay successfully

appealed more traffic tickets than it would have been possible to do — appear to be made up.

33)   DoNotPay has conceded they are puffery, at the least.

34)   But based on available information, along with Respondents' demonstrated

willingness to lie or make massively careless statements to consumers, it seems that these

numbers may not be mere puffery, but wholesale invention.

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[20] https://finance.yahoo.com/news/ftx-account-holders-money-back-165544383.html
[21] For what it is worth, Petitioner does and will consent to any application Respondents make to use their "Robot Lawyer" in these proceedings. And she submits that a failure to make such an application should weigh heavily in the Court's evaluation of whether DoNotPay actually *has* such a product.

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35)   While Petitioner is ready to frame a complaint with the information she has, it is in the interest of all involved for her to understand if there is *any* basis for the factual claims DoNotPay has made about how its products have been successful

36)   Thus, an order compelling production of the items listed above is the most efficient way to ensure the initial complaint adequately and truthfully presents the issues related to this seemingly stunning fraud — and the litigation doesn't get mired in fights about what the initial complaint happened to plead (based on reasonably available information).

37)   Moreover, such an order is proper and required because ordinary investigative steps can no longer produce results because of Respondents' extensive cover up efforts, also detailed above.

B. The Court should grant Petitioner a temporary restraining order ("TRO") preventing the destruction, and ordering the preservation, of documents and information related to the action.

38)   In addition to allowing limited pre-action discovery, CPLR 3102(c) also provides an avenue to "preserve information."

39)   Petitioner does not know Respondents' exact preservation policies, or whether they have litigation hold policies at all.

40)   Upon information and belief, particularly given the storm of Terms of Service amendments designed to hide their fraud, Respondents will likely destroy the requested documents unless there is a preservation order in place.

41)   Thus, Ms. Tewson faces imminent and irreparable harm should the Court deny this aspect of his application and the above enumerated evidence, as a result, is spoliated, lost, or destroyed.

42)   Where, as here, relevant evidence has the potential to be lost or destroyed in the regular course of business, court-ordered preservation is proper. *See, e.g., Application of Loria*, 98 A.D.2d 989, 989 (4th Dept 1983) (ordering preservation of evidence related to police officer's shooting of the petitioner).

43)   Ms. Tewson therefore requests that the Court enter a TRO preventing Respondents from destroying, and ordering Respondents to preserve, documents and information related to this case, including the documents demanded above.

44)   To ensure that the TRO and preservation order is honored, Ms. Tewson also requests that the Court order Respondents to produce an affidavit to Ms. Tewson and this Court indicating to whom the TRO and preservation order was delivered, which will assist Ms. Tewson in holding DoNotPay accountable if evidence is later missing or destroyed. *See, e.g., In the matter of Mercado v. The City of New York*, Index Number 17888/2013, (Sup. Ct. Kings Co. Nov. 1, 2013).

45)   No party would be prejudiced if this Court orders the preservation of information and production of evidence referred to in the Order to Show Cause.

C. The Court Should Toll the Statute of Limitations Pending Discovery.

46)   The Court should also enter an order tolling the statute of limitations for claims arising out of the nexus of facts alleged above (that is, summed up, claims that Respondents are — in part or in whole — falsely claiming their services use AI) pending the discovery sought herein.

47)   Petitioner could simply go file a complaint with the information she has, triggering the class period tolling in *American Pipe & Construction Company v. Utah*, 414 U.S. 538 (1974) (as adopted by New York state courts).

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48)   However, that would be inefficient, particularly since the purpose of this action is to better frame that complaint — and avoid being imprecise with the allegations, particularly in light of how serious they appear to be.

49)   So Petitioner asks that the Court essentially treat this Petition as — at least in part — a Summons with Notice.

50)   It certainly more than serves the function of a summons with notice and includes far more detail than most complaints — let alone most Notices.

51)   With that temporary toll, particularly in light of the one year statute of limitations under N.Y. Gen. Bus. L. § 349, the parties can move at a manageable pace through this litigation over pre-action discovery, and then ultimately move reasonably — and sequentially — to the merits litigation once it begins.

Notice of Petition and TRO Request

52)   Ms. Tewson has made a good faith attempt to notify Respondents of the time, date, and place of the instant application in order to provide Respondents an opportunity to appear in response to the instant application. *See* 22 NYCRR 202.7(f).

53)   For example, at approximately 5:00 p.m. on February 10, 2023, counsel for Ms. Tewson served a copy of these papers indicating they would be filed at or around 5:00 p.m. on Monday, February 13, 2023.

54)   Petitioner can also confirm that Respondents received that notice because Mr. Browder blocked Petitioner's counsel on Twitter shortly after receiving the papers.[22]

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[22] The version of this petition sent to Respondents obviously did not have this paragraph. Other than this paragraph and minor typographical fixes, the Petition is otherwise the same one sent on Friday.

CONCLUSION

WHEREFORE, Ms. Tewson respectfully asks this Court to grant the within Petition in its

entirety and order such other and further relief as the Court deems just and proper.

Dated: Brooklyn, New York
       February 11, 2023

                                      /s/

                                _____

                                J. Remy Green
                                Honorific/Pronouns: Mx., they/their/them
                                Cohen&Green P.L.L.C.
                                1639 Centre St., Suite 216
                                Ridgewood, New York 11385

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VERIFICATION

STATE OF _Washington_)

                              ss.:

COUNTY OF _King_)

        KATHRYN TEWSON, the Petitioner in the above action, being duly sworn, deposes and says:

1. I am the Petitioner herein.

2. I have read the attached Petition and the same is true and to my own knowledge except as to matters therein alleged to be on information and belief, and as to those matters I believe them to be true.

3. I incorporate all the factual statements in the Petition in this verification as if fully set forth herein.

Dated: _2/12/2023_

February _12_, 2023

_____
KATHRYN TEWSON

Sworn to before me this _12th_ day of _Feb_, 2023

_____
Notary Public

[Notary seal: THOMAS ASPLIN, COMMISSION EXPIRES, NOTARY PUBLIC, LIC No 21006180, 01-05-2025, STATE OF WASHINGTON]

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