IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LISA STONE, a mother and next Friend of Jed Stone, a minor,	)	
Petitioner,	)	
v.	)	No. 09 L 5636
PADDOCK PUBLICATIONS, INC., d/b/a THE DAILY HERALD, INC.	)	
Respondent.	)	

REPLY IN SUPPORT OF MOTION IN OPPOSITION TO TURNOVER OF IDENTITY

NOW COMES John Doe, user of I.P. address 24.1.3.203, and for his Reply in Support of Motion in Opposition to Turnover of Identity ("Reply"), states as follows:

1. After John Doe filed his Motion in Opposition to Turnover of Identity, Petitioner filed her Motion to Disclose Comcast's Response to Subpoena, which identified the purportedly actionable speech attributed to John Doe in a Daily Herald web forum. Because the speech identified is clearly protected under the First Amendment and also not actionable, notwithstanding questions of constitutional privilege, this Court should grant John Doe's Motion in Opposition to Turnover of Identity. For his Reply, John Doe incorporates the authorities and arguments set forth in his Response to Stone's Motion to Disclose Comcast's Response to Subpoena.

2. Petitioner Lisa Stone's ("Stone's) Response to John Doe's Motion in Opposition to Turnover of Identity ("Response") argues that the speech at issue here is not entitled to protection under the United States and Illinois constitutions because it is not, in her estimation, political speech. However, Stone's narrow interpretation of the subject post demonstrates why

the Illinois Citizen Participation Act ("CPA") must be broadly construed to immunize "[a]cts in furtherance of the constitutional rights to petition, speech, association, and participation in government . . . regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result or outcome." 735 ILCS 110/15 (emphasis added); 735 ILCS 110/30 (stating that the CPA "shall be construed liberally to effectuate its purposes and intent fully.")

3. Here, in the same post that contains the language Stone objects to, John Doe questions the efficacy of Stone's campaign strategy and calls for Stone to apologize and learn "something about finance before she is sworn in." The Supreme Court in *Mills v. State of Alabama* explained the protection afforded to political speech under the First Amendment as follows:

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect free discussion of governmental affairs. This of course includes discussions of candidates, structures, forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books, and magazines but also humble leaflets and circulars to play an important role in the discussion of public affairs.

384 U.S. 214, 218-19 (1966). In this way, the First Amendment "reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Buckley v. Valeo*, 424, U.S. 1, 14 (1976) *citing New York Times V. Sullivan at* 376 U.S. 254, 270 (1964). There can be no more obvious example of participating in the public process than a citizen engaging in debate about the conduct of an elected official in a public forum.

4. The tone of John Doe's speech does not deprive it of constitutional protection and Stone's hypersensitive interpretation of that speech as a false statement of fact does not make it actionable. *Milkovich v. Lorraine Journal Co.*, 497 U.S. 1, 20 (1990); *Lewis v. Time Inc.*, 710 F.2d 549, 553 (9th Cir. 1983); *see also Underwager v. Channel 9 Australia*, 69 F.3d 361, 366-367 (9th Cir. 1995)(comments made in the context of heated debate would be viewed as spirited critique and audience would expect emphatic language on both sides). Stone cannot establish by "clear and convincing evidence" that John Doe's posting was not immunized, or not in furtherance of acts immunized under the CPA, and her 224 Petition must be dismissed. 735 ILCS 110/20.

5. Even if the CPA does not apply, and it does, constitutional protections afforded to statements of opinion mandate dismissal of Stone's 224 Petition. Authorities in support of First Amendment protection for non-factual statements are set forth in John Doe's Response to Stone's Motion to Disclose. This Court should apply the standard applied by Court in *Dendrite Int'l, Inc. v. Doe No. 3,* 775 A.2d 756, 760-61 (N.J. Super. Ct. App. Div. 2001) in concluding that John Doe's posting is constitutionally privileged and not actionable, or alternatively, that the posting is not actionable notwithstanding questions of constitutional privilege.

6. The *Dendrite* opinion states that a party seeking an order disclosing the identity of anonymous internet posters, "in addition to establishing [the] action can withstand a motion to dismiss, . . . must produce sufficient evidence supporting each element of its cause of action, on a prima facie basis, prior to a court ordering the disclosure of the identity of the unnamed defendant." *Id.* at 760. Here, Stone fails to present evidence of actionable speech and none of her briefing can be construed as having set forth allegations of actionable speech.

7. In addition to arguing in conclusory fashion that a question from "hipcheck16" to "UncleW" is an actionable statement of fact sufficient to support liability as defamation *per se*, Stone implies that the question is also actionable as defamation *per quod*. However, Stone fails to allege facts extrinsic to the posting which potentially provide a basis for defamation *per quod* liability. *Thomas v. Fuerst*, 345 Ill.App.3d 929, 934 (1st Dist. 2004)(defamatory statement is not actionable *per quod* unless extrinsic circumstances are plead that explain why a statement not defamatory *per se* demonstrates injurious meaning). Moreover, Stone does not allege that her son has suffered special damages, which is required before a statement is actionable as defamation *per quod*. *Moriarty v. Greene*, 325 Ill.App.3d 225, 236 (1st Dist. 2000); *see also Zucker v. The Chicago Tribune Company*, 2004 WL 3312757, *5 (Ill. App. 1st Dist 2004)(in a defamation *per quod* action, special damages must be plead with particularity and "general allegations of damage to health or reputation, economic loss, or emotional distress, are insufficient to plead special damages.")

8. Nor does Stone set forth allegations sufficient to state a cause of action for false light invasion of privacy. In order to state a claim for false light invasion of privacy, a plaintiff must allege that the defendant (1) publicized a matter concerning plaintiff that places the plaintiff in a false light; (2) the false light "would be highly offensive to a reasonable person"; and (3) the defendant had knowledge of the falsity or acted in reckless disregard of the truth." *Zucker* at *5. First, Stone fails to establish that anything relative Jed Stone was publicized as she has not cited to a statement of fact or a reference to a real person. Instead, she alleges that the publication relates to a question posed by "hipcheck16" to "UncleW". Next, no reasonable person would interpret John Doe's question as a highly offensive statement. Finally, Stone makes no allegation about John Doe's knowledge or his reckless disregard of the truth. Moreover, false

light invasion of privacy requires a plaintiff to plead special damages with particularity. *Zucker* at *6. Here, again, Stone fails to allege special damages.

WHEREFORE, John Doe respectfully requests that this Court grant his Motion, that this Court decline to reveal his identity to Petitioner pursuant to his right to anonymous speech under the United States and Illinois Constitutions, and that the Petition be dismissed pursuant to 735 ILCS 110/1 *et seq.* Further, John Doe requests that he be awarded his attorneys fees incurred under 735 ILCS 110/25. Alternatively, John Doe requests that this Court dismiss the Petition with prejudice and without costs or fees to either party.

Respectfully submitted,
John Doe, by and through his attorneys,
TROBE, BABOWICE & ASSOCIATES, LLC

By: _____
One of its attorneys

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