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 TO QUASH SUBPOENA

NOW COMES John Doe, user of I.P. address 24.1.3.203, and for his Reply in Support of Motion to Quash the Subpoena issued to Comcast Cable Communications, LLC ("Comcast") dated July 14, 2009, states as follows:

Petitioner's Subpoena Is Impermissible Under Supreme Court Rule 224

1. In her Memorandum Response in Opposition to John Doe's Motion to Quash ("Response"), Petitioner fails to explain how the subpoena at issue here complies with Supreme Court Rule 224. Specifically, Rule 224(a)(1)(ii) states the "petition shall be brought in the name of the petitioner and shall name as respondents the person or entities from whom discovery is sought... ." Here, Petitioner has not filed a verified petition naming Comcast a respondent. Because Comcast is the entity from whom discovery is sought, and because Rule 224 requires the responding entity to be named in the petition, the subpoena issued by Petitioner is invalid. Additionally, this Court's jurisdiction to enforce the Petition is limited to the named respondent, Paddock Publications, Inc. Because the subpoena fails to satisfy Rule 224, it should be quashed in its entirety.

The Subpoena Violates Electronic Communications Privacy Act

2. Petitioner erroneously argues that disclosure of John Doe's identity is permissible under the Electronic Communications Privacy Act ("ECPA"). Section 2702(c) of the ECPA allows a provider of electronic communications to disclose "a record or other information pertaining to a subscriber or customer of such service (*not including the contents of communications....)*" 18 U.S.C. § 2702(c) (emphasis added). At set forth at 18 U.S.C. 2510(8):

> 'contents', when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

Clearly, the identity of the person issuing a communication concerns "the substance, purport, or meaning of the communication" and is thus shielded from disclosure under Section 2702(c) of the ECPA.

3. Even if disclosure of John Doe's identity is permissible, the subpoena violates the ECPA and Rule 224 because it is overbroad and is not limited to a request for the identity of John Doe. Petitioner falsely asserts that the subpoena "is scrupulously limited to seeking information about the name, address and location of someone from whose location the offensive postings were made." (Response, pg. 5.) Quite to the contrary, the subpoena requests:

> * * * <u>any and all information</u> for IP address 24.1.3.203 from February 1, 2009 to the present <u>including but not limited to</u> the name, address [sic] location and any and all other

> information identifying the subscriber, user an/or user of the aforesaid IP address and anyone associated with the IP address. * * * (emphasis added).

The request for "any and all information ... including but not limited to" John Doe's identity, and the request for information regarding "anyone associated with the IP address", each go well beyond a request solely for the identity of John Doe and seek information protected from disclosure under the ECPA and Rule 224. Accordingly, the subpoena should be quashed in its entirety, or in the alternative, the subpoena should be quashed to the extent it seeks information beyond the scope of permissible disclosure under the ECPA and/or Rule 224.

John Doe Has Standing

4. This Court has already recognized John Doe's standing here by entry of its July 21, 2009 Order granting John Doe, as a subscriber to Comcast, leave to file papers contesting the subpoena. John Doe has standing to protest the disclosure of his information pursuant to the ECPA, Rule 224, and as a party in contractual privity with subpoena respondent Comcast.

WHEREFORE, John Doe respectfully requests that this Court quash the subpoena issued to Comcast in its entirety, or alternatively, to quash those portions of the subpoena found to be in violation of Supreme Court Rule 224 and/or the Electronic Communications Privacy Act.

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

By: _____
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