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December 17, 2007

Honorable Terence P. Flynn
Monmouth County Superior Court
71 Monument Park
P.O. Box 1266
Freehold, NJ 07728

RE: Township of Manalapan v. Stuart Moskowitz, Esq.
Docket No. MON-L-2893-07
Our File No. 1158
Motion Returnable: December 21, 2007

Dear Judge Flynn:

This firm represents the plaintiff, Township of Manalapan, in the above referenced matter. Please accept this letter reply to daTruthSquad.com attorneys' opposition to our motion for issuance of letter rogatory. Throughout the following reply brief, we refer to daTruthSquad.com's attorneys, Matt Zimmerman, Esq. and Frank Corrado, Esq., collectively as the "Poster's Attorneys").

I. INTRODUCTION

Because the core arguments we make below are nearly identical to those we make in our opposition to the motion to quash also returnable on December 21, 2007, we only briefly summarize them in this reply brief. We also bring to the Court's attention our opposition to any potential sanctions motions that may be filed by the Poster's Attorneys regarding the information we seek via letter rogatory and/or subpoena.

II. ARGUMENT

A. The Information and Materials Sought by the Subpoena Are Likely to Lead to Admissible Evidence



The Poster's Attorneys assert that our request for information, which is likely to lead to admissible evidence, amounts to a "fishing expedition" and that we have offered no evidence to support our allegation that the Poster may be the defendant, Stuart Moskowitz. The Poster's Attorneys' contentions are misleading and incorrect. Plaintiff's assertion that the defendant and the Poster could be the same person is an **obvious inference that any reasonable observer could draw** from viewing the daTruthSquad blog. As we have stated in our certification to our motion for issuance of letter rogatory, the blog repeatedly refers to the character "Da Mosked Man", an obvious reference to the defendant, Stuart Moskowitz, Esq., in vehemently defending the defendant's actions regarding the execution of the Dreyer Property contract. Thus, there is plenty of evidence on the blog site itself that strongly suggests the Poster could be Stuart Moskowitz. The Poster's Attorneys prefer to characterize our motions as an attempt to "unmask an anonymous third-party critic". The Poster's Attorneys, both in their opposition brief and in their motion to quash, inundate this Court with Supreme Court decisions regarding the protection of anonymous speakers. This is an attempt to divert the court from the important distinguishing issue in this dispute: the anonymous individual we seek to "unmask" could be a **party in this case**, not some unrelated neutral third-party. Unlike the Poster's Attorneys argue, we **do not** aim to unmask a random vocal critic unrelated to this litigation in an attempt to muzzle criticism regarding the Township. As we have stated repeatedly in other certifications and briefs regarding this issue, it is crucial to determine whether the Poster is the defendant in this case in order to determine whether he has made and continues to make knowing misrepresentations to the Court regarding his identity. If the information sought confirms that the defendant has been lying under oath in open court, this realization will **pervade the entire litigation** as the credibility and trustworthiness of defendant's written and oral statements will perpetually be in question as this case proceeds.

B. Neither the First Amendment Nor the Stored Communications Act Bars the Plaintiff From the Information Sought

The Poster's Attorneys recognize that anonymous speech is a **qualified privilege** under the First Amendment and that such anonymity is unprotected if the party seeking to unmask the anonymous speaker shows the compelling need for discovery of the anonymous speaker's identity pursuant Dendrite Int'l v. Doe No. 3, 342 N.J. Super. 134, 142 (App. Div. 2001). In contemplating the importance of an anonymous speaker's qualified privilege to speak pseudonymously, the court also acknowledged that such a privilege is only protected "so long as those acts are not in violation of the law" and that the privilege of remaining anonymous "should be tempered by the need to provide injured parties with a forum in

which they may seek redress for grievances Id. at 151. (emphasis added.)

The Poster's Attorneys offer the unsubstantiated blanket argument that our pursuit of information regarding daTruthSquad "fails in every aspect of [the Dendrite] analysis." (See Corrado's Opposition Brief, p.8) Specifically, the Poster's Attorneys claim that our motion should fail because (1) the discovery we seek "is not relevant to any claim or defense", (2) the discovery is available from (and has already been provided by) other sources, and (3) the "township is apparently motivated by an attempt to silence or intimidate critical speakers." We will address each of these assertions in turn below.

Regarding (1), the discovery is relevant to every claim and defense because a finding that the defendant has lied under oath would pervade the entire litigation as the trustworthiness of defendant's certifications and statements in court would perpetually be in question. Regarding (2), that the discovery has already been provided by other sources, the Poster provides no explanation of what other sources have provided the information we seek. If the Poster is referring to the defendant's certifications denying that he is involved with daTruthSquad, this "source" of information is unsatisfactory as we refuse to accept defendant's bald assertions that he is not the Poster in light of the suspicious clues on daTruthSquad that suggest otherwise. Also, considering the various gross misrepresentations of the facts that defendant has made in his previous and current certifications regarding the underlying facts of this litigation (See Daniel J. McCarthy's Brief In Support of Cross-Motion and In Opposition To Defendant's Motion For Sanctions, pp.12-20), we refuse to blindly accept defendant's contention that he is not the Poster. We want definitive proof that the defendant is not daTruthSquad and only the information we seek from Google can provide such affirmation. Furthermore, regarding (3), that the Township seeks to "silence or intimidate critical speakers", this emotional appeal is a red herring designed to divert the Court's attention from the legitimate purpose we have in the information we seek.

Additionally, as we state in our opposition to the Poster's motion to quash, the Stored Communications Act ("SCA") also does not prohibit the plaintiff from discovering the information it seeks. The information we seek fits into one of the many exceptions to the SCA. Specifically, §2703 of the SCA details circumstances that require disclosure of customer communications and records. Sections 2703(b)(B)(ii) and 2703(c)(B) provide that a governmental entity may require a provider of electronic communication service or remote computing service to disclose customer communications or records via a court order in accordance with the requirements in §2703(d). We contend that, by this Court's signing our order granting issuance of letter rogatory,

<http://www.jdsupra.com/legaldocs/9733792446-4f9745ca-8ced-03f4599fba6d>
this would be, in effect, a court order within the meaning of §2703. The fact that the court order is for issuance of a discovery subpoena in another state does not invalidate our motion under the SCA.

III. Unwarranted Sanctions Threats

We also strongly oppose any potential application for sanctions made by the Poster's Attorneys in connection with our efforts seeking discovery via our motion for issuance of letter rogatory or our prior September 26, 2007 subpoena. In prior correspondence, specifically letters dated November 5, 2007 and December 7, 2007 (see Correspondence Regarding Sanctions Threats, attached as Exhibit A), Mr. Zimmerman, Esq., has attempted to intimidate and harass our client with inflammatory letters threatening sanctions in response to our legitimate pursuit of discovery regarding the defendant's possible involvement with daTruthSquad. To summarize for the Court our response to these inappropriate letters, Mr. Zimmerman's abusive correspondence is unprofessional and unwarranted and any motion he files, oral or written, for sanctions in connection with the legitimate discovery sought by the Township is groundless and should be denied.

CONCLUSION

Plaintiff has shown that the information sought via the subpoena attached with our Motion For Issuance Letter Rogatory is likely to lead to admissible evidence. Additionally, the plaintiff has demonstrated to the Court that neither the First Amendment nor the SCA bars the plaintiff from the information sought. Therefore, we respectfully request that this Court grant plaintiff's Motion For Issuance of Letter Rogatory. Additionally, we respectfully request that this Court deny any potential sanctions motions the Poster's Attorneys may file in connection with the legitimate discovery we seek regarding defendant's potential relationship with daTruthSquad.

Respectfully submitted,

RUPRECHT, HART & WEEKS, LLP



LEN M. GARZA

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cc: Stuart J. Moskovitz, Esq.
Daniel J. McCarthy, Esq.
Matt Zimmerman, Esq.
Frank L. Corrado, Esq.