

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-359

MARIE GUNNING,)
)
Plaintiff,)
)
v.)
)
JOHN DOE,)
)
Defendants.)

**REPLY IN SUPPORT OF MOTION TO
QUASH SUBPOENA AND MOTION
FOR PROTECTIVE ORDER
BY NON-PARTY WITNESS RICHARD
SIMARD**

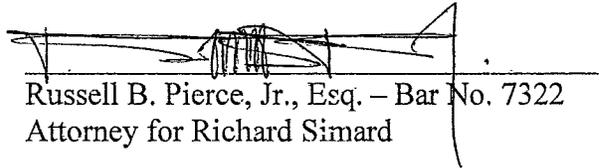
NOW COMES non-party Richard Simard, by and through undersigned counsel, in reply to Plaintiff Gunning’s objection to his Motion to Quash Subpoena and Motion for Protective Order. First, Simard joins in the reply arguments of John Doe #1, and all arguments advanced by John Doe #1 in support of the motion to quash. Second, Simard does have standing to challenge the merits of this lawsuit, in its current procedural posture. His standing derives, by logical extension, from his right as a witness to be protected “from annoyance, embarrassment, oppression, or undue burden and expense” under Rule 26(c) of the Maine Rules of Civil Procedure. If a lawsuit’s allegations and claims are deficient and infirm under the First Amendment of the United States Constitution, and if a discovery initiative is launched that violates constitutional protections of free speech, by definition the lawsuit and the discovery initiatives subject subpoenaed witnesses to improper annoyance, oppression, and undue burden and expense. M.R. Civ. P. 26(c).

The California judgment against Gunning is a “valid” and “final” judgment on exactly the same issues in this case. It was an appealable decree in California. That final order closed the proceedings in California – there was nothing further to litigate in the California case. These

are points that Gunning concedes by her arguments. But even if the California proceeding is treated as a discovery initiative, as a matter of comity and full faith and credit, non-party Simard should be afforded the same result as the non-party California-based website host. The website host obtained judgment not because of some technicality under California law. The judgment was based upon the failure of Gunning's Complaint to meet the same constitutional standard of stating a claim under First Amendment protections. Because the California judgment was entered as to the same litigants, Marie Gunning and John Doe #1, Richard Simard should be entitled to have this Court give full faith and credit to that judgment on his behalf too.

For these reason, and the reasons set forth in Simard's Memorandum of Law in support of Motion to Quash, together with the arguments advanced by John Doe #1 both here and in California, Simard respectfully requests that this Motion to Quash be granted.

DATED: August 14, 2015


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