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10 JOHN DOE 1 and JOHN DOE 2

ENDORSED  
FILED  
San Francisco County Superior Court

Dec 11 2013

CLERK OF THE COURT  
BY: LESLEY FISCELLA  
Deputy Clerk

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF SAN FRANCISCO,  
13 UNLIMITED JURISDICTION

14 JOHN DOE 1, an individual, and )  
15 JOHN DOE 2, an individual, )  
16 Petitioners, )  
17 vs. )  
18 MARIE GUNNING, an individual, )  
19 Respondent. )

California Case No. CPF-13-513271

(PROPOSED) ORDER GRANTING JOHN DOE  
1 AND JOHN DOE 2'S PETITION TO QUASH  
SUBPOENA

Date: December 11, 2013  
Time: 9:00 a.m.  
Department: 302 - DISCOVERY  
Judge: Judge Marla J. Miller

20 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
21 FOR THE COUNTY OF MULTNOMAH

22 MARIE GUNNING, an individual, )  
23 Plaintiff, )  
24 vs. )  
25 JOHN DOE, )  
26 Defendant. )

Maine Case No. CV-13-359

1 **(PROPOSED) ORDER GRANTING JOHN DOE 1 AND JOHN DOE 2'S PETITION TO**  
2 **QUASH SUBPOENA**

3 On December 11, 2013, the petition to quash subpoena filed by JOHN DOE I and JOHN  
4 DOE II came before this Court. Having considered the papers and arguments submitted in this  
5 matter, and good cause appearing therefor, PETITIONERS JOHN DOE I'S and JOHN DOE II'S  
6 Petition To Quash Subpoena [C.C.P. §§ 2029.600, 1987.1, 1987.2] is Granted. Petitioners'  
7 request for judicial notice is granted.

8 On August 20, 2013, Respondent obtained a witness subpoena directed to Automattic,  
9 Inc. requiring: (1) all names you have associated with <http://freeportcrownsnest.com>; (2) all email  
10 address associated with anyone covered above; (3) IP addresses from which the  
11 <http://freeportcrownsnest.com> was posted; and (4) IP addresses and user-agent for the specific  
12 posts to sixteen separate editions of the Crow's Nest. In order to overcome Petitioners' motion  
13 to quash, Respondent must make a prima facie showing of libel. (*Krinsky v. Doe 6* (2008) 159  
14 Cal.App.4th 1154, 1172.) Respondent failed to make this prima facie showing. The Court finds  
15 that while the content of the Crow's Nest could be seen as rude and distasteful, taking into  
16 consideration the context and contents of the statements at issue, it is parody, and not likely to be  
17 taken as true by a reasonable person. The speech at issue in the Crow's Nest is protected under  
18 the First Amendment of the U.S. Constitution. The statements are not actionable speech such  
19 that the identities of the website owner and persons who comment or otherwise publish material  
20 printed in or posted online at the Crow's Nest must be revealed pursuant to the subpoena. (See  
21 *Hustler Magazine, Inc. v. Falwell* (1988) 485 U.S. 46, 57 [parody is not actionable as  
22 defamation if it cannot "reasonably be understood as describing actual fact about [the plaintiff]  
23 or actual events in which [she] participated".]) Pursuant to C.C.P. § 1987.2(c), Petitioners may  
24 make a motion for reasonable expenses incurred in making the motion, including reasonable  
25 attorney's fees.

26 IT IS SO ORDERED.

27 DATED: December 11, 2013

28 *Marla J Miller*

Marla J. Miller  
Judge of the Superior Court