PAUL ALAN LEVY, Pro Hac Vice Being Filed
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009
Telephone: (202) 588-1000
Facsimile: (202) 588-7795
Email: plevy[at]citizen.org

MARK GOLDOWITZ, State Bar No. 96418
California Anti-SLAPP Project
2903 Sacramento Street
Berkeley, California 94702
Telephone: (510) 486-9123
Fascimile: (510) 486-9708
Email: mg[at]casp.net

Attorneys for Movant John Doe

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

In the Matter of the Subpoena Issued to Facebook in: NEWTON B. JONES, Plaintiff, v. JOHN DOE #1 *et al.,*. Defendants.	CASE NO. 34-2012-00122374 Honorable David I. Jones **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH SUBPOENA** Date: June 28, 2012 Time: 2 PM Department 53

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MISCELLANEOUS

This motion seeks to quash a subpoena arising from a lawsuit filed by the president of a large national construction workers union against an anonymous member of his union member who created a parody web page on Facebook that poked fun at the union president for having "inherited" his father's leadership post in the union and for enjoying a large salary at the expense of the membership. The complaint makes vague claims about defamation and impersonation, but does not come close to pleading any valid claims, satisfying California's requirements for specificity, or making the evidentiary showing required by the First Amendment before an anonymous critic of a public figure may be stripped of his right to speak anonymously. The Facebook page itself, which is submitted with this brief although plaintiff chose not to attach it to his complaint, shows that nobody could be confused about whether the union president is its sponsor. And because members of this union work out of hiring halls, they are particularly subject to economic retaliation, and hence there is an especial reason to demand a strong showing of merit from the plaintiff. Because no showing has been made, the subpoena should be quashed.

STATEMENT OF FACTS AND PROCEEDINGS TO DATE

The subpoena in this case arises out of a suit for supposed defamation and "impersonation" brought by plaintiff Newton B. Jones, the president of the International Brotherhood of Boilermakers, a union of construction workers and others based in Kansas City, Kansas. Jones succeeded his father, Charles W. Jones, to that position in 2003. *See* Thomas, *Hefty Salaries, perks for union leaders raise eyebrows*, Kansas City Star, May 13, 2012, attached to Levy Affidavit as Exhibit E and available online http://www.kansascity.com/2012/05/12/3608026/united-in-largesse-boilermakers.html. There has been substantial controversy, both within the union and in public forums, over the presence of several of Jones's relatives on the union's payroll, and over the fact that Jones' salary is among the highest of all union presidents in the country, even though the Boilermakers' membership of 59,000 makes it fairly small for a national union. *Id.* At the same time that union members have criticized their union leaders, they have insisted that their names not be disclosed because of fear of retaliation. *Id.* The danger of retaliation is exacerbated by the fact that many members work out of union hiring halls, whose "referral lists" have historically been used in many unions to keep disfavored members from working. *See generally* Association for Union Democracy, *Union Democracy in the Construction Trades* (1985), attached to the Levy Affidavit as Exhibit G.

In February, 2012, an anonymous member of the union created a Facebook page entitled "Lord

Newton B. Jones, Monarch," Levy Affidavit ¶ 4 and Exhibit F, poking fun at Jones for having inherited his leadership from his father and enjoying lavish perquisites of office. The page included an "About" notation reading "Hi, I'm Newt. My daddy gave me a dynasty. I'm king of Jones & Sons Incorporated, formerly known as International Brotherhood of Boilermakers," and a listing of Jones's salary and total compensation for each of the past seven years, along with the statement "Solidarity? Whatever! The union makes me rich!" Four comments were posted by other Facebook users. Three of them referred to Jones in the third person, making clear that they did not think that they were posting on Jones's own page. A fourth user inquired whether the data had been drawn from unionfacts.org, a well-known anti-union web site.

Jones filed suit against John Doe #1 *et al.*, in the District Court for Wyandotte County, Kansas. Levy Affidavit Exhibit D. The complaint alleges vaguely that the anonymous defendants "posted false and/or defamatory content" to the Facebook page, ¶ 6, "co-opted and pirated [Jones's] identity and impersonated him with the intent to defraud," ¶ 10, and "committed fraud by holding themselves out as the real Newton B. Jones." ¶ 12. The complaint further alleges that the page was "intended to embarrass and humiliate [Jones]," ¶13, and "intentionally and recklessly caused injury to [Jones.]" ¶ 14. There is, however, no allegation that defendants deliberately made statements they knew to be false, or with reckless disregard of probable falsity, or that Jones suffered any actual damages from the posting. Nor is there any allegation that the anonymous Facebook creator had any commercial motive for the page, or used Jones's identity in any way that brought her any commercial advantage. The complaint contains no specific allegations about the content of the Facebook page — none of the words on the page are reproduced verbatim, and the Facebook page itself was not attached to the complaint. Levy Affidavit ¶ 7.

Jones served a subpoena on Facebook, seeking any information in its possession about the identity of the creator of the "Lord Newton B. Jones, Monarch" page. Levy Affidavit, Exhibit B. Pursuant to its normal procedures in such cases, Facebook sent an email to the creator, notifying her of the subpoena and stating that identifying information in Facebook's possession would be released unless Facebook received notice that a motion to quash had been filed. Levy Affidavit ¶ 2 and Exhibit A.[1] Through the Association

[1]To protect against any implicit identification of the Doe, this brief uses generic female pronouns to refer to Doe, without intending any implication about Doe's actual gender.

for Union Democracy, Doe was able to retain Paul Alan Levy, who is a member of the Association's Board of Directors. Mr. Levy confirmed that the person contacting him is, in fact, the person notified by Facebook, Levy Affidavit ¶ 5 and Exhibit A, and also confirmed that Doe is a member of the Boilermakers union. *Id*. ¶ 6 and Exhibit C. Doe now files this motion to quash the subpoena.

A. The First Amendment Requires Identification of Allegedly Actionable Speech, Pleading a Valid Claim, and a Preliminary Showing of Evidentiary Merit Before a Subpoena to Identify an Anonymous Internet Speaker May Be Enforced.

The subpoena violates the First Amendment's protections for the right of anonymous speech. The First Amendment protects the right to speak anonymously. *Watchtower Bible & Tract Soc. of New York v. Village of Stratton*, 536 U.S. 150, 166-167 (2002); *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 199-200 (1999); *McIntyre v. Ohio Elections Comm.,* 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960). These cases have celebrated the important role played by anonymous or pseudonymous writings over the course of history, from the literary efforts of Shakespeare and Mark Twain to the authors of the Federalist Papers. As the Supreme Court said in *McIntyre*:

> [A]n author is generally free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, . . . the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.
> * * *
> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent.
>
> 514 U.S. at 341-342, 356.

California courts have squarely agreed that the First Amendment protects the right to speak anonymously, *Krinsky v. Doe 6*, 159 Cal. App.4th 1154, 1164 (Cal. App. 2008), and have also held that the California Constitution provides its own independent support for this right. *Rancho Publications v. Superior Court*, 68 Cal. App.4th 1538, 1548 (Cal. App. 1999).

These rights are fully applicable to speech on the Internet. The Supreme Court has treated the Internet as a forum of preeminent importance because it places in the hands of any individual who wants to express his views the opportunity to reach other members of the public who are hundreds or even thousands of miles away, at virtually no cost. Accordingly, First Amendment rights fully apply to communications

over the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997).

Internet speakers speak anonymously for various reasons. They might wish to avoid having their views stereotyped according to their race, ethnicity, gender, or class characteristics. They might be associated with a group but want to express opinions of their own, without running the risk that, however much they disclaim attribution of opinions to the group, readers will assume that the individual speaks for the group. They might discuss embarrassing subjects and might want to say or imply things about themselves that they are unwilling to disclose otherwise. And they might wish to say things that might make other people angry and stir a desire for retaliation. As the California Court of Appeal recognized in *Krinsky*, 159 Cal. App.4th at 1162,

> The use of a pseudonymous screen name offers a safe outlet for the user to experiment with novel ideas, express unorthodox political views, or criticize corporate or individual behavior without fear of intimidation or reprisal. In addition, by concealing speakers' identities, the online forum allows individuals of any economic, political, or social status to be heard without suppression or other intervention by the media or more powerful figures in the field.

Whatever the reason for wanting to speak anonymously, a rule that makes it too easy to remove the cloak of anonymity will deprive the marketplace of ideas of valuable contributions.

Moreover, at the same time that the Internet gives individuals the opportunity to speak anonymously, it creates an unparalleled capacity to monitor speakers and discover their identities. Speakers who send e-mail or visit a website leave behind electronic footprints that can, if saved by the recipient, provide the beginning of a path that can be followed back to the original senders. *Doe v. Cahill*, 884 A.2d 451, 454-455 (Del. 2005). Thus, anybody with enough time, resources and interest, if coupled with the power to compel the disclosure of the information, can learn who is saying what to whom.

A court order, even if granted for a private party, is state action and hence subject to constitutional limitations. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964); *Shelley v. Kraemer*, 334 U.S. 1 (1948). A court order to compel production of individuals' identities in a situation that threatens the exercise of fundamental rights "is subject to the closest scrutiny." *NAACP v. Alabama*, 357 U.S. 449, 461 (1958); *Bates v. City of Little Rock*, 361 U.S. 516, 524 (1960). Abridgement of the rights to speech and press, "even though unintended, may inevitably follow from varied forms of governmental action," such as compelling the production of names. *NAACP v. Alabama*, 357 U.S. at 461. Rights may also be curtailed by means of private retribution following court-ordered disclosures. *Id.* at 462-463; *Bates*, 361 U.S. at 524.

Due process requires the showing of a "subordinating interest which is compelling" where, as here, compelled disclosure threatens a significant impairment of fundamental rights. *Bates*, 361 U.S. at 524; *NAACP v. Alabama*, 357 U.S. at 463. Because compelled identification trenches on the First Amendment right of speakers to remain anonymous, justification for incursions on that right requires proof of a compelling interest, and beyond that, the restriction must be narrowly tailored to serve that interest. *McIntyre*, 514 U.S. at 347.

In a closely analogous area of law, courts have developed a standard for the compelled disclosure of the sources of libelous speech, recognizing a qualified privilege against disclosure of otherwise anonymous sources. In such cases, many courts apply a three-part test, under which the person seeking to identify the anonymous speaker has the burden of showing that (1) the issue on which the material is sought is not just relevant to the action, but goes to the heart of the plaintiff's case; (2) disclosure of the source is "necessary" to prove the issue because the party seeking disclosure is likely to prevail on all the other issues in the case; and (3) the discovering party has exhausted all other means of proving this part of its case. *Shoen v. Shoen*, 5 F.3d 1289 (9th Cir. 1993); *Carey v. Hume*, 492 F.2d 631 (D.C. Cir. 1974); *Cervantes v. Time*, 464 F.2d 986 (8th Cir. 1972); *Baker v. F&F Investment*, 470 F.2d 778, 783 (2d Cir. 1972). *See also Mitchell v. Superior Court*, 37 Cal.3d 268, 279-283 (1984) (five-part test).

As one court stated in refusing to enforce a subpoena to identify anonymous Internet speakers whose identities were allegedly relevant to defending against a shareholder derivative action, "If Internet users could be stripped of that anonymity by a civil subpoena enforced under the liberal rules of civil discovery, this would have a significant chilling effect on Internet communications and thus on basic First Amendment rights." *Doe v. 2theMart.com*, 140 F. Supp.2d 1088, 1093 (W.D. Wash. 2001). Similarly, in *Columbia Insurance Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999), the court expressed concern about the possible chilling effect of such discovery:

> People are permitted to interact pseudonymously and anonymously with each other so long as those acts are not in violation of the law. This ability to speak one's mind without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate . . . . People who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identities.

Several courts have enunciated standards to govern identification of anonymous Internet speakers

for the purpose of suing them on the ground that their speech violates the plaintiff's rights under the law. The first appellate decision in the country remains the leading case. In *Dendrite v. Doe*, 775 A.2d 756 (N.J. Super. App. Div. 2001), a company sued four individuals who had criticized it on a Yahoo! bulletin board. The court set out a five-part standard for cases involving subpoenas to identify anonymous Internet speakers for the purpose of suing them as defendants:

> **1. Give Notice:** Require reasonable notice to the potential defendants and an opportunity for them to defend their anonymity before issuance of any subpoena;
>
> **2. Require Specificity:** Require the plaintiff to allege with specificity the speech or conduct that has allegedly violated its rights;
>
> **3. Ensure Facial Validity:** Review each claim in the complaint to ensure that it states a cause of action upon which relief may be granted based on each statement and against each defendant;
>
> **4. Require An Evidentiary Showing:** Require the plaintiff to produce evidence supporting each element of its claims; and
>
> **5. Balance the Equities:** Weigh the potential harm (if any) to the plaintiff from being unable to proceed against the harm to the defendant from losing the First Amendment right to anonymity. *Id.* at 760-61.

A later case, decided by the Delaware Supreme Court, adopted the *Dendrite* standard but rejected the final, balancing stage. *Doe v. Cahill*, 884 A.2d 451 (Del. 2005). The California Court of Appeal, Sixth District, followed *Cahill* in requiring the production of sufficient evidence to defeat a motion for summary judgment but not requiring the final, balancing stage. *Krinsky*, 159 Cal. App.4th at 1172.[2]

Around the country, the full *Dendrite* standard remains the majority rule among state appellate courts that have reached the issue.[3] Similarly many federal district courts, including the Northern District of California, have embraced the *Dendrite* or *Cahill* tests.[4] Doe recognizes that *Krinsky* is binding in this

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[2] *Accord Solers, Inc. v. Doe*, 977 A.2d 941 (D.C. 2009)*; In re Does 1-10*, 242 S.W.3d 805 (Tex. App. 2007).

[3] *In re Indiana Newspapers*, 963 N.E.2d 534, 549-553 (Ind. App. 2012); *Pilchesky v. Gatelli*, 12 A.3d 430 (Pa. Super. 2011); *Mortgage Specialists v. Implode-Explode Heavy Industries*, 999 A.2d 184, 192 (N.H. 2010); *Independent Newspapers v. Brodie*, 966 A.2d 432, 456-457 (Md. 2009); *Mobilisa v. Doe*, 170 P.3d 712 (Ariz. App. 2007).

[4] *Koch Industries v. Does*, 2011 WL 1775765 (D. Utah May 9, 2011); *Fodor v. Doe*, 2011 WL 1629572 (D. Nev. April 27, 2011); *Salehoo v. Doe*, 722 F. Supp.2d 1210 (W.D. Wash. 2010); *USA Technologies v. Doe*, 2010 WL 1980242 (N.D. Cal. May 17, 2010); *Art of Living Foundation v. Does 1-10*, 2011 WL 5444622 (N.D. Cal. Nov. 09, 2011); *Sinclair v. TubeSockTedD*, 596 F.

Court, and hence argues based on the *Krinsky*/*Cahill* standard, while reserving the right to ask the Third District Court of Appeal to consider the reasons for adopting *Dendrite*'s fifth, balancing stage in the event this subpoena issue reaches that Court. Moreover, since *Krinsky* was decided, the California legislature endorsed such protections for the anonymity of Internet speakers by amending the Code of Civil Procedure to provide for awards of attorney fees when subpoenas to identify anonymous speakers are quashed. Code of Civil Procedure, Section 1987.2(b).

B. Jones Has Not Met the Requirements for Identifying an Anonymous Defendant.

Applying *Krinsky*, Jones has not come close to meeting the First Amendment standard for the identification of the anonymous author of the Lord Newton B. Jones Facebook page. Although the record does not reflect any efforts on Jones' part to notify Doe about the subpoena, Facebook has done so. Jones, however, cannot meet **any** of the other parts of the test.

1. The Specific Actionable Words Have Not Been Set Forth.

Jones has not set forth any of the specific statements that he alleges are actionable, not to speak of pleading them verbatim as required by *Dendrite*, or, indeed, by California law in defamation cases. 5 Witkin, *Cal. Proc.* 5th Plead. § 739 at 159 (2008); *Kahn v. Bower*, 232 Cal. App.3d 1599, 1612 n. 5 (1991). Verbatim pleadings are crucial because the law distinguishes between false statements of fact and statements of opinion, which cannot be the subject of a defamation claim. *Carver v. Bonds*, 135 Cal. App.4th 328, 346 (Cal. App. 2005). For example, does plaintiff allege that the dollar amounts of his compensation as listed on the Facebook page were significantly inflated? Those would be claims about assertions of fact. But if the lawsuit has been filed about the satirical reference to "Jones & Co." or to use of the terms "king," "dynasty," or "monarch," those hyperbolic references to the Jones family's apparent nepotism within the union, or to perceived lack of sufficient democracy in the union, would be non-actionable opinion. Until Jones spells out what he is suing over, the Court cannot assess whether he has legally viable claims. Similarly, on plaintiff's impersonation claim, there can be no constitutionally permissible cause of action because inspection of the actual Facebook page reveals that it was plainly a parody. *Cardtoons, L.C. v.*

Supp.2d 128 (D.D.C. 2009); *Doe I and Doe II v. Individuals whose true names are unknown*, 561 F. Supp.2d 249 (D. Conn. 2008); *Highfields Capital Mgmt. v. Doe*, 385 F. Supp.2d 969 (N.D. Cal. 2005).

Major League Baseball Players Ass'n, 95 F.3d 959 (10th Cir.1996). The page's title, "Lord Newton B. Jones, Monarch" certainly suggests a parody, and the page itself reveals its parodic nature. Jones's failure to attach the page to its complaint, or to explain why members of his union would believe that "Lord Newton B. Jones, Monarch" is something that Jones would say about himself, speaks volumes.

2. No Valid Claims Have Been Pleaded.

Jones has not pleaded a proper cause of action either for defamation or for "impersonation." To plead defamation, Jones had to set forth the allegedly actionable words and allege that they are false, that the falsehoods were perpetrated with the requisite degree of fault, and that the words caused him actual damage. These requirements apply not only as a matter of California law, *Krinsky*, 159 Cal. App.4th at 1173, but also as a matter of federal law, for two reasons. First, as a public figure, the president of a national labor union cannot bring a claim for defamation without alleging that false statements were made with actual malice, *Martin v. Inland Empire Utilities Agency*, 198 Cal. App.4th 611, 627 (Cal. App. 2011); *Paterno v. Superior Court*, 163 Cal. App.4th 1342, 1349 (Cal. App. 2008); *Vogel v. Felice*, 127 Cal.App.4th 1006, 1017-1018 (Cal. App. 2005). Second, the preemptive effect of federal law imposes the same requirement when libel suits are brought based on statements by union members about each other. *Linn v. United Plant Guard Workers,* 383 U.S. 53, 64-65 (1966); *Hailstone v. Martinez*, 169 Cal. App.4th 728, 741, (Cal. App. 2008); *Warren v. Herndon*, 115 Cal. App.3d 141, 146-147 (Cal. App. 1981). The complaint here contains none of these key allegations — it pleads falsity only in the alternative, ¶ 6, and it pleads intent to injure but not the making of intentionally false statements, ¶ 13. But "[i]ll will toward the plaintiff, or bad motives, are not elements of the *New York Times* standard." *Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 281 (1974).

Nor has Jones pleaded a proper claim for impersonation. To avoid conflict with the First Amendment, courts have read both a commercial speech requirement and a parody exception into claims under the right of publicity, which is the most likely analogue of the vague claim of impersonation that is pleaded. *See Cardtoons*, 95 F.3d at 970-976; *White v. Samsung Electronics America*, 971 F.2d 1395, 1398 & 1401 n.3 (9th Cir. 1992). *Cf. Gionfriddo v. Major League Baseball*, 94 Cal. App.4th 400, 408-409 (Cal. App. 2001) (recognizing that right of publicity is limited to exploitation of the commercial value of plaintiff's identity). Absent a showing that a parody is likely to cause confusion about whether a given

product is sponsored by the plaintiff, application of state law barring the use of the plaintiff's name to forbid a parody will violate the First Amendment. *L.L. Bean v. Drake Publishers*, 811 F.2d 26, 32-33 (1st Cir. 1987). The complaint in this case alleges an intent to defraud, but it does not allege either that reasonable viewers of the page would have been confused about whether it is sponsored by Jones, or that the Facebook page was published for any commercial purpose. Because the complaint itself is insufficient on its face, the *Dendrite* / *Krinsky* requirement of pleading an actionable claim has not been met.

3. There Has Been No Showing of a Prima Facie Case.

Jones has made no **showing** sufficient to make out a prima facie case of either a defamation or an "impersonation" claim. On defamation, there has been no showing of falsity, and although the complaint sets forth a conclusory claim of injury to reputation, no evidence of such injury has been presented. In this regard, a showing of actual harm will be required by principles of federal labor law preemption by *Linn v. Plant Guards*, 383 U.S. at 65; *Steam Press Holdings v. Teamsters Local 996*, 302 F.3d 998, 1004 (9th Cir. 2002). *Krinksy* also indicated that proof of damage is required before disclosure may be ordered, 159 Cal.App.4th at 1173; *see also Global Telemedia Int'l v. Doe 1*, 132 F. Supp.2d 1261, 1270 (C.D. Cal. 2001). Yet there is no evidence of any actual harm. Moreover, the fact that a parody may hurt the plaintiff's feelings does not make it actionable as defamation. *Hustler Magazine v. Falwell*, 485 U.S. 46, 57 (1988).

Similarly, with respect to the impersonation claims, there is no showing that the Facebook page contained commercial speech – the Facebook page does not carry **any** advertising, and Doe has done nothing to promote the sale of any product. Nor is there any showing that the page caused any confusion about sponsorship, or indeed that it was anything other than an obvious parody. The courts in *Highfields Capital Management*, *Salehoo* and *Koch Industries* quashed subpoenas that were based in part on impersonation claims (filed as trademark theories) because it was apparent from the face of the statements at issue in those cases that they were made to criticize and were not likely to cause confusion about the source. This is, in a word, a frivolous case that has been filed by the union's own general counsel, Levy Affidavit ¶ 8 and Exhibit E, presumably at union expense, for the apparent purpose of discouraging criticism by members. Such litigation may well violate a federal statute protecting the free speech of union members. *Clark v. Esser*, 821 F. Supp. 1230, 1235-1237 (E.D. Mich. 1993).

Finally, although *Krinsky* rejected application of the *Dendrite* balancing stage, in making the equitable determination about whether to allow the subpoena to be enforced, the Court is urged to take into consideration the potential impact of an order compelling Facebook to reveal Doe's identity. Hiring halls can provide an important source of regularity for employment in construction unions, but courts have long recognized the "union's tremendous authority and the workers' utter dependence" that union hiring halls create. *Plumbers Local 32 v. N.L.R.B.*, 50 F.3d 29, 32 (D.C. Cir.1995). Moreover, decision after decision, not to speak of writings and practical experience in the field, show abuses whereby those known to be at odds with the union leadership can be frozen out of employment, and hence deprived of their right to make a living. *Wall v. Laborers' Local 230*, 224 F.3d 168, 171 (2d Cir. 2000); *Guidry v Operating Engineers Local 406*, 882 F.2d 929 (5th Cir. 1989), *vacated on other grounds*, 494 U.S. 1022 (1990); *E.E.O.C. v. Ironworkers Local 580*, 139 F. Supp.2d 512, 524 (S.D.N.Y. 2001); Levy Affidavit ¶¶ 10-11 and Exhibits G to J. Although these authorities pertain to different construction unions than the one of which plaintiff is the president, and at times in the past, the reports about the Boilermakers in the Kansas City Star make clear that worry about retaliation is a continuing phenomenon affecting members of this union, in that the reporter was unable to find a single current member who was willing to be quoted by name about the union's president. Thomas, *Hefty Salaries*, Levy Affidavit, Exhibit E.

Given the absence of any properly pleaded claim, not to speak of the absence of evidence showing that Jones has a realistic chance of prevailing on his claims about the anonymous Facebook page, the interest of the Doe in maintaining her anonymity easily outweighs Jones's interest in identifying the union member who criticized him by posting the page. Consequently, the subpoena should be quashed.

CONCLUSION

The motion to quash the subpoena should be granted. Moreover, the Court is requested to apply section 1987.2(b) of the California Code of Civil Procedure to require Jones to pay the attorney fees of undersigned counsel for having had to file the motion to quash, in an amount to be determined by further motion if the parties cannot agree on the amount. The subpoena seeks defendant's personally identifying information in connection with an underlying action involving the defendant's exercise of free speech rights on the Internet, for use in an action pending in another state, and the subpoena was served on Facebook, which is an Internet Service Provider or the provider of an interactive computer service. Moreover, plaintiff

did not and cannot make a prima facie showing of his cause of action.

Dated: May 23, 2012

By:_____
PAUL ALAN LEVY
Attorney for Movant John Doe

By:_____
MARK GOLDOWITZ
Attorney for Movant John Doe