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Attorneys for Movant Datruthsquad.com a/k/a John Doe

| | | |
|-----------------------------------|---|------------------------------|
| TOWNSHIP OF MANALAPAN, |) | SUPERIOR COURT OF NEW JERSEY |
| |) | LAW DIVISION |
| Plaintiff, |) | MONMOUTH COUNTY |
| |) | DOCKET NO. MON-L-2893-07 |
| vs. |) | |
| |) | |
| STUART MOSKOVITZ, ESQ., JANE DOE |) | <u>CIVIL ACTION</u> |
| and/or JOHN DOE, ESQ. I-V (these |) | (LEGAL MALPRACTICE) |
| names being fictitious as their |) | |
| true identities are presently |) | NOTICE OF MOTION |
| unknown) and XYZ Corporation, I-V |) | |
| (these names being fictitious as |) | |
| their true corporate identities |) | |
| are currently unknown) |) | |

Defendants.

TO: LEN M. GARZA, ESQUIRE
DAVID PARKER WEEKS, ESQUIRE
Attorneys for Plaintiff

STUART MOSKOVITZ, ESQUIRE
Pro se defendant

PLEASE TAKE NOTICE that the undersigned will apply to the
above named Court, at the Monmouth County Court House, Monmouth

County Superior Court, 71 Monument Park, Freehold, New Jersey on December 21, 2007, at 9:00 a.m. o'clock, or as soon thereafter as counsel may be heard, for an Order 1) permitting intervenor-movant to intervene in this lawsuit as a party defendant, pursuant to R. 4:33-1 or -2.

In support of this application, movant will rely on the accompanying letter brief.


Pursuant to R. 1:6-2(d), the undersigned:

- (X) waives oral argument and consents to disposition on the papers.
- () does not request oral argument at this time.
- () requests oral argument.

A proposed form of order is annexed.

DATED:

12/1/07



FRANK L. CORRADO, ESQUIRE



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ATTORNEYS AT LAW

STEPHEN W. BARRY*
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MICHELE C. HOSNER

*CERTIFIED CIVIL TRIAL ATTORNEY
*CERTIFIED CRIMINAL TRIAL ATTORNEY

December 2, 2007

The Honorable Terrence Flynn, J.S.C.
Monmouth County Court House
71 Monument Park
Freehold, NJ 07728

Re: Township of Manalapan v. Moskovitz, et al
Docket No. MON-L-2893-07

Dear Judge Flynn:

Please accept this letter-brief in support of the motion of anonymous blogger datruthsquad.com, a/k/a John Doe, to intervene in this matter. The motion is returnable December 21.

Doe is the subject of a subpoena issued by the Township of Manalapan to Google, Inc. The subpoena asks Google to disclose various categories of information about Doe, including his identity, address, other identifying data, and "any and all information related to" his internet blog.¹

Doe seeks to intervene in this matter solely to quash this subpoena and to prohibit Manalapan from further similar efforts to learn his identity or information about him. He does so to protect his rights under the First Amendment, the state constitution, and federal and state law.

Doe has already filed a motion, also returnable December 21, to quash the subpoena and for an appropriate protective order. In his brief in support of that motion, Doe sets forth in detail the reasons why the subpoena violates his constitutional and statutory rights.

¹Doe uses the masculine pronoun here as a matter of convenience. He does not thereby mean to indicate he is male.

The Honorable Terrence Flynn, J.S.C.
December 2, 2007
Page 2

Doe brings this motion pursuant to R. 4:33-1, which permits intervention as of right, and R. 4:33-2, which governs permissive intervention. Under either Rule, the Court should allow Doe to intervene.

R. 4:33-1 permits a person to intervene in a lawsuit as of right if, "upon timely application"

[t]he applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that disposition of the action may as a practical matter impair or impede that interest, unless the applicant's interest is adequately represented by existing parties.

A motion to intervene must be viewed liberally. ACLU of NJ v. County of Hudson, 352 N.J. Super. 44, 67 (App. Div.), certif. den., 174 N.J. 191 (2002). The motion is timely if it does not "unduly delay or prejudice the rights of the original parties." Atlantic Employers Ins. Co. v. Tots & Toddlers, 239 N.J. Super. 276, 280 (App. Div. 1990).

Doe's application satisfies that standard. As his motion to quash makes clear, he has an interest, protected by both the First Amendment and the cognate provision of the state constitution, in speaking anonymously on the internet. McIntyre v. Ohio Elections Comm'n, 514 U.S. 539, 544 (1995); Dendrite Int'l v. Doe No.3, 342 N.J. Super. 134, 142 (App. Div. 2001).

That interest is directly threatened by Manalapan's subpoena. Neither party to the case - Manalapan or Stuart Moskovitz (who denies the township's unsupported accusation that he is "datruthsquad") -- can adequately protect that interest. Google's policy is to notify its bloggers when their identity is sought, but not to represent them, or actively defend their interests. Doe's participation is thus essential.

Furthermore, given the case's procedural posture and the irrelevance of the demand for Doe's identity to the issues raised in the township's complaint, allowing intervention will

The Honorable Terrence Flynn, J.S.C.
December 2, 2007
Page 3

not prejudice the rights of the parties or delay disposition of the matter.

Intervention is equally appropriate under R. 4:33-2. That rule provides:

Upon timely application anyone may be permitted to intervene in an action if the claim or defense and the main action have a question of law or fact in common.

The criteria for timeliness and liberality of application are identical to those for intervention as of right. See Atlantic Employers Ins. Co., 239 N.J. Super. at 280. A court should determine whether permissive intervention will cause undue delay, prevent litigation or complicate the case. See Grober v. Kahn, 88 N.J. Super. 343, 361 (App. Div. 1965), modified o.b., 47 N.J. 135 (1966). The court should also consider whether the litigation implicates the public interest. Evesham Tp. Bd. of Adj. v. Evesham Tp., 86 N.J. 295, 299 (1981).

As noted above, there is no danger of delay or prejudice from Doe's intervention. The subpoena directly threatens Doe's rights. Those rights are of constitutional dimension, and in fact go to the core of the state and federal guarantees of free speech. See New York Times Co. v. Sullivan, 376 U.S. 254, 270-71 (1964). The issue therefore implicates the public interest as well.

Although the precise situation presented by this motion has not yet arisen in a reported New Jersey decision, I draw the Court's attention to the decision in Greenbaum v. Google, Inc., ___ N.Y.S.2d ___, 2007 WL 3197518 (N.Y. Sup. 2007).² In that case, plaintiff sought to compel Google to disclose the identity of an anonymous blogger who she claimed had defamed her.

Google - which does not represent the interests of its website's bloggers - notified the blogger of plaintiff's

² A copy of this case is attached as Exhibit N to the Certification of Matthew Zimmerman, which Doe submitted in support of his motion to quash.

The Honorable Terrence Flynn, J.S.C.
December 2, 2007
Page 4

effort, and the blogger moved to intervene. The court granted that motion on the ground that the First Amendment interests involved warranted intervention. Id. at *1. Those same interests are involved here, and warrant intervention as well.

Accordingly, for the foregoing reasons, the Court should allow Doe to intervene in this matter for the limited purpose of quashing the subpoena that seeks to expose his identity, and protecting himself against further efforts by plaintiff.

Respectfully yours,

BARRY, CORRADO, GRASSI & GIBSON, PC

A handwritten signature in black ink, appearing to read "Frank L. Corrado", with a long horizontal flourish extending to the right.

Frank L. Corrado

FLC/sh

cc Len M. Garza, Esquire
David Parker Weeks, Esquire
Stuart Moskowitz, Esquire
Matthew J. Zimmerman, Esquire

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| unknown) and XYZ Corporation, I-V) |) | ORDER PERMITTING |
| (these names being fictitious as |) | INTERVENTION |
| their true corporate identities |) | |
| are currently unknown) |) | |
| |) | |
| Defendants. |) | |

THIS MATTER having come before the Court on the motion of the anonymous speaker "daTruthsquad", a/k/a "John Doe," by his counsel, Frank L. Corrado, Esquire, and Matthew Zimmerman, Esquire, and in the presence of counsel for plaintiff Manalapan Township and defendant Stuart Moskowitz, Esquire; and the Court having considered the briefs and arguments of the parties, and for good cause shown;

IT IS ON THIS _____ day of December 2007, hereby ORDERED
AND DECREED as follows:

1. Anonymous blogger "datruthsquad.com, a/k/a John Doe is hereby permitted to intervene in this lawsuit pursuant to R. 4:33-1 and 4:33-2 for the purpose of moving to quash the subpoena issued to Google, Inc., and to seek a protective order against the Township of Manalapan preventing it from taking any similar steps to obtain Doe's identity.

J.S.C.

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| are currently unknown) |) | |
| |) | |
| Defendants. |) | |

The original of the within Notice of Motion have been filed with the Clerk, Law Division, Monmouth County, Monmouth County Court House, 71 Monument Park, Freehold, NJ 07728-1266.


FRANK L. CORRADO, ESQUIRE

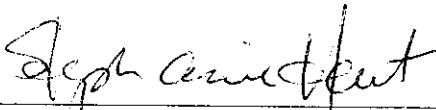
PROOF OF MAILING: On December 3, 2007, I the undersigned, mailed to: LEN M. GARZA, ESQUIRE, and DAVID PARKER WEEKS, ESQUIRE, of Ruprecht, Hart and Weeks, LLP, 306 Main Street, Millburn, New Jersey 07041; and STUART MOSKOVITZ, ESQUIRE, 819

Highway 33, Freehold, New Jersey 07728 by regular mail the following: NOTICE OF MOTION TO INTERVENE WITH ATTACHMENTS.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

12/3/07


STEPHANIE A. HART