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JUDICIAL DISTRICT OF TEXAS

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Re: Cause No. 76357; SuddenLink Communications, Inc,
Essent PRMC, LP vs. John Does, et al

Dear Counsel:

The Court after considering the argument of counsel, reviewing the statute, and the cases presented, hereby decides the following: Plaintiff seeks the name of the Internet subscriber from SuddenLink Communications, Inc. The subscriber was notified and appeared unnamed by counsel for argument before the Court.

Texas, as well as the Federal Court, allows broad discovery where good cause is presented; however, the subscriber claims that they are protected under the Wire or Radio Communications Act from the subscriber being able to provide this information. The Act does protect the identity and personal information with the exception that it may, upon notifying the subscriber give such information under a Court order.

In reviewing the cases presented in American Online, the Circuit Court of Virginia concluded that an Internet search provider should be required to produce information concerning the identity of a subscriber only if

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*(1) the pleadings or evidence satisfy the court "that the party requesting the subpoena has a legitimate, good faith basis to contend that it may be the victim of conduct actionable in the jurisdiction where suit was filed" and (2) "the subpoenaed identity information is centrally needed to advance that claim." American Online, 2000 WL 1210372 at *8. The American Online court reasoned that those who suffer damages as a result of tortious or other actionable communications on the Internet should be able to seek appropriate redress by preventing the wrongdoers from hiding behind an illusory shield of purported First Amendment rights." Id., at *6. Thus, it concluded that the compelling state interest in protecting residents "from the potentially severe consequences that could easily flow from actionable communications on the information superhighway significantly outweighs the limited intrusion on the First Amendment rights of any innocent subscribers."*

Also, in Alvis Coatings, Inc versus John Does One Through Ten the Court quoted as follows: The parties have not cited, and the undersigned is unaware of, any controlling precedent considering whether an anonymous Internet speaker is entitled to maintain his anonymity in the face of allegations that his statements falsely impugned a federally-registered trademark or otherwise disparaged the complaining party's business. However, courts that have considered similar issues have concluded that where a plaintiff makes a prima facie showing that an anonymous individual's conduct on the Internet is otherwise unlawful, the plaintiff is entitled to compel production of his identity in order to name him as a defendant and to obtain service of process. See, e.g., John Doe v. 2themart.com, Inc., 140 F.Supp.2d 1088, 1094-95 (W.Dist.Wash.2001) (subpoena enforced where it was issued in good faith and the identity of the anonymous Internet author was unavailable from any other source); Columbia Ins. V. Seescandy.com, 185 F.R.D. 573 (N.D.Cal. 1999) (anonymous creator of Internet website address that was identical to the plaintiff's federally-registered trademark was not entitled to maintain his anonymity in an effort to avoid service of process); and In re Subpoena Duces Tecum to America Online, Inc., 52 Va. Cir. 26, 30 (Va. Cir. Ct.2000) (plaintiff entitled to subpoena identity of anonymous author of allegedly-false Internet statements).

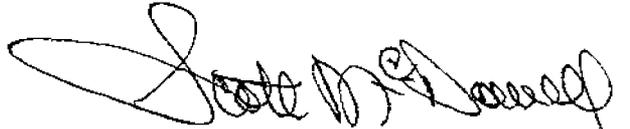
After considering the above, the Court hereby concludes that good cause has been shown and the burden by plaintiff has been met to meet the

requirements of the exceptions to the Communication Act to grant the request by Plaintiff for the Internet service provider to furnish the name and address of the subscriber.

Plaintiff's attorney is to prepare the appropriate order.

If there's any question regarding the above, please contact me at your earliest convenience.

Yours very truly,



Scott McDowell

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