

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THOMAS M. COOLEY LAW SCHOOL,
a Michigan nonprofit corporation,

Plaintiff,

Case No. 11-781-CZ

vs.

Hon. Clinton Canady III

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
and JOHN DOE 4,

Defendants.

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**PLAINTIFF THOMAS M. COOLEY LAW SCHOOL'S SUPPLEMENTAL BRIEF
OPPOSING DEFENDANT JOHN DOE 1'S MOTION TO QUASH**

RECEIVED

SEP 23 2011
Clerk of the Court
39th Judicial Circuit

Plaintiff Thomas M. Cooley Law School respectfully submits this supplemental brief to bring to the Court's attention two issues that bear directly on the Court's *in camera* review hearing, scheduled for Monday, September 26, 2011, and more generally on the Court's rulings on Defendant John Doe 1's Motion to Quash. The first issue is the Weebly, Inc. Terms of Service that Defendant John Doe 1 agreed to as a condition of using Weebly's web site to create the blog postings at issue in this action. Those terms specifically granted Weebly the sole discretion to disclose Defendant's identity, and render unreasonable Defendant's alleged expectation of anonymity in the Weebly materials, as he argued to this Court on September 7. The second issue is the applicability of MCR 2.302(B)(7) to non-party Weebly, Inc.'s response to Cooley's legitimate California subpoena in this action. As discussed below, that rule by its terms simply does not apply here.

A. Defendant John Doe 1 Had No Legitimate Expectation of Anonymity With Respect to His Use of the Weebly Site

Cooley believes the Court should be aware, prior to the *in camera* review, of Weebly, Inc.'s Terms of Service (attached as Exhibit A), to which Defendant John Doe 1 agreed when he created the blog post at issue in this action. The terms are significant because they grant Weebly sole discretion to disclose any and all information from Defendant. That fact renders unreasonable Defendant's arguments to this Court in his Motion to Quash and at the hearing that he had an expectation of privacy and anonymity when he posted the alleged defamatory statements about Cooley on the blog.

Specifically, Weebly's Terms and Service (attached as Exhibit A) provide the following:

You acknowledge and agree that we may preserve Content and **may also disclose** Content if required to do so by law **or in the good faith belief that such preservation or disclosure is reasonably necessary to:** (a) **comply with legal process;** (b) **enforce these Terms;** (c) **respond to claims that any Content violates the rights of third parties;** or (d) **protect our rights, property, or personal safety and those of our users and the public.**

(Exhibit A ¶ 8; emphasis added.) “Content” is defined in the terms to include “[a]ll information, data, text,” etc. The Terms further provide:

You agree that you will not:

(a) upload, **post**, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous [sic], **defamatory**, vulgar, obscene, **libelous**, invasive of another’s privacy (up to, but not excluding any address, email, phone number, or any other contact information without the written consent of the owner of such information), hateful, or racially, ethnically **or otherwise objectionable**[.]

(*Id.*)

The terms of service to which Defendant John Doe 1 agreed when he created his blog, in other words, granted Weebly the discretion to disclose identifying information about Defendant—not only when required by law, but also, among other reasons, “in the good faith belief that such . . . disclosure is reasonably necessary” to “enforce these Terms,” including terms that prohibit defamatory content, or to “respond to claims that any Content violates the rights of third-parties.” (*Id.*) Notably the terms do not call for Weebly to make any judgment whether the content is in fact abusive, harmful, defamatory, etc. Instead, the right arises upon a *claim* of such wrongful conduct.

Weebly’s discretion makes completely unreasonable any expectation Defendant could have had that his identity would remain hidden when he created his blog or when he posted harmful, abusive, tortious, and defamatory content on the Weebly site. By using Weebly’s site, he expressly agreed to Weebly’s Terms of Service that Weebly would have sole discretion to disclose the identifying information he submitted.

B. MCR 2.302(B)(7) Applies Only to Claims of Attorney-Client Privilege or Work-Product Protection, Neither of Which Apply to Weebly's Subpoena Response

Notwithstanding Defendant's meritless argument to the contrary, MCR 2.302(B)(7) simply does not apply to Weebly's subpoena response here. The rule was one of several electronic-discovery amendments to the court rules, and was enacted to protect parties against inadvertent waiver of the attorney-client privilege and work-product doctrine in large-scale electronic document productions. *See* Comment to 2008 Amendment (noting that MCR 2.302(B)(7) was introduced in a set of amendments designed to "update Michigan's discovery rules as they relate to electronically stored information"). The rule, which mirrors Federal Rule of Civil Procedure 26(b)(5)(B), provides procedures for parties to protect against waiver of attorney-client-privileged or work-product-protected documents after they are inadvertently produced in discovery. *See* Advisory Committee Notes to Fed. R. Civ. P. 26 (noting that the rule is aimed at protecting against "privilege waiver" and the increased risk of waiver "because of the volume of electronically stored information and the difficulty in ensuring that all information to be produced has in fact been reviewed"); *see Bd. of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Palladium Equity Partners, LLC*, 722 F. Supp. 2d 845 (E.D. Mich. 2010) (applying Fed. R. Civ. P. 26(b)(5)(B) to a party's claim of attorney-client privilege with respect to documents it produced in a 4.3-million-page electronic document production).

Indeed, MCR 2.302(B)(7), by its terms, applies *only* to a claim of "*privilege or of protection as trial-preparation material*" in such circumstances. MCR 2.302(B)(7) (emphasis added). The privilege is the attorney-client privilege—as evidenced by the background and context of the rule—and the rule specifically defines "trial-preparation material" in an earlier subsection as documents and information "prepared in anticipation of litigation or for trial." MCR 2.302(B)(3). The information provided by Weebly is neither attorney-client privileged nor

trial-preparation material. No party has ever asserted that the Weebly information is either of those things and, indeed, the Court did not find at the hearing on Defendant's Motion to Quash that Defendant had asserted any claim that the Weebly information was either of those things. The rule therefore does not apply.

Defendant John Doe 1 nonetheless asserted, both in his supplemental brief to the Court dated September 2, 2011 and to the Court at the hearing, that MCR 2.302(B)(7) applied simply because the information purportedly had been "inadvertently produced" and because Defendant had made some claim of "protection." (See Defendant's Supplemental Brief at 4) ("MCR 2.302(C)(7) [sic] address [sic] the issue of documents and/or information that is inadvertently produced").¹ The Court indicated at the hearing that Defendant's general claim of "protection"—which was not a claim of "protection as trial-preparation material"—was sufficient together with a finding of inadvertent production to invoke MCR 2.302(B)(7).

That finding was, plain and simple, error. MCR 2.302(B)(7) does not apply in every situation where a party asserts some nebulous claim of "protection." Nor does it apply to every situation where documents are "inadvertently produced." It applies instead only where the "protection" asserted is "protection as trial-preparation material," and it operates to protect a party from waiver only when trial preparation material is inadvertently produced in discovery. Indeed, it is telling that Defendant has not cited a single case—in Michigan or in any federal court applying the analogous federal rule—where a court applied the rule to anything other than attorney-client privileged or work-product documents.

And for good reason. Otherwise, parties could claim some undefined "protection"—as Defendant now does here—with respect to any document produced in discovery in an action and

¹ In his brief and to the Court at the hearing Defendant repeatedly and mistakenly cited MCR 2.302(C)(7) instead of 2.302(B)(7). MCR 2.302(C)(7) is wholly inapplicable here.

automatically trigger the return, claw-back, preservation, sequestration, and non-use provisions of MCR 2.302(B)(7). Under that improper construction, the rule would wreak havoc on the open liberal discovery process and place an undue burden on the parties. The Court should reject that dangerous, unwarranted, and unduly burdensome precedent in this case. MCR 2.302(B)(7) simply does not apply here.

Respectfully submitted,

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Dated: September 23, 2011

19,436,020.2\018763-00020

EXHIBIT A



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Terms of Service

Content Guidelines

These types of sites are not allowed on Weebly:

- Adult**1. : involving nudity in a sexual context, exposed genitalia or adult
- Copyrighted Content**2. : music, movies or games that you do not own
- Spam/SEO**3. : a site whose sole purpose is to gain Google ranking, Facebook likes, or other artificial means
- Phishing**4. : a site meant to trick users into providing their username and password
- Illegal Content**5. : content which may be illegal in your country
- Scams**6. : get rich quick, pyramid/MLM, or other dubious schemes
- Excessive Advertising**7. : placing excessive advertising on your site, including more than three ad units per page
- File Hosting**8. : including sites that are not created with the Weebly service
- Injurious Experience**9. : sites using the "Custom HTML" element that provide a horrible user experience, such as extreme flashing banners, excessive animated movement, or content that could provoke seizures in unsuspecting visitors

This list is a quick reference and is not meant to be complete. For more specific information, please refer to the Terms below.

1. ACCEPTANCE OF TERMS

Welcome to Weebly, Inc.'s website creation service (the "Service"). Your use of the Service is subject to these Terms of Service ("Terms"). We reserve the right to update and change these Terms from time to time without notice to you. These Terms will also be applicable to your use of the Service on a trial basis. By using the Service, you signify your acceptance of these Terms. If you do not agree to these Terms, do not use the Service.

2. DESCRIPTION OF SERVICE

Our web-based Service allows users who register for an account (each an "Account Holder") to create and update an online web site. Once registered, each Account Holder receives his or her own Web Site and may post "Content" (defined in Section 7). Any new features on the Service, including the release of new Weebly tools and resources, shall be subject to these Terms. To use the Service, you must have access to the Internet, either directly or through devices that access web-based content, and you must pay any fees associated with Internet access. In addition, you must provide all equipment necessary to make such connection to the Internet, including a web-enabled computer. The Service may include certain communications from us, such as service announcements, administrative messages, and the Weebly Newsletter. These communications are considered part of Weebly membership. You may not access the Service by any means other than through the Service interfaces we provide you.

3. REGISTRATION

To register as an Account Holder, you must provide us with a valid email address and other information ("Registration Data"). You will choose a password and account designation for your web sites during the registration process and you will obtain a Weebly ID. You are responsible for maintaining the confidentiality of the password and account, and for all activities that occur under your account. In consideration of use of the Service, you agree to maintain and update true, accurate, current and complete Registration Data. If you provide any information that is untrue, inaccurate, not current or incomplete, or if Weebly has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate your account and refuse any and all current or future use of the Service or any portion thereof. Individuals under the age of 13 are prohibited from creating or using accounts through Weebly.com. Students under the age of 13 may, however, use Weebly through special student accounts created by their teachers through education.weebly.com, provided the teacher has obtained signed parental consent from the student's parents.

4. CANCELLATION AND TERMINATION

If you cancel the Service, your cancellation will take effect immediately. After cancellation, you will no longer have access to your web site and we may delete all information on your web site. We accept no liability for such deleted information or content.

For as long as we continue to offer the Services, we will provide and seek to update, improve and expand the Service. As a result, we allow you to access the Service as it may exist and be available on any given day and have no other obligations, except as expressly stated in this Agreement. We may modify, replace, refuse access to, suspend or discontinue the Service, partially or entirely, or change and modify prices for all or part of the Services for you or for all our users in our sole discretion. All of these changes shall be effective upon their posting on our site or by direct communication to you unless otherwise noted. We further reserve the right to withhold, remove and or discard any Content available as part of your account, with or without notice if deemed by us to be contrary to this Agreement. For avoidance of doubt, we have no obligation to store, maintain or provide you a copy of any content that you or others provide when using the Service.

5. WEEBLY PRIVACY POLICY

How we collect, protect and use your Registration Data and certain other information about you are contained in our [Privacy Policy](#), which is part of these Terms.

6. WEBSITE ACCOUNT AND SECURITY

You are responsible for maintaining the security of your account and web site, for all activities that occur or actions taken under the account or in connection with the web site. You agree to immediately notify us in writing of any unauthorized uses of the account or any other breaches of security. We will not be liable for any loss or damage from your failure to comply with this security obligation. You acknowledge and agree that under no circumstances will we be liable, in any way, for any or your acts or omissions or those of any third party, including damages of any kind incurred as a result of such acts or omissions.

7. YOUR RIGHTS IN YOUR CONTENT

Weebly does not claim ownership of your Content, but you give us your permission to host your Content on the Service. This permission exists only for as long as you continue to use the Service or remain an Account Holder.

8. CONTENT AND CONDUCT RULES AND OBLIGATIONS

All information, data, text, software, music, sound, photographs, graphics, video, messages, goods, products, services or other materials you post on a web site via the Service ("Content") are the sole responsibility of the person from which such Content originated. You are responsible for all Content that you upload, post, transmit or otherwise make available via the Service. We do not control the Content you post via the Service.

By using the Service, you may be exposed to content that is offensive, indecent or objectionable. Under no circumstances will we be liable for your Content or the content of any third party, including, but not limited to, for any errors or omissions in your Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted or otherwise made available via the Service. You acknowledge that we do not pre-screen Content, but that we shall have the right (but not the obligation) to refuse, move or delete any Content that is available via the Service. We shall also have the right to remove any Content that violates these Terms or is otherwise objectionable in our sole discretion. You must evaluate, and bear all risks associated with, the use of any Content. You may not rely on any Content created by us. You acknowledge and agree that we may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any Content violates the rights of third-parties; or (d) protect our rights, property, or personal safety and those of our users and the public.

The technical processing and transmission of the Service, including Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

You agree that you will not:

(a) upload, post, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy (up to, but not excluding any address, email, phone number, or any other contact information without the written consent of the owner of such information), hateful, or racially, ethnically or otherwise objectionable;

(b) harm minors in any way;

(c) impersonate any person or entity, including, but not limited to, a Weebly official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;

(d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;

(e) upload, post or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);

(f) upload, post or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright, rights of privacy or publicity, or other proprietary rights of any party;

(g) upload, post, or transmit unsolicited commercial email or "spam". This includes unethical marketing, advertising, or any other practice that is in any way connected with "spam", such as (i) sending mass email to recipients who haven't requested email from you or with a fake return address, (ii) promoting a site with inappropriate links, titles, descriptions, or (iii) promoting your site by posting multiple submissions in public forums that are identical;

(h) upload, post or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

(i) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;

(j) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;

(k) "stalk" or otherwise harass another;

(l) promote or provide instructional information about illegal activities, promote physical harm or injury against any group or individual, or promote any act of cruelty to animals. This may include, without limitation, providing instructions on how to assemble bombs, grenades and other weapons or incendiary devices;

(m) offer for sale or sell any item, good or service that (i) violates any applicable federal, state, or local law or regulation, (ii) you do not have full power and authority under all relevant laws and regulations to offer and sell, including all necessary licenses and authorizations, or (iii) we determine, in our sole discretion, is inappropriate for sale through the Service;

(n) use the Service as a forwarding service to another web site;

(o) solicit a third party's passwords or personal identifying information for unlawful or phishing purposes;

(p) exceed the scope of the Service that you have signed up for; for example, by accessing and using the tools that you do not have a right to use, or deleting, adding to, or otherwise changing other peoples comments or content; (q) upload, post or otherwise transmit any Content that is intended to take advantage of a user. Such content may include, but is not limited to, "get rich quick", "get paid to surf", pyramid/MLM, or other dubious schemes.

(q) include more than three ad units per page, or any advertising that greatly reduces the usability of the site.

(r) upload files for the sole purpose of having them hosted by us and for use outside of a web site created using the Service.

(s) create a web site that provides an injurious user experience with custom programming. Examples include, but are not limited to, extreme flashing banners and excessive animated movement.

(t) upload, post or otherwise transmit any Content that is adult in nature, such as any nudity in a sexual context, any Content revealing exposed genitalia, or any Content with adult themes.

We retain the right to terminate any account or user who has violated any of the above prohibitions.

9. FEES/PAYMENT

Some of the features on the Service require payment of fees. If you elect to sign up for these features, you shall pay all applicable fees, as described on the Service in connection with such features selected by you. We reserve the right to change our prices and at any time. You authorize us to make any reasonably necessary inquiries to validate your account and financial information.

All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment thereof. You agree to pay for any taxes that might be applicable to your use of the Service and payments you make to us.

10. MONEY BACK GUARANTEE

Weebly Pro Accounts include a 30-day money back guarantee. If you are dissatisfied with the pro account service for any reason, you can receive a full refund if you cancel your pro account within 30 days of activation. Please direct refund requests to support@weebly.com with the subject line: Refund Request.

If you elect to purchase your own domain name, this purchase is non-refundable and not subject to this money back guarantee.

Downgrading your account may cause the loss of content, features, or capacity of your account. We do not accept any liability for such loss.

11. ADDITIONAL SOFTWARE

If you elect to download or access any additional software or third party content made available by us through the Service, you must agree to additional terms and conditions before you use such software or third party content. If you do not agree to the third party's terms of service or license agreement, do not download the software or content.

Your use of any third party software or content obtained through the Service does not transfer to you any rights, title or interest in or to the third party software or such content beyond the terms contained in the third party provider's terms of service or license.

12. INTERNATIONAL USE

Recognizing the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable content. Specifically, you agree to comply with all applicable laws

regarding the transmission of technical data exported from the United States or the country in which you reside.

13. LINKS

The Service may provide, or third parties may provide, links to other web sites or resources. Because we have no control over such sites and resources, we are not responsible for the availability of such external sites or resources, and we do not endorse and are not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. We are not liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

14. THEMES

If you choose, you may contribute website themes ("Custom Themes") to the Service for use by other users. You hereby grant and agree to grant us an exclusive, perpetual, sublicensable, worldwide, irrevocable, royalty-free right and license to use, copy, modify, and create derivative works of any Custom Themes contributed by You to the Service, including the HTML code and media assets therefor.

15. DESIGNER PLATFORM TERMS

If you use our Designer Platform Service to design a web site (a "Client Website") for a third party (your "Client"), your use of the Service shall be subject to these additional terms.

(a) Your relationship with your Client is strictly between you and the Client. We will not be a party to any agreement you have with your Client. The manner and means that you choose to perform your services are in your sole discretion and control; however you agree to perform these services in a timely and professional manner, consistent with industry practice and in conformance with these Terms.

(b) You accept full responsibility for all Client Websites under your account and for each Client Website's adherence to these Terms.

(c) While we intend to allow you to resell the service under a private label, this private label is in no way guaranteed and we will in no way be held responsible for any failure to maintain its private label.

(d) In the event your Client contacts us, we will direct them to contact you. In the event you fail to support your Client and we receive a request from your Client stating that you have not been responsive, we reserve the right to support your Client directly.

(e) Payments for your use of the Designer Platform Service are calculated on a per website basis. Each Client Website under your account that's published live to a Client's domain will incur monthly service charges. These service charges are billed to the credit card on file for your Weebly account.

(f) Service charges are billed each month for the upcoming month's service, based on the total service charges of all Client Websites. If a new Client Website is published mid-month, a pro-rated amount will be included on your next month's invoice.

(g) No refunds will be given for any days remaining in your current billing cycle.

(h) You understand and agree that you, as the Account Holder, are ultimately responsible for payment for every Client Website under your account. If, at any time, the billing obligations of any Client Website are not met, we will have the right to disable the Client Website until the billing obligation is met.

16. INDEMNITY

You agree to indemnify and hold Weebly, and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your Content, use of or connection to the Service, violation of these Terms, or violation of any rights of another.

17. RESALE OF SERVICE

You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service without our express written permission.

18. GENERAL PRACTICES REGARDING USE AND STORAGE

We may establish general practices and limits concerning use of the Service and may modify such practices and limits from time to time with or without notice to you.

19. OUR PROPRIETARY RIGHTS

You acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contains proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that content contained in sponsor advertisements or in information presented to you through the Service or advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by us or our advertisers, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service, in whole or in part.

We do not want to receive confidential or proprietary information from you through the Service or by email. Unless otherwise agreed in writing by an authorized Weebly representative, any material, information or idea you transmit to us by any means may be disseminated or used by us or our affiliates without compensation or liability to you for any purpose whatsoever, including, but not limited to, developing, manufacturing and marketing products. However, this provision does not apply to Content (as defined herein), or to personal information that is subject to our Privacy Policy.

20. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

(a) YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(b) WE NOT RESPONSIBLE FOR ANY DAMAGE, LOSS OF DATA, CUSTOMER INFORMATION OR VENDOR DATA, REVENUE, OR OTHER HARM TO BUSINESS ARISING OUT OF DELAYS, MISDELIVERY OR NONDELIVERY OF INFORMATION, RESTRICTION

OR LOSS OF ACCESS, BUGS OR OTHER ERRORS, UNAUTHORIZED USE DUE TO YOUR SHARING OF ACCESS TO THE SERVICE, OR OTHER INTERACTION WITH THE SERVICE. YOU ARE RESPONSIBLE FOR MAINTAINING AND BACKING-UP YOUR DATA AND INFORMATION THAT MAY RESIDE ON THE SERVICE. WEEBLY DOES NOT WARRANT THAT (i) THE SERVICE WILL MEET YOUR SPECIFIC REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

(c) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

21. LIMITATION OF LIABILITY

WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WEEBLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE. OUR AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICE SHALL NOT EXCEED THE AMOUNTS PAID BY YOU TO FOR THE PAST THREE MONTHS OF THE SERVICE IN QUESTION.

22. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 20 AND 21 MAY NOT APPLY TO YOU.

23. U.S. GOVERNMENT RESTRICTED RIGHTS

The materials on the Service are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in applicable laws and regulations. Use of the materials by the U.S. Government constitutes acknowledgment of our proprietary rights in them.

24. GENERAL

We may provide notices to you via either email or regular mail. The Service may also provide notices of changes to these Terms or other matters by displaying notices or links to notices to you generally

on the Service. These Terms and the relationship between you and Weebly shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Weebly agree to submit to the personal and exclusive jurisdiction of the courts located within San Francisco, California. The failure of Weebly to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. These Terms constitute the entire agreement between you and us and govern your use of the Service, superseding any prior agreements (including, but not limited to, any prior versions of these Terms). You also may be subject to additional terms and conditions that may apply when you use affiliate or other services, third-party content or third-party software. If any provision of these Terms or incorporated documents are found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred. The section titles in these Terms are for convenience only and have no legal or contractual effect.

25. VIOLATIONS

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THOMAS M. COOLEY LAW SCHOOL,
a Michigan nonprofit corporation,

Plaintiff,

Case No. 11-781-CZ

vs.

Hon. Clinton Canady III

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
and JOHN DOE 4, unknown individuals,

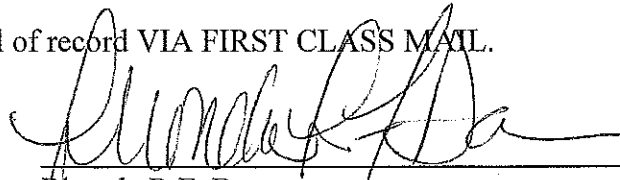
Defendants.

MILLER, CANFIELD, PADDOCK AND STONE, PLC
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CERTIFICATE OF SERVICE

Rhonda R.F. Dancer hereby certifies that on September 23, 2011 she caused to be served a copy of Plaintiff Thomas M. Cooley Law School's Supplemental Brief Opposing Defendant John Doe 1's Motion to Quash on counsel of record VIA FIRST CLASS MAIL.



Rhonda R.F. Dancer

19,439,631.1\018763-00020

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SEP 23 2011

Clerk of the Court
30th Judicial Circuit